

PARENTING LAWS - WHAT'S NEXT?

February, 2010

The Shared Parenting changes to the *Family Law Act*, which commenced in July 2006, have continued to be a source of heated debate in the community. Do they work, or don't they? After significant research, a Report was released last week by the Australian Institute of Family Studies (AIFS) which examines the results of the changes to the Family Law Act.

The Report was provided to the Federal Government - which will now commence a long process of consideration by the Government. The Report was no small undertaking involving 28,000 contributors, including parents, lawyers, judges and psychologists. Numbering 1,200 pages, the summary alone is 30 pages long!

A RECAP ON THE SHARED PARENTING CHANGES

The 2006 amendments to the *Family Law Act* created a presumption of "Shared parental responsibility" (except in cases of Family Violence). This means that when determining the ongoing care arrangements for a child, the Court has to first consider "equal time" and whether it is suitable. The idea behind the amendments was to encourage cooperation and collaboration between parents and to maintain and facilitate a relationship for the child with both parents. However, in many high conflict parenting situations, the "Shared parenting" approach is often not appropriate.

THE REPORT - WHAT WAS THE OUTCOME?

The AIFS Report is one of the largest public consultation documents ever prepared in Australia. The Report concludes that there are several problems with the current "Shared Parenting" laws, some of the significant issues included:

- It is perceived to be more difficult for a parent (usually the Mother) to raise allegations of violence in the Family Court, due to the 2006 amendments introducing a fine for anyone making a false allegation of violence.
- It is now difficult for a parent wanting to relocate with their children after divorce.
- The presumption of shared parental responsibility gave parents the false impression that the child would spend 50/50 split time with each parent.
- Court Orders are at risk of focussing parenting arrangements more on the parent's rights than focussing on the child's needs.
- Several cases involving children under 2 years of age, where parenting arrangements had been made (pursuant to the "Shared Parenting" law), had resulted in disruption to the child's sleeping pattern and feeding times.

The Report, however did reveal that after the commencement of the 2006 laws, fewer parents had sought Court action.

SHARED PARENTING LAWS - WHAT LIES AHEAD?

Overall, the Report highlighted that the 2006 laws have resulted in numerous adverse effects on parenting arrangements. Despite these problems having been identified, the Federal Government has indicated that it is unlikely that changes will go before Parliament anytime soon, as the recommendations will next need to be referred to a committee for lengthy examination.

However, in response to the problems identified in the Report involving parenting arrangements for children under the age of 2 years, the Federal Government has said that it is preparing to make those changes. The proposed changes would have the effect of making it harder for separated fathers to argue for a 50/50 time split to see their child, if the child is under 2 years.