



(Media Release 1 of 3 for this report)

Radical reshaping of family law system and processes recommended

A radical reshaping of Australia's family law system and processes has been recommended by the House of Representatives Family and Community Affairs Committee, following an intensive six-month inquiry into child custody arrangements in the event of family separation.

In a **unanimous** 240-page report released today, the 10-member committee of Coalition and Labor MPs outlines a completely new system it would like to see in place in the event of family breakdown.

Under the recommended changes, two new stages would come before the majority of disputes reach lawyers or the courts (which are to be the 'last resort', except for cases where violence or abuse exists). The two new 'pre-court' stages are a well-resourced, multi-functional **Entry Point**, and a new **Families Tribunal** to resolve disputes. More detail appears below.

The new system is deliberately less-legalistic and more 'child-focused' than the current system, and is designed to encourage and facilitate positive shared parenting after separation. It reduces the role of the courts and massively increases access to counselling and support services.

The report also discusses grandparent's roles and makes major recommendations on the child support scheme. These are outlined in separate media releases which follow.

The Committee Chair Kay Hull MP (Member for Riverina, NSW) says the new system is designed to better assist and equip parents to take responsibility for resolving their disputes in a non-adversarial way in the best interests of their child or children. It seeks to build a capacity to support shared parenting.

"To achieve this, the committee believes we have to not just make minor changes to the law, but to radically shake-up the system to change its emphasis," Mrs Hull said. "This, in association with an extensive public education campaign, is the best way to change community perceptions, attitudes and actions in the area of parenting responsibilities after separation."

Mrs Hull said people should read the report in its entirety to understand how the various recommendations made by the committee hang together and interrelate to create a better system.

She said the new system would require additional government funding. "This is complex social policy with funding implications," Mrs Hull said. "It is not and cannot be revenue-neutral."

"However, the upfront costs of the new system should be offset against the massive current costs associated with family breakdown, the costs of people avoiding child support, and the huge expense of entering the legal system."

The three stages of the new system advocated by the Family and Community Affairs Committee are:

STAGE 1: A NEW ENTRY POINT – the new entry point would be a widely publicised, widely-available, non-threatening 'shop-front' starting point for parents considering separation or who have separated. The entry point service would provide information about shared parenting, the impact of conflict on children, and dispute resolution options, as well as screening and case assessment by appropriately trained and qualified staff, with referral powers to external providers of mediation, counselling and support services for men and women going through separation (and to the courts where necessary for protection or safety).

There would be a requirement for parents who are separating 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,

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and before any obligation to pay child support arises. This would include commencing the development of a 'parenting plan', assisted by appropriate professionals. The committee recommends government funding and resources be made available to dramatically expand and support all these processes (examples are outlined in chapter 3 of the report).

STAGE 2: NEW FAMILIES TRIBUNAL – A new body, the Families Tribunal, would decide on disputes, performing a large part of the role currently filled by the Family Court. It would be able to make binding orders about all aspects of parenting responsibility, for the majority of families. For each case, a small group of Tribunal decision-makers would be selected from a wide panel of accredited professionals practising in the family relationships area, including mediators, child psychologists and other professionals, as well as those trained in the law. Other experts would be involved in proceedings at the sole discretion of the Tribunal. The Tribunal's processes and procedures would be child inclusive, non-adversarial and simple, respecting the rules of natural justice. The Tribunal would also have an **investigative arm**, staffed by suitably qualified people, with powers to investigate allegations of violence and child abuse. The expert advice received by the committee is that the new Tribunal would be constitutionally sound.

STAGE 3: THE COURTS – The role of the courts is significantly reduced, and limited to cases involving entrenched conflict, family violence, substance abuse and child abuse, including sexual abuse; penalties for breaches of orders of the Families Tribunal in some circumstances, when the dispute cannot be resolved; and review of decisions of the Families Tribunal only on grounds related to denial of natural justice or acting outside its power or authority.

The proposed new system is outlined in much more detail in chapter 4 of the report, especially from paragraph 4.87 onward (page 87). Please note, a graphic is included at page 102.

EQUAL TIME

"The committee has considered the concept of 50-50 shared residence (equal time), raised by the terms of reference," Mrs Hull said.

"We have concluded that the goal for the majority of families should be one of equality of care and responsibility along with substantially shared parenting time. They should start with an expectation of equal care.

"However, the committee does not support forcing this outcome in potentially inappropriate circumstances by legislating a presumption (rebuttable or not) that children will spend equal time with each parent.

"Rather the committee agrees that, all things considered, each parent should have an equal say on where the child or children reside. Wherever possible, an equal amount of parenting time should be the standard objective, taking into account individual circumstances."

The committee recommends that the new system operate under a clear 'first-tier' rebuttable presumption of equal shared parental responsibility in post-separation decision-making (except where there is entrenched conflict, family violence, substance abuse and child abuse, including sexual abuse; these cases would go direct to the courts).

'Shared parental responsibility' does not necessarily mean 'equal time residence'. The committee recommends 'shared parental responsibility' be defined 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 decisions about education, religious and cultural upbringing, health, change of name and usual place of residence. In particular, the committee believes each parent should have an equal say in where the children reside. This should be outlined in a formal parenting plan.

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In other areas, the report also recommends:

- strengthening of contact enforcement options, with a strict cumulative list of penalties for first and subsequent breaches of court orders;
- that in parallel with the establishment of the Families Tribunal the current structure of the courts with family law jurisdiction be simplified (ie one federal court with an internal structure of magistrates and judges);
- a longitudinal research project on the long-term outcomes of family law judicial decisions, with the outcomes incorporated into judicial education programs; and
- an accreditation requirement for all family law practitioners to have undertaken study in social sciences or dispute resolution.

Mrs Hull said: "It has been the committee's task to find a way to make the family law system better for all the children and young adults who find themselves, through no choice of their own, in a situation where their parents cannot live together any more.

"We cannot solve everybody's problem, or resolve anybody's personal dispute.

"We do believe, however, that the conclusions and recommendations outlined in the committee's report point to solutions that will in the future make the family law system, including the child support scheme, fairer and better for children in separated families and thereby for both their parents and extended family members, including grandparents."

Mrs Hull paid tribute to her fellow committee members.

"Initially there was a divergence of views amongst us that lead to some robust debate," she said. "However, I have never felt so proud of a group of members of parliament who put political differences aside and worked together to ensure a united outcome."

Background: The committee received more than 1700 submissions, and spent a total of 21 days gathering evidence in all states and territories. Copies of submissions and transcripts of hearings are available on the committee website.

To arrange media comment from the Chair, please contact:

Mrs Kay Hull, MP (Chair), tel: 0428 214 600

For further details, including copies of the report and background documentation:

contact the Committee Secretariat on (02) 6277 4566 or visit the inquiry website at

www.aph.gov.au/house/committee/fca

Documents which follow:

- 1 page media release on grandparents' role
- 2 page media release on recommended changes to the Child Support Scheme & Agency