

FEDERAL GOVERNMENT'S RESPONSE TO INQUIRY

August, 2004

At the end of July, 2004, the Federal Government made its first public response to the "shared parenting inquiry" recommendations, issued at the end of December, 2003.

That day, the Courier Mail committed four (4) pages to articles on the matter, leaving no doubt that Family Law has very much returned to the social and political centre stage.

The Federal Government's response was released by way of "a discussion paper" and immediately criticised by the opposition for being just a discussion paper proposal, rather than as policy. Regardless, there appears little likelihood that the proposed reforms will be considered for implementation until after the election.

The Inquiry recommendations were extensive and radical, proposing amongst other things, a national system of Tribunals to replace the Family Court. One media commentator has referred to the discussion paper as "a strangely muted response to the Parliamentary Inquiry".

In summary, the discussion paper suggests:

- enshrining the concept of "shared parenting responsibility" in legislation,
- effecting legislative changes to acknowledge that children have a right to spend time on a regular basis with both of their Parents and that both Parents have to be consulted before significant discussions are made about a child's care, welfare and development, except in cases involving violence, child abuse or entrenched conflict;
- legislative amendments being made, to ensure that Parents try to resolve disputes through alternative dispute resolution and the development of a Parenting Plan before filing actions with the Court;
- the creation of a network of 65 community based Family Relationship Centres across Australia to provide separating Parents with up to three (3) hours of free dispute resolution sessions. The Centres to assess each case, offer assistance in developing a Parenting Plan, provide information and advice and screen for instances of child abuse or violence, in which case, the couples would be referred to other Government support services, or the Courts;
- people using the Centres would be able to bring only friends and family, not Lawyers, along to the meetings, for support;
- establishing a Task Force to review the methods used to calculate and administer Child Support payments and to report back by March, 2005, for re-evaluation;
- legislative amendments to recognise the entitlement of family members (who are not Parents) to contact, such as, Grandparents;

- a new combined Registry for the Family Court and the Federal Magistrates Court;
- that the 65 community based Family Relationship Centres would be funded by the Government, but tendered for and run by community and church groups who already offer similar services.

The opposition spokesman stated that the Federal Opposition was likely to support the changes to the Family Law system if they were brought before the Parliament because they appeared to be in the best interests of children and families.

If the discussion paper does eventuate into real legislative change, its impact will depend upon the specifics of the legislative change. From the broad statements made at this stage, the writer would question whether it will ultimately result in any manifest difference to the current system.

The legislative amendments contemplated for parental responsibility and for grandparents contact are already contained in the legislation as "objects". Furthermore, in promoting primary dispute resolution, it is noted that the *Family Law Rules* were amended in March, 2004 to provide that alternative dispute resolution is a compulsory "Pre-Action Procedure" prior to any Court Application being filed. The contemplated establishment of 65 community based Family and Relationship Centres would assist in clarifying the appropriate alternative dispute resolution process.

The history of "Parenting Plans" since 1996, has shown that they have been poorly received by the community as options for dealing with child, Residence and Contact arrangements.

The reality remains, as quoted by a client, "Mediation only works if two people want it to work"