

**FRAMEWORK STATEMENT
ON
REFORMS TO THE FAMILY LAW SYSTEM**

In 2003 the House of Representatives Standing Committee on Family and Community Affairs conducted a wide-ranging inquiry into child custody arrangements in the event of family separation. The 1700 submissions that the Committee received demonstrate the significant community concerns about these issues. The government is grateful for the hard work of the Committee on what was a very demanding task.

The Committee's report, *Every Picture Tells A Story*, tabled last December, had a strong focus on the importance of reducing conflict between separated parents and on separated fathers having greater involvement with their children. It emphasised the need for practical steps to reduce parenting disputes.

The government agrees with the Committee on the importance of these issues and on providing opportunities for families to resolve disputes without going to court. It is also important to provide assistance to families to avoid separation by ensuring they have opportunities for pre-marriage education and help in dealing with relationship difficulties along the way. The government proposes to undertake major reforms of the family law system to provide families with better ways to resolve relationship disputes and to reduce the emotional costs to families and children of conflict and separation.

A new family law process

The Committee recommended that a single entry point into the family law system be established to provide information, case assessment, screening and referral of separating parents to mediation and counselling services. The Committee also recommended the establishment of a Families Tribunal to attempt to conciliate disputes and to make decisions in a range of cases.

The government considers that the Committee's objectives can be addressed through a major change to the family law system focusing on resolving disputes outside the courts. The government proposes to establish new Family Relationship Centres across the country to provide information, advice and dispute resolution to help

parents reach agreement. This new national service will be a visible entry point to the family law system, providing case assessment, referrals and practical assistance to parents, including help in developing a parenting plan. Centres will screen cases for violence or child abuse and refer such cases to support services and direct to the courts where appropriate.

While the Committee envisaged that the single entry point services would be attached to a government agency, the government considers that the community sector is better placed to provide these services. Information, advice and the first three hours of dispute resolution sessions will be free.

The new Family Relationship Centres will overcome the limitations associated with the Committee's Families Tribunal proposal. Where the Tribunal would have only been able to make determinations in a relatively small proportion of cases, and would have assisted only those couples wishing to proceed to court, the centres will offer practical, early intervention assistance which will be available to all separated families. Through the new centres, couples will be able to access dispute resolution at a much earlier stage in their separation, before conflict has escalated and disputes have become entrenched.

A major cause of conflict between separating parents is the breach of parenting agreements or court orders. The centres will have an important role in helping to deal with such breaches rather than relying on enforcement orders from the courts which often do not resolve the problem. Where a parent contacts a Family Relationship Centre over a breach of an agreement or order, a parenting adviser would contact the other parent and, where practical, set up a meeting with both parents to try to resolve the issue. (In some cases the level of conflict might mean the adviser will need to talk to the parents separately or by telephone only.) Where the efforts of the adviser do not resolve the dispute, the parents could be referred to a service such as the Contact Orders Program which has had significant success in working with families experiencing high conflict that is affecting parenting arrangements. The government proposes to increase significantly the resources of these programs.

The Family Relationship Centres will not just be for separating parents. They will provide information and referral to pre-marriage education services to give couples a

sound start to marriage. For families who have not separated but who are experiencing relationship difficulties, the centres will provide information and referral to services that can help to prevent family breakdown. In many cases such services will be available on the same premises.

The government proposes to undertake a tender process to establish 65 Family Relationship Centres around Australia. Like the Job Network, they will be run by a variety of non-government organisations but will be badged as a national service and will provide similar help to families across the country. It is likely that service providers such as Centacare, Relationships Australia and members of Family Services Australia, such as Anglicare, will be among the organisations that deliver these services. The network of centres will be supported by a free telephone advice line for those who are unable to access a Family Relationship Centre in person. An implementation review of the centres will be undertaken after the first year.

One of the objectives of the Committee in recommending the Tribunal was to make family law hearings less adversarial. As part of the new family law process, the government will propose changes to the *Family Law Act 1975* to make family law cases relating to children less adversarial and less likely to escalate conflict.

Parents would be able to consult a lawyer if they wished, however, given the Committee's preference for keeping lawyers out of pre-court processes as a means to reduce pressure to adopt a win/lose approach, lawyers would not be allowed to participate in the individual or joint sessions with a parenting adviser. However, parties could bring a non-legal companion if considered appropriate by the mediator.

The government will also establish a new combined registry for family law matters for the Family Court of Australia and the Federal Magistrates Court. The combined registry will help people navigate the court system without the need for a lawyer. It will provide information about the family law courts and channel cases to the appropriate court. Where people come to the courts without attempting dispute resolution first – and the case does not involve violence or child abuse – the registry will refer them to a Family Relationship Centre or other appropriate dispute resolution service to try to resolve the matter outside the courts.

Sharing parenting

The Committee rejected the idea that equal shared custody should be a starting point under the Family Law Act. However, it did recommend that equal shared parental responsibility be a starting point in most cases. That means parents share the key decisions in a child's life, regardless of how much time the child spends with each parent. The government proposes to amend the objects provisions of the Family Law Act to refer to the need for both parents to have a meaningful involvement in their children's lives and for children to have a right to spend time on a regular basis with both parents. The government also proposes to make equal shared parental responsibility the starting point except in cases involving violence, child abuse and entrenched conflict. Parents will still be able to put their case for a different arrangement - and the courts will continue to consider the best interests of the child as the most important question - but equal shared parental responsibility will be the starting presumption in most cases. In many cases the Courts will have to consider equal parenting time if both parents are seeking to have the child living with them (although not where violence, child abuse or entrenched conflict is involved). The government will also consider implementing useful family law initiatives from other parts of the world.

To better promote shared parenting, the government proposes that counsellors, mediators and legal advisers will be required to inform parents about jointly developing a parenting plan.

When advising on parenting plans they will need to discuss equal shared parenting time as a starting point where practicable.

The Committee also recommended that, except in certain circumstances, parents be required to attempt alternative forms of dispute resolution such as counselling, mediation or conciliation before they can go to court over a parenting matter. The government agrees. Parents will need to attend a dispute resolution process aimed at completing a parenting plan, either at a Family Relationship Centre or elsewhere, before they will be able to file a parenting matter in the courts. Cases involving violence or child abuse will not have to meet this requirement.

In cases where couples are in complete agreement regarding custody and related matters, all that will be required is a brief attendance at a Family Relationship Centre to formalise the details of a parenting plan. Proceedings can then be commenced.

Services to assist shared parenting

The Committee's report highlighted the importance of services that can assist parents who cannot achieve and sustain shared parenting on their own. It recommended the government provide increased resources for family services.

The government agrees. The new approach will require significant expansion of pre-marriage education, early intervention services for families, dispute resolution counselling, mediation and similar services. Some of these resources will be available for the Family Relationship Centres to provide further services. The government will also be expanding the successful Contact Orders Program, children's contact services, Mensline and the Men and Family Relationships Program.

Help for grandparents

Grandparents play an essential role in children's lives but can feel cut off and helpless when families separate. Many have responsibility for caring for their grandchildren when the parents are unable to do so. Grandparents already have the right to apply for a residence or contact order under the Family Law Act but often are not aware of their rights or simply want to have a role in their grandchildren's lives without taking the matter to court. The government proposes to change the Family Law Act to highlight the role of grandparents and to ensure the role of grandparents is taken into account by the courts. Through a community education campaign, grandparents will be encouraged to use the Family Relationship Centres, dispute resolution services and the new national advice line to obtain information and assistance. The government also proposes additional legal aid resources in recognition of the increased demand as a result of more grandparents exercising their rights. The government is working with the Council of Australian Governments (COAG) to develop a better coordinated approach across jurisdictions to support grandparents who are providing full-time care to their grandchildren. COAG has commissioned the Community and Disability Services Ministers Conference to report to COAG this year on the nature and extent of the needs of grandparent carers and what measures could be taken to address them.

Child Support

The committee recommended a number of changes to child support legislation and a detailed re-evaluation of the Child Support Scheme by a Taskforce. The government recognises that there is considerable interest in the scheme and a strongly held belief in parts of the community that the current system is inequitable. The government is taking immediate steps to establish a Child Support Taskforce to report back by March 2005 on the recommendations of the Committee. This Taskforce could also consider whether there is scope for the Child Support System to encourage couples to enter parenting plans and access the services of the Family Relationship Centres.

Community Education

The Committee recommended a wide-ranging, long term and multi-level community education strategy to support legislative changes and to promote shared parenting. The government will implement on-going community education to explain the changes to the law, encourage a non-adversarial approach to family separation and to encourage parents to get early help. It will include information on the role of grandparents, as recommended by the Committee.

Implementation

The government is committed to improving outcomes for separating families and ensuring that the focus is on the best interests of the children involved. These proposed reforms will significantly change the family law system and enable many more families to resolve disputes outside the courts. However such far-reaching changes need to be implemented carefully and through consultation with the community. For this reason the government will be releasing a discussion paper on the implementation of the proposed reforms and seeking input from the community on how they should be taken forward.