



## **Australian Government**

### **A new family law system** **Government Response to *Every picture tells a story***

Response to the report of the House of Representatives Standing Committee on  
Family and Community Affairs inquiry into  
child-custody arrangements in the event of family separation

**June 2005**

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## **PART 1**

### **A new family law system**

The Australian Government recognises the impact of family breakdown on Australian families, as well as the wider community. There is too much long term conflict and too many children growing up without the involvement of both their parents in their lives. The inquiry by the House of Representatives Standing Committee on Family and Community Affairs into child custody identified the need for major change. The committee's report, *Every picture tells a story*, recommended a range of reforms to the law and to the family law system.

The government has responded with the biggest investment in the family law system ever and the most significant changes to family law in 30 years. In doing so the government has adopted the great majority of the committee's recommendations, in full or in part.

The government agrees a new approach to the family law system is needed – one that helps prevent separation and, where separation does occur, helps parents agree on what is best for their children rather than fighting in the courtroom. The government has allocated \$397.2 million over four years in the 2005-06 Budget to support the new approach.

A new network of 65 Family Relationship Centres is the centrepiece of the reforms. The committee identified the need for a single entry point into the family law system. The government has allocated \$188.5 million over four years for the establishment of the Family Relationship Centres to provide information, advice, and dispute resolution services to families to help them reach agreement on parenting arrangements without the need to go to court. The centres will also be a doorway to other services families need and will assist families to access those services. Where parenting arrangements breakdown or court orders are breached, the centres will be a first port of call to help families to resolve the problem outside the courts where possible. They will also assist families who have not separated but who are experiencing relationship difficulties by providing information and referral to services that can help prevent separation. In addition, the centres will have a role in building strong, healthy relationships through helping couples access pre-marriage education and relationship skills training.

The Family Relationship Centres will be established in many regional as well as metropolitan centres and will provide outreach services to rural and Indigenous communities. A national telephone advice line and website will support the Family Relationship Centres, providing information and advice for those unable to attend a centre in person.

In addition to the Family Relationship Centres, the government will be establishing over a hundred other new services to help families. These include:

- 15 new services under the Contact Orders Program, at a cost of \$23.3 million over four years. The Contact Orders Program is very successful in helping high conflict families restore contact between non-resident parents and their children where contact has broken down;

- 30 new children’s contact services, at a cost of \$17.0 million over four years, providing safe, neutral places for separated parents to hand over and spend time with their children;
- Early intervention and prevention services at a cost of \$61.6 million over 4 years which includes:
  - up to 40 new pre-marriage and family relationship education services to assist in positive family relationship formation and development;
  - 45 new men and family relationship services;
  - 35 new family relationship counselling and skills services; and
  - increased funding for the delivery of specialised family violence services, at a cost of \$7 million over four years.
- increased funding to Men’s Line Australia, at a cost of \$12.4 million over four years to help fathers have greater involvement in parenting, both before and after separation, and increase their access to relevant support services; and
- increased resources for mediation and similar services provided by agencies supporting the new Family Relationship Centres network, so more separating families have the opportunity to sit down and agree on what is best for their children, at a cost of \$13.4 million over four years.

Changes to the *Family Law Act 1975* will recognise the importance of children having the opportunity for both parents having a meaningful involvement in their lives and will include a new presumption of joint parental responsibility, except in cases involving child abuse or violence. Other changes will:

- require parents to attend dispute resolution, such as mediation, before taking a parenting matter to court (with exceptions including child abuse or violence);
- require the courts to consider substantial sharing of parenting time in appropriate cases;
- encourage parents to consider substantially sharing parenting time when developing parenting plans outside the courts; and
- better recognise the interests of the child in spending time with grandparents and other relatives.

The changes to the law will emphasise the best interests of the child.

When deciding the best interests of a child, the primary factors that the court must consider will be the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm. Among other factors to be considered will be the capacity of each parent to provide for the needs of the child and the willingness and ability of each parent to facilitate a continuing relationship between the child and the other parent.

The government recognises the important role grandparents and other extended family members play in children’s lives. In addition to legal changes, the government will be providing resources to legal aid commissions to facilitate the involvement of grandparents or other extended family

members in family conferencing. Family conferencing is a form of mediation which includes family members, rather than just the parents, in the dispute resolution process. Staff of Family Relationship Centres will also be trained in family conferencing.

Breaches of court orders are a major source of conflict and distress. The Family Relationship Centres will have an important role to play in helping parents to resolve such issues outside the courts. The expansion of the Contact Orders Program will also help where entrenched conflict has led to a breakdown in contact between a parent and child. However the government recognises that in some cases the court needs to take firm action to deal with breaches. The government proposes to strengthen the enforcement provisions in the Act. New provisions will include :

- a requirement that the court consider ‘make up’ contact (such as another weekend) where contact has been missed through a breach of an order;
- a power to award compensation for reasonable expenses incurred by a party (such as airfares wasted or other tickets purchased but not used);
- where there has been a series of breaches or a serious disregard of court orders, a presumption that legal costs will be awarded against the party who has breached the order, unless it is not in the best interests of the child; and
- a discretion to impose a bond for all breaches of orders.

Adversarial processes tend to escalate and prolong conflict. As part of this response, the government intends to reduce the adversarial nature of court processes for parenting matters. The government has also asked the Family Court of Australia and the Federal Magistrates Court to establish a combined registry for family law matters. The two courts are working together to implement this reform.

The government has heard the community concerns about the need to ensure the reforms do not increase the risk of violence or child abuse. These concerns have been taken into account in the drafting of the amendments to the Act. Moreover, screening for violence and child abuse will be a very important role of the Family Relationship Centres. The centres will be able to provide information and advice to victims of family violence about their options and about support services available, and will help them to access those services.

The government will release an exposure draft of the Bill making these changes to the law.

The government’s responses to the committee’s specific recommendations are set out in Part 3.

## **PART 2**

### **Background**

On 26 June 2003, the former Attorney-General and the former Minister for Children and Youth Affairs jointly referred to the House of Representatives Standing Committee on Family and Community Affairs an inquiry into child custody arrangements in the event of family separation.

The committee's report, *Every picture tells a story*, released on 29 December 2003, recommended a range of reforms to the family law system. On 29 July 2004, the Prime Minister released a Framework Statement which outlined the government's proposed response to the committee's report.

Because of the far-reaching nature of its proposed package, the government decided to consult the community about the reforms. On 10 November 2004, it released a discussion paper, *A new family law system: implementation of reforms*. Over 400 written submissions were received in response to the paper and officers of the Attorney-General's Department and the Department of Family and Community Service held face to face meetings with over 300 agencies, service providers and interest groups. These consultations greatly assisted the government as it shaped this final response to *Every picture tells a story*.

## **PART 3: Response to the committee's recommendations**

### ***A rebuttable presumption***

#### **Recommendation 1**

The committee recommends that Part VII of the *Family Law Act 1975* be amended to create a clear presumption, that can be rebutted, in favour of equal shared parental responsibility, as the first tier in post separation decision making.

The government agrees with this recommendation and will introduce amendments to Part VII of the Act to require the court to apply a presumption (or starting point) of joint parental responsibility. Joint parental responsibility will mean that parents will continue to share the key decisions in a child's life after separation, regardless of how much time the child spends with each parent. While the changes to the law will mean that a judge or magistrate will generally start with the presumption that the parents will have joint parental responsibility, one or both parents can submit that this is not appropriate in a particular case. The best interests of the child will remain the most important factor to be taken into account. The primary factors in determining the best interests of the child will be the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm.

#### **Recommendation 2**

The committee recommends that Part VII of the *Family Law Act 1975* be amended to create a clear presumption against shared parental responsibility with respect to cases where there is entrenched conflict, family violence, substance abuse or established child abuse, including sexual abuse.

The government agrees with this recommendation in relation to cases involving violence or child abuse. While the amendments will not introduce a separate presumption against joint parental responsibility in these cases, the courts will be required not to apply the presumption in favour of joint parental responsibility where there is evidence of violence or child abuse.

The government has decided not to create a presumption against joint parental responsibility in cases involving substance abuse or entrenched conflict.

The government considers that, in relation to substance abuse, a better approach would be for the courts to take into account the effect of substance abuse on parental behaviour in deciding whether joint parental responsibility is in the best interests of the child.

In relation to entrenched conflict, it could be argued that any case that reaches a final court hearing involves entrenched conflict. Making entrenched conflict a ground for applying a presumption against joint parental responsibility could mean the courts would rarely be able to

apply the proposed new presumption in favour of joint parental responsibility. The government considers that the presumption of joint parental responsibility should apply, noting that the impact of conflict and the ability of parents to communicate over parenting arrangements are matters for the courts to consider when deciding any particular case.

### **Recommendation 3**

The committee recommends that Part VII of the *Family Law Act 1975* be amended to:

- provide that the object of Part VII is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents are given the opportunity for meaningful involvement in their children's lives to the maximum extent consistent with the best interests of the child;
- define 'shared parental responsibility' as involving a requirement that parents consult with one another before making decisions about major issues relevant to the care, welfare and development of children, including but not confined to education – present and future, religious and cultural upbringing, health, change of surname and usual place of residence. This should be in the form of a parenting plan;
- clarify that each parent may exercise parental responsibility in relation to the day-to-day care of the child when the child is actually in his or her care subject to any orders of the court/tribunal necessary to protect the child and without the duty to consult with the other parent;
- in the event of matters proceeding to court/tribunal then specific orders should be made to each parent about the way in which parental responsibility is to be shared where it is in the best interests of the child to do so; and
- in the event of matters proceeding require the court/tribunal, to make orders concerning the allocation of parental responsibility between the parents or others who have parental responsibility when requested to do so by one or both parents.

The government agrees with this recommendation and will introduce amendments to the Act to implement the changes proposed by the committee. The amendments should be child-focused and so will refer to the need to ensure that children are given the opportunity for their parents to have a meaningful involvement in their lives to the maximum extent possible, consistent with their best interests. The government will also make an additional change to the objects of the Act to include the preservation of a child's right to safety, in keeping with the committee's conclusion at paragraph 2.29.

### **Recommendation 4**

The committee recommends that Part VII of the *Family Law Act 1975* be further amended to remove the language of 'residence' and 'contact' in making orders between the parents and replace it with family friendly terms such as 'parenting time'.

The government agrees with this recommendation. It will remove the terms 'residence' and 'contact' from the Family Law Act, but will use the concept of 'parenting orders' rather than

‘parenting time’. It considers that this is a simpler way to ensure that the Act focuses on the relationship that parents have with their children rather than the time a child spends with each parent.

### **Recommendation 5**

The committee recommends that Part VII of the *Family Law Act 1975* be further amended to:

- require mediators, counsellors, and legal advisers to assist parents for whom the presumption of shared parenting responsibility is applicable, develop a parenting plan;
- require courts/tribunal to consider the terms of any parenting plan in making decisions about the implementation of parental responsibility in disputed cases;
- require mediators, counsellors, and legal advisers to assist parents for whom the presumption of shared parenting responsibility is applicable, to first consider a starting point of equal time where practicable; and
- require courts/tribunal to first consider substantially shared parenting time when making orders in cases where each parent wishes to be the primary carer.

The government agrees with this recommendation in principle. Changes to the Act will require mediators, counsellors, and legal advisers to provide information about what a parenting plan is, the possible content of such a plan and appropriate organisations or individuals who can assist in the development of parenting plans. Where they are providing advice to parents about parenting plans, they would also be required to inform parents that they could consider substantially sharing parenting time as an option where it is in the best interests of the child and practicable.

A judge or magistrate would be required take into account the terms of the most recent parenting plan if the parents subsequently end up in court over a parenting issue.

Changes to the Act will also require courts to first consider substantially shared parenting time when making orders in cases where there is joint parental responsibility and each parent wishes to be the primary carer. Whether substantially shared parenting time is ordered will depend on the best interests of the child.

### **Recommendation 6**

The committee recommends that the Commonwealth government develop a wide ranging, long term and multi level strategy for community education and family support to accompany legislative change and to promote positive shared parenting after separation, as was recommended by the Family Law Pathways Advisory Group.

The government agrees that a community education campaign is necessary to accompany the legislative changes. The 2005-06 Budget contains \$5.7 million for a community education campaign. Family Relationship Centres will also have an important role in promoting and educating the community on positive shared parenting.

In relation to family support, the government is establishing the new network of Family Relationship Centres and a range of other new and expanded services to support separated parents to achieve positive shared parenting where possible.

## ***Facilitating shared parenting***

### **Recommendation 7**

The committee recommends that in support of the legislative presumption for shared parenting recommended in Chapter 2 the government review the community's current access to services which can assist those who cannot achieve and sustain shared parenting on their own to:

- develop the skills to communicate effectively around their children's needs and to manage co-operative parenting;
- enable them to resolve their on-going conflict and develop a long term ability to share their parenting responsibilities in the interest of their children; and
- include the perspective and needs of their children in their decision making, with and without assistance from the family law system.

The government agrees with this recommendation. Establishing the new network of Family Relationships Centres will be central to providing parents with this assistance. In addition, the government has considered what other services can help parents achieve and sustain shared parenting.

The government is quadrupling the size of the Contact Orders Program from 5 to 20 services at a cost of \$23.3 million over four years. The program is highly effective in improving parents' ability to resolve conflict and to focus on and communicate about their children's needs. The government is also expanding the Men and Family Relationship Program, family relationships education, counselling and skills services and a range of dispute resolution services to provide a range of help for parents to improve their parenting and communication skills and resolve disputes. These measures will cost over \$87 million over four years.

### **Recommendation 8**

The committee recommends in particular the significant expansion of the contact orders program beyond the level addressed in the government's Response to the Pathways Report, to enable separated families in long term conflict to have access to like services in all states and territories and in regional areas. (As a minimum there should be one of these services in each location where there is a Family Court registry.)

The government agrees with this recommendation.

Fifteen new services will be provided under the Contact Orders Program at a cost of \$23.3 million over four years. This will bring to 20 the total number of services across the

country. It is also expected that the Family Relationship Centres will refer families to this expanded program when entrenched conflict is causing agreements on children's contact to break down. This is a better alternative than that currently available where parents have no option but to go to court over breaches of contact orders.

## **Recommendation 9**

The committee recommends that the *Family Law Act 1975* be amended to require separating parents to undertake mediation or other forms of dispute resolution before they are able to make an application to a court/tribunal for a parenting order, except when issues of entrenched conflict, family violence, substance abuse or serious child abuse, including sexual abuse, require direct access to courts/tribunal.

The government agrees with this recommendation (with some changes to the exceptions).

The government will introduce amendments to the Act to provide that a parent who wishes to take a parenting dispute to court will be required to file a certificate by an accredited dispute resolution practitioner (such as a mediator) to show that:

- they have attended a dispute resolution process with the other parent aimed at completing a parenting plan, or
- they attempted to do so but the other parent refused or failed to attend.

Exceptions to this requirement will be cases involving violence or child abuse, urgent matters, situations where the parents lack the capacity to participate in dispute resolution, and cases involving flagrant breaches of existing court orders.

Where a case is exempt from this requirement because it involves violence or child abuse, there will still be a requirement for the person wanting to take the matter to court to obtain information from a family counsellor or dispute resolution practitioner about options and support services available.

The government does not agree that cases involving substance abuse and entrenched conflict should also be exempted from the compulsory dispute resolution requirement. In the government's views, these exceptions could cover too many cases where dispute resolution may in fact be successful.

Dispute resolution services meeting the new requirement will be provided by the new Family Relationship Centres and also by accredited practitioners in other services or in private practice. Accreditation standards will be developed under the Act.

As well as establishing the new Family Relationship Centres, the government will expand community-based dispute resolution services by 25 per cent to help meet the demand for these services, at an additional cost of \$13.4 million over four years

As the new Family Relationship Centres and other services will be rolled out over three years, the compulsory dispute resolution provision will be phased in over the same period.

## Recommendation 10

The committee recommends that the funding for the Family Relationships Services Program be increased following a review with respect to the appropriate targeting and adequacy of resources for the service types which will provide the most benefit to families' positive family relationships, before during and after separation. In this review the committee recommends that consideration be given particularly to a significant further expansion of children's contact services nationally.

The government agrees with this recommendation.

In 2003-2004, the Department of Family and Community Services, in collaboration with the Attorney-General's Department, undertook a review of Family Relationships Services Program. The review has provided information about the community's access to services. This has been taken into account in the development of the government's response to the committee's report.

When announcing the government's proposed package of reforms on 29 July 2004, the Prime Minister also announced an immediate 30 per cent increase in funding to services under the Family Relationships Services Program for the 2004-05 financial year. The 2005-06 Budget includes funding of \$63.1 million over four years to maintain this 30 per cent increase.

The 2005-06 Budget provides other funding for new and existing services, which aim to assist families before during and after separation. In addition to the establishment of the new network of Family Relationship Centres and expansion of the Contact Orders Program (see response to recommendation 8 above), the government will:

- expand prevention and early intervention services including men's services, pre marriage and family relationship education, counselling and family skills training, and specialised family violence services, at a cost of \$61.6 million over four years;
- maintain and enhance funding for Men's Line Australia at a cost of \$12.4million over four years; and
- establish 30 new children's contact services at a cost of \$17.0 million over four years.

## ***A new family law process***

### **Recommendation 11**

The committee recommends that a shop front single entry point into the broader family law system be established attached to an existing Commonwealth body with national geographic spread and infrastructure, with the following functions:

- provision of information about shared parenting, the impact of conflict on children and dispute resolution options;
- case assessment and screening by appropriately trained and qualified staff;
- power to request attendance of both parties at a case assessment process; and
- referral to external providers of mediation and counselling services with programs suitable to the needs of the family's dispute including assistance in the development of a parenting plan.

The government agrees with the need for a new entry point to the family law system outside the courts. It will implement the thrust of this recommendation through the establishment of the new network of Family Relationship Centres. As well as the information, case assessment, screening and referral recommended by the committee, the centres will also provide practical advice and assistance to parents, including help in developing a parenting plan. The centres themselves will provide dispute resolution and will also refer parents to other mediation, counselling or specialist services they may need. Information, advice and referral services will be free. The first three hours of dispute resolution will also be free. There will be flexibility for parents who need more time to help them reach agreement. They will be able to continue either at the centre or at a dispute resolution service that best suits their needs. Like existing mediation and counselling services funded by the government, some parents will get additional services for free and others who can afford it, will pay for these services.

Rather than being attached to a government agency, the government considers that the non-government sector is better placed to provide these services. The Family Relationship Centres will be run by a variety of non-government organisations but will be a national service network with nationally consistent goals and standards. It will be supported by a national telephone advice line and website.

### **Recommendation 12**

The committee recommends that the Commonwealth government establish a national, statute based, Families Tribunal with power to decide disputes about shared parenting responsibility (as described in Chapter 2) with respect to future parenting arrangements that are in the best interests of the child/ren, and property matters by agreement of the parents. The Families Tribunal should have the following essential features:

- It should be child inclusive, non adversarial, with simple procedures that respect the rules of natural justice.

- Members of the Families Tribunal should be appointed from professionals practising in the family relationships area.
- The Tribunal should first attempt to conciliate the dispute.
- A hearing on the dispute should be conducted by a panel of three members comprising a mediator, a child psychologist or other professional able to address the child's perspective and a legally qualified member.
- Legal counsel, interpreters or other experts should be involved in proceedings at the sole discretion of the Tribunal. Experts should be drawn from an accredited panel maintained by the Tribunal.

The government does not agree with this recommendation. It considers the committee's objectives can be better met through the new network of Family Relationship Centres and through changes to court processes.

Through the new centres, separated couples will be able to access a non-adversarial way of resolving disputes at a much earlier stage in their separation, before conflict has escalated and disputes have become entrenched. For those families who do need to go to court, the government will introduce less adversarial court processes for parenting matters.

### **Recommendation 13**

The Committee recommends that all processes, services and decision-making agencies in the system have as a priority built in opportunities for appropriate inclusion of children in the decisions that affect them.

The government agrees with this recommendation in principle. It will continue to support initiatives that ensure that the focus of the family law system is on the best interests of the children involved, and that enable services and decision-making agencies to directly involve children in decision making where appropriate.

The government has already provided training for lawyers and dispute resolution professionals in child-focussed practice through the *Children in Focus* and *Changing the Face of Practice* programs.

Community services funded under the Family Relationships Service Program will continue to provide innovative child focussed practice and include children where appropriate. The government has also provided funding for research into child-inclusive mediation processes.

In relation to court processes for parenting matters, the less adversarial court processes outlined in the response to recommendation 12 above will also include opportunities for the appropriate inclusion of children.

## **Recommendation 14**

The committee recommends that in the period immediately following separation:

- there be a 6 week moratorium before any obligation to pay child support arises;
- parents be required to access the single entry point and begin the process of mediation (including the commencement of a parenting plan); and
- during the first 6 weeks parents be able to access their full entitlement to social security benefits without penalty, to ensure neither they nor their children are financially disadvantaged.

The government will consider the first and third parts of this recommendation in the context of its consideration of the report of the Child Support Taskforce (see response to recommendation 26 below).

The government does not agree with the second part of the recommendation that parents be required to begin mediation soon after separation as it does not take into account the range of circumstances that face different families. However, parents will be encouraged to use Family Relationship Centres and other services early in their separation. As outlined in the response to recommendation 9, parents will be required to attend a dispute resolution process (such as mediation), at a centre or elsewhere, before taking a parenting dispute to court.

## **Recommendation 15**

The committee recommends that all family law system providers, but most particularly the single entry point service, should screen for issues of entrenched conflict, family violence, substance abuse, child abuse including sexual abuse and provide direct referral to the courts for urgent legal protection, and for investigation of allegations by the investigative arm of the Families Tribunal.

The government agrees with the need for effective screening at the Family Relationship Centres and other services, especially for family violence and child abuse.

Staff of the Family Relationship Centres will be trained to screen for a range of issues but especially for family violence and child abuse. Where such issues are identified, the centres will be able to provide information and advice on options and referral to support services and to the courts where appropriate.

Existing organisations that provide services under the Family Relationships Services Program are already required to screen for violence and child abuse. The government will also introduce new accreditation standards for family counsellors and dispute resolution practitioners that will include skills in screening for such issues

The 2005-06 Budget also included new funding of \$7 million to enhance the capacity of the sector to deliver specialised family violence services.

## Recommendation 16

The committee recommends that an investigative arm of the Families Tribunal should also be established with powers to investigate allegations of violence and child abuse in a timely and credible manner comprised of those with suitable experience. It should be clear that the role is limited to family law cases and does not take away from the States' and Territories' responsibilities for child protection.

The government notes the committee's concerns about the need for allegations of violence and child abuse to be investigated in a timely and credible manner. As the Families Tribunal is not part of this response, the option of an investigative arm of such a tribunal is not available. The government considers that, to avoid duplication, better coordination of the family law system and State and Territory child protection systems is a preferable mechanism rather than establishing additional investigative bodies. It is important that the States and Territories fulfil their obligations in respect to investigating child abuse.

As reported by the committee, the Standing Committee of Attorneys-General agreed on 8 August 2003 to establish a working group to look at ways of better coordinating the Commonwealth's family law system with child protection systems at State and Territory levels. Innovative initiatives, including the Magellan project of the Family Court of Australia and the Columbus project in the Family Court of Western Australia, provide useful examples of how to promote strong inter-agency coordination.

## Recommendation 17

The committee recommends that after establishment of the Families Tribunal, the role for courts in disputes about parenting matters should be limited to:

- cases involving entrenched conflict, family violence, substance abuse and child abuse including sexual abuse which parties will be able to access directly once the issues have been identified;
- enforcement of orders of the Families Tribunal when the dispute cannot be resolved by a variation of the order of the Tribunal so far as possible by judicial delegation to Registrars;
- review of decisions of the Families Tribunal only on grounds related to denial of natural justice or acting outside its power or authority.

As indicated above, the government does not propose to establish a Families Tribunal. The government agrees, however, that as far as possible, family disputes should be resolved outside the court system. The establishment of the Family Relationship Centres and implementation of other elements of its family law reform package will help to achieve this goal.

## **Recommendation 18**

The committee recommends that in parallel with the establishment of the Families Tribunal the current structure of courts with family law jurisdiction be simplified. This should ensure there is one federal court with family law jurisdiction with an internal structure of magistrates and judges to support the delivery of judicial determination in the best interests of the child.

The government agrees that the way separating families interact with the family court system should be simplified but does not consider that one federal court with family law jurisdiction be established. Instead the government has considered other ways to meet the committee's concern that there be 'one way into the family courts' to reduce confusion and complexity for separating families and to make access to the courts simple and clear.

The government has also asked the Family Court of Australia and the Federal Magistrates Court to establish a combined registry for family law matters. The two courts are working together to implement this reform. The combined registry will provide information about the family courts and help people navigate the court system. Cases will be channelled through the registry to the appropriate court. The new combined registry will work closely with Family Relationship Centres and other services to ensure that separating families have the best possible opportunity to resolve their disputes outside the courts.

## **Recommendation 19**

The committee recommends that a longitudinal research project on the long term outcomes of family law judicial decisions should be undertaken and incorporated into judicial education programs.

The government agrees with this recommendation. As part of its package of reforms, the government proposes a research project that examines the outcomes of family law judicial decisions and also of other interventions such as counselling and mediation. The findings of the project will provide a sound evidence base for evaluations of services and to guide future policy and programmes.

## **Recommendation 20**

The committee recommends that there should in future be an accreditation requirement for all family law practitioners to have undertaken, as part of their legal training, undergraduate study in social sciences and or dispute resolution methods.

The government considers this recommendation to be a matter for the legal profession as there is a national scheme for accreditation of family law specialists, managed through law societies in most states/territories, under the umbrella of the Law Council of Australia.

## **Recommendation 21**

The committee recommends the immediate implementation of the following additions to contact enforcement options:

- a cumulative list of consequences for breaches;
- reasonable but minimum financial penalties for first and subsequent breaches;
- on a third breach within a pattern of deliberate defiance of court orders, consideration to a parenting order in favour of the other parent; and
- retaining the ultimate sanction of imprisonment.

The government agrees with the committee's concern that the contact enforcement options in the Act need to be strengthened. In addition to the financial penalties and cumulative list of consequences already in the Act, the government will introduce the following new measures:

- a requirement that the courts consider 'make-up' contact if contact has been missed through a breach of an order. Unlike most enforcement provisions, it will not be necessary to prove that the breach was intentional. This will make it easier to obtain make-up contact and help those parents who are missing out on seeing their children;
- a power to award compensation for reasonable expenses incurred by a person but which were wasted due to a breach of an order. This might include airfares or other tickets purchased but not used or travel expenses incurred by the person to collect a child but the child was not handed over;
- in cases involving a series of breaches or a serious disregard of court orders, a presumption that legal costs will be awarded against the party that has breached the order, unless it is not in the best interests of the child; and
- a discretion to impose a bond for all breaches of orders.

As recommended by the committee, imprisonment will be retained as an ultimate sanction.

## **Recommendation 22**

The committee recommends that in the lead up to the implementation of the recommendations in this chapter to create a Families Tribunal there should be a public awareness campaign to inform the community about the reform and its benefits.

The government agrees that there needs to be a community education campaign to accompany the family law reforms (see response to recommendation 6).

## ***A child's contact with other persons***

### **Recommendation 23**

The committee recommends that the Commonwealth government amend subsections 68F(2)(b) and (c) of the *Family Law Act 1975* to explicitly refer to grandparents.

The government agrees with this recommendation, recognising the important role grandparents play in children's lives. The government will introduce amendments to ensure consideration is given to the role of grandparents and other relatives when considering the best interests of a child and when making orders about parenting arrangements. Parents will also be encouraged to consider substantially sharing parenting time and a child's relationship with grandparents when developing parenting plans outside the court.

### **Recommendation 24**

The committee recommends that the Commonwealth government:

- include information on grandparents' status in a wider public education campaign on the *Family Law Act 1975*;
- ensure contact with grandparents and extended family members are considered by parents when developing their parenting plan, and if in the best interest of the child, make specific plans for contact with those individuals in the parenting plan; and
- develop a range of strategies to ensure that grandparents, and extended family members, are included in mediation and family counselling activities when it is in the best interest of the child, in particular the development of a wider family conferencing model.

The government agrees with this recommendation.

Information on the status of grandparents will be included in the education campaign referred to in the response to recommendation 6. Provisions in the Act relating to parenting plans will explicitly refer to contact with grandparents and extended family members to encourage parents to consider including that contact in their plan.

The government also agrees on the need to develop strategies to ensure that grandparents and other extended family members are included in mediation and family counselling activities when it is in the best interest of the child. To this end, the government will ensure that staff of Family Relationship Centres are trained to provide family conferencing, a form of dispute resolution which includes other family members as well as the parents. The government will also provide funding to legal aid commissions to enable them to use dispute resolution processes such as family conferencing where grandparents are involved.

## **Child Support**

### **Recommendation 25**

The committee recommends that the *Child Support (Assessment) Act 1989* be amended as follows:

- to increase the minimum child support liability payable under section 66 from \$260 per year to \$520 per year (that is, from \$5 per week to \$10 per week);
- to reduce the ‘cap’ on the income of the paying parent on which child support is calculated under section 42 to ensure high income payers are not contributing child support at a rate in excess of cost of children by reducing the cap to twice average weekly earnings for full time employees or changing the base to 2.5 times average weekly earnings for all employees;
- to eliminate any direct link between the amount of child support payments and the time children spend with each parent, amend sections 47 to 49 removing the changes to the formula in relation to levels of care of their children (‘109 nights’) by non-resident parents, and replacing it with a new parenting payment to non-resident parents with above 10% care;
- amending the way the payer’s child support income is determined by halving the formula percentage applying to income earned from overtime and second jobs worked above a set working week of 38 hours. In the event of a person working more than one job, either part time or casual, only the first 38 hours can be combined to achieve the 38 hour limit; and
- to give the following additional enforcement powers to the CSA to improve their collection of child support:
  - ⇒ amend Child Support Agency garnishee powers so they can be used to collect current child support from non-salary and wage earners;
  - ⇒ compulsory notification to Child Support Agency from insurers re settlements;
  - ⇒ collection from realised compulsory preserved superannuation;
  - ⇒ possibility of being able to access joint accounts;
  - ⇒ credit reference agencies – use to obtain information; *xxviii*
  - ⇒ cancellation of drivers/other licences;
  - ⇒ deeming the transfer of assets; and
  - ⇒ access to extraordinary lump sum payments and receipts which are not normally included in the child support income base, be included when there is an option of using them to satisfy outstanding debt.
- The committee also recommends that section 71C of the *Child Support (Registration and Collection) Act 1988* be amended by raising the limit on prescribed non agency payments from 25% to 30%.

### **Recommendation 26**

The committee recommends that a detailed re-evaluation of the Child Support Scheme be undertaken by a dedicated Ministerial Taskforce.

- The objectives of the re-evaluation should include:
- establishing the costs of raising children in separated households at different income levels that adequately reflect the costs for both parents having significant and meaningful contact with their children;
- adequately reflecting the costs for both parents of re-establishing homes for their children and themselves after separation;
- ensuring that the Child Support Scheme and the social security system work consistently to support and encourage both parents to continue to be involved in parenting their children after separation and does not act as a disincentive for workforce participation for each parent;
- ensuring the Child Support Scheme appropriately reflects significant developments in the taxation system since 1988 including company tax, trusts etc; and
- ensuring as a matter of principle that exempt and disregarded income are adjusted to bring them closer together to reflect the changing work and parenting patterns now evident in the community.
- The re-evaluation should be completed by 30 June 2004.

### **Recommendation 27**

The committee recommends that a Ministerial Taskforce be established to undertake the re-evaluation set out above. The Ministerial Taskforce should include:

- clients of the Child Support Agency;
- child support payer and payee representative groups ;
- researchers with expertise in the costs of children such as National Centre for Social and Economic Modelling, University of Canberra (NATSEM) and the Social Policy Research Centre of the University of New South Wales (SPRC);
- social policy researchers such as the Australian Institute of Family Studies; and
- representatives of relevant government departments and agencies.

### **Recommendation 28**

The committee recommends that the Child Support Agency, in conjunction with the Commonwealth Ombudsman:

- undertake a review of its strategies for communication with individual clients and the effectiveness of information flow to clients; and
- take whatever steps are required to ensure that clients fully understand all the options available to them in meeting their child support obligations and are enabled to act upon them.

## Recommendation 29

The committee recommends that the Child Support Agency decisions be subject to external review. This could be done by an arm of the Families Tribunal, the Social Security Appeals Tribunal or any other appropriate tribunal.

In response to recommendations 25-29, the government established a taskforce to provide advice on the child support scheme. The taskforce's terms of reference were to:

1. Provide advice around the short-term recommendations of the committee along the lines of those set out in the report (recommendation 25) that relate to:
  - a. increasing the minimum child support liability
  - b. lowering the maximum 'cap' on the assessed income of parents
  - c. changing the link between the child support payments and the time children spend with each parent, and
  - d. the treatment of any overtime income and income from a second job.
2. Evaluate the existing formula percentages and associated exempt and disregarded incomes, having regard to the findings of the Report and the available or commissioned research including:
  - a. data on the costs of children in separated households at different income levels, including the costs for both parents to maintain significant and meaningful contact with their children
  - b. the costs for both parents of re-establishing homes for their children and themselves after separation.
3. Advise on what research program is necessary to provide an ongoing basis for monitoring the child support formula.
4. Consider how the Child Support Scheme can play a role in encouraging couples to reach agreement about parenting arrangements.
5. Consider how Family Relationship Centres may contribute to the understanding of and compliance with the Child Support Scheme.

The taskforce examined the detailed operation of the Child Support Scheme (the scheme), including the child support formula, with a view to improving the effectiveness of the scheme in meeting the needs of separated parents and their children. In evaluating the scheme, the taskforce considered the large range of issues raised in the submissions and evidence presented to the committee.

The taskforce delivered its full report to the government in June 2005. The report covers complex and important issues that affect families following separation. The government will undertake detailed consideration of the taskforce's recommendations before delivering its response. Advice on progress will be available at the Department of Family and Community Services (FaCS) website: <http://www.facs.gov.au/childsupportreview/>