

CHAPTER 1

INTRODUCTION

Introduction and referral of bill

1.1 The Family Law Amendment (Shared Parental Responsibility) Bill 2005 (the bill) was introduced into the House of Representatives on 8 December 2005. On 8 February 2006, the provisions of the bill were referred to the Legal and Constitutional Legislation Committee for inquiry and report by 27 March 2006.

Conduct of the Inquiry

1.2 The inquiry was advertised in *The Australian* newspaper on 15 February 2006, and the Committee also wrote to 56 organisations and individuals. Interested persons were invited to provide submissions by 24 February 2006. Details of the inquiry, the bill, and associated documents were placed on the Committee's website.

1.3 The Committee received 212 submissions in total with 29 supplementary submissions. A list of submissions is at Appendix 1.

1.4 The Committee held one public hearing on 3 March 2006 in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

1.5 The Committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings, particularly in view of the short timeframes involved. In particular, the Committee wishes to record its thanks to the individuals who shared their personal stories and circumstances. In many cases, for reasons of privacy, these have been accepted by the Committee as confidential submissions and not published, however this information has been useful to the Committee in understanding the complexity and impact on individuals of decision making in family law matters.¹

1.6 Readers should also note that the Committee undertook this inquiry in the context of two preceding House of Representatives inquiries. These inquiries were substantial and resulted in detailed reports.

1.7 The first was the House of Representatives Standing Committee on Family and Community Affairs inquiry resulting in the *Every picture tells a story* report, tabled in December 2003. The committee received 1716 submissions (not including form letters from 355 people). There were 21 public hearings, held in Canberra,

1 The Committee accepted 144 as public submissions and 68 as confidential submissions.

Gunnedah, Coffs Harbour, Wyong, Perth, Darwin, Adelaide, Cairns, Keperra, Robina, Bankstown, Wollongong, Launceston, Wantirna and Geelong.

1.8 The House of Representatives Standing Committee on Legal and Constitutional Affairs then inquired into the exposure draft of the bill, tabling its report in August 2005. That committee received 88 submissions and held four public hearings in Sydney, Melbourne and Canberra, with further evidence taken by video link from other areas in Australia. (Further details of the findings of these inquiries are provided below).

1.9 The Committee has deliberately not attempted to replicate these inquiries, and instead has sought to focus on matters that arose after these reports were handed down. Similarly, there are some matters in which the findings and recommendations of these earlier committees were based on detailed consideration of the evidence and a fine balancing of the issues. In the short time frame available, this committee has been reluctant to second guess these findings. Again, the Committee has generally confined itself to addressing new issues or areas in which the bill differs from the findings and recommendations of the earlier reports.

1.10 Readers should also note that on 27 February 2006, after the referral of the provisions of the bill to this Committee, the government introduced into the House of Representatives amendments that addressed a number of the issues raised in submissions. The Committee's consideration of this bill includes the impact of these amendments.

Purpose of the bill

1.11 The bill amends the *Family Law Act 1975* (the Act). The Explanatory Memorandum states that the amendments are part of the Government's reform agenda representing a 'generational change in family law and aim to bring about a cultural shift in how family separation is managed; away from litigation towards cooperative parenting'.²

1.12 The key changes to the family law system introduced by the bill are:

- a requirement that a court must apply a presumption that equal shared parental responsibility is in the best interests of the child when making a parenting order;
- a new graduated regime for dealing with contraventions of orders, or obligations, with respect to children;
- changes in the conduct of child-related proceedings to support a less adversarial approach;

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- the establishment of two distinct types of dispute resolution procedures: community-based services, comprised of family counsellors, family dispute resolution and arbitration, and court-based family consultants;
 - the creation of a role for an 'independent children's lawyer' to represent the child's interest in proceedings (as distinct from representing the child);
 - the clarification of the relationship orders providing for a child to spend time with a person which are inconsistent with family violence orders;
 - the removal of the limit on the Federal Magistrates Court which restricted the exercise of that Court's jurisdiction to property proceedings where the value of the property did not exceed \$700,000; and
 - the removal of the terms 'contact' and 'residence' from the Act.

Note on references

1.13 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

Background to the bill

1.14 In June 2003, the Prime Minister, in response to general community concern about the operation of child custody arrangements following marriage breakdown and separation and the operation of the Child Support Agency, announced an inquiry into those issues by the House of Representatives Standing Committee on Family and Community Affairs (FCAC). The terms of reference for the FCAC inquiry were:

- (a) given that the best interests of the child are the paramount consideration:
 - (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
 - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.³

1.15 The FCAC report, *Every Picture Tells a Story*, was released on 29 December 2003. The FCAC report recommended a significant number of changes to the family

3 House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story: Report on the inquiry into child custody arrangements in the event of family separation*, December 2003, p. xvii.

law system in relation to proceedings involving children, including inclusion of a presumption of equal shared parental responsibility in the Act and the introduction of a less adversarial process for child-related proceedings under the Act.

1.16 Mr Duggan from the Attorney-General's Department summarised for the Committee the next steps in the process:

In July 2004 the Prime Minister made announcements in relation particularly to the family relationship centres. In November 2004 my colleagues issued a discussion paper on the proposed changes. Around 400 submissions were received in response to that. Face-to-face consultations took place between November and January 2005. In May 2005 there was a budget announcement of a \$400 million or \$397 million package.⁴

1.17 In June 2005, the Government responded to the FCAC report, outlining substantial changes to the family law system.⁵ Those changes were comprised of three initiatives:

- the establishment of 65 Family Relationship Centres (FRC) over 4 years;
- the establishment of a Child Support Taskforce; and
- major changes to the Family Law Act, which were encompassed in an exposure draft of the current bill.

1.18 The exposure draft of the bill was referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs (LCAC) in June 2005. The LCAC reported in August 2005. The Government's response to the LCAC report was tabled on 8 December 2005.

1.19 In July 2005, the locations of the first 15 FRCs were announced. Between July and December 2005 the Attorney-General (and the Attorney-General's Department) conducted information sessions throughout Australia. In September an information paper on the operation of the FRCs was released, and in October the locations of the remaining FRCs were announced.⁶

4 *Committee Hansard*, 3 March 2006, p. 44.

5 Government Response to *Every Picture Tells a Story*, June 2005.

6 Mr Duggan, *Committee Hansard*, 3 March 2006, p. 44.