

Introduction

Background to the inquiry

- 1.1 In December 2003 the House of Representatives Standing Committee on Family and Community Affairs (FCAC) released its report into child custody arrangements in the event of family separation, *Every picture tells a story*.¹ In its report the Committee recommended significant changes to the family law system, including a number of amendments to the *Family Law Act 1975*.
- 1.2 On 23 June 2005 the Government released its response to that report. In releasing the response, the Attorney-General described the proposed changes as 'the most significant changes to the family law system in 30 years'.²
- 1.3 The Government's response to the FCAC's recommendations has a number of components. The most significant are:
 - A commitment of \$397 million over four years in the 2005-06 Budget, including for 65 Family Relationship Centres (FRCs) to be rolled out over the next four years

1 This report can be accessed at: <http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>. It is hereafter referred to as the FCAC report.

2 *Government responds to 'watershed' child custody report*, press release by the Attorney-General, 23 June 2005.

- Establishment of the Child Support Taskforce, which has now reported to the Government, and
- Major changes to the Family Law Act, as set out in the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, also released on 23 June 2005, and referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs for inquiry.

The Committee's inquiry and report

Referral of the inquiry

- 1.4 In referring the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 to the House of Representatives Standing Committee on Legal and Constitutional Affairs, the Attorney-General requested that the Committee inquire into the provisions of the proposed Bill, considering specifically whether these provisions were drafted to implement the measures set out in the Government response to the *Every picture tells a story* report.
- 1.5 In examining the Exposure Draft the Committee was asked to focus on whether the draft did the following:
 - Encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where this was appropriate
 - Promote the benefit to the child of both parents having a meaningful role in their lives
 - Recognise the need to protect children from family violence and abuse, and
 - Ensure that the court process is easier to navigate and less traumatic for the parties and the children.
- 1.6 The Committee was specifically directed not to re-open discussions on policy issues such as the rejection of the proposal for 50/50 custody in favour of the approach of sharing of parental responsibility and it was therefore necessary for the Committee to proceed on this basis. Although this was clearly stated in the inquiry material, a number of individuals and groups attempted to revisit this issue. The

Committee found that, in discussing the adequacy of the Exposure Draft in fulfilling the aims set out in the preceding paragraph, it was inevitable that discussion would focus on what the concepts of 'shared parental responsibility' and 'substantial' contact meant in practice. These matters are discussed in more detail in Chapter 2.

Conduct of the inquiry

- 1.7 The Committee was assisted greatly in its work through the presence of the former Chair of the House of Representatives Family and Community Affairs Committee, Mrs Kay Hull MP as a member of this Committee. In addition, membership of the Committee was supplemented for this inquiry by the addition of two other members of the former Family and Community Affairs Committee, the Hon Alan Cadman MP and the Hon Roger Price MP. All three members brought a deep understanding of the issues surrounding separation and family breakdown to the inquiry. Mr Daryl Melham MP, a long-standing member of the Committee, was unable to participate in the inquiry due to pre-existing commitments. As a result, Mr Melham was not able to endorse or comment on the findings of the Committee.
- 1.8 An advertisement inviting submissions to the inquiry was placed in The Australian newspaper on 29 June 2005. Letters seeking submissions were also sent to approximately 250 organisations and individuals likely to have an interest in the subject matter of the inquiry.
- 1.9 The Committee received 88 submissions, 15 supplementary submissions, and 44 exhibits. Details of submissions received are at Appendix A to this report, with exhibits listed at Appendix C.
- 1.10 The Committee commenced its consideration of the Exposure Draft with a private briefing on the provisions of the Bill, given by officers of the Attorney-General's Department on 4 July 2005. The Committee subsequently released the transcript of that briefing publicly. Public hearings were held in Melbourne on 20 July 2005, in Sydney on 21 July 2005, and in Canberra on 25 and 26 July 2005. Due to the tight reporting deadline it was not possible for the Committee to conduct extensive hearings throughout Australia, however the Committee endeavoured to hear a representative cross-section of views. Evidence was taken by video link from a number of interstate witnesses. Details of hearings and witnesses are listed in Appendix B.

- 1.11 The Committee received a number of items of correspondence from the general public raising their concerns about the current operation of the family law system. As the comments were broad in nature and did not specifically address the Terms of Reference, the Committee was unable to accept these letters and emails as submissions to the inquiry. However, the Committee did find them valuable as a tool in bearing witness to the impact of family law legislation and the operations of the court on individuals and their families. A list of those who sent correspondence to the Committee is at Appendix D to this report.

The report

- 1.12 In this report the Committee considers the provisions of the draft Bill and their implementation of the measures in the Government response to the 2003 report of the House of Representatives Standing Committee on Family and Community Affairs, *Every picture tells a story*. The report examines the issues surrounding shared parenting, as proposed in the Exposure Draft in Chapter 2.
- 1.13 Chapter 3 deals with mechanisms for family dispute resolution outside of the legal system and the new arrangements envisaged to avoid the necessity of becoming involved in court processes at the initial stages. Chapter 4 examines how the Exposure Draft proposes that the court processes themselves will be less adversarial in nature.
- 1.14 Chapter 5 of the report deals with the range of issues associated with compliance. Chapter 6 deals with several other issues relating to the Exposure Draft that arose in the course of the inquiry, including terminology and contact with family members other than a parent. Chapter 7 details minor technical issues arising from the way the Exposure Draft has been prepared.
- 1.15 The final Chapter of the report deals with a number of issues that are not strictly within the Terms of Reference set by the Attorney-General, but which the Committee believes are of importance to the ultimate success or otherwise of the proposed legislative changes.