

The Australian Government's reform of the federal family law system takes a more concrete form with the passage of amendments to the *Family Law Act (1975)* and the announcement of mooted changes to the child support scheme. With a similarly busy reform agenda, the states and territories move towards a more encompassing definition of "family".

## State and federal reform agendas



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### *Shared parental responsibility - Federal reform takes shape*

On 22 May 2006 the *Family Law Amendment (Shared Parental Responsibility) Act 2006* received Royal Assent, resulting in the enactment of far-reaching amendments to the *Family Law Act 1975* (FLA), the result of a reform process kick-started by the 2003 "joint custody" inquiry<sup>1</sup>.

The majority of the provisions are expected to take effect when proclaimed on 1 July 2006, coinciding with the anticipated opening of the first 15 Family Relationship Centres and the roll out of the Family Court's Children's Cases Program.

The most significant changes to the substantive law are amendments to Part VII of the FLA, contained in Schedule 1 of the Bill, dealing with parental responsibility, time spent with children, the "best interests" provisions, and the making of parenting plans and parenting orders. Other amendments to procedural provisions seek to deflect disputing parents away from the courts, to minimise the adversarial nature of proceedings involving issues related to children and to encourage a culture of co-operative parenting after separation.

A summary of the more significant amendments contained in the Act will appear in the next *Family Matters* (No. 74).

### *Modernising the Child Support Scheme*

On 28 February 2006, the Minister for Families, Community Services and Indigenous Affairs the Hon Mal Brough, in providing the Australian Government's response to the Ministerial Taskforce on Child Support, announced major changes to the Child Support Scheme. An additional Budget allocation of \$150 million over four years towards an organisational overhaul of the Child Support Agency, with a strong focus on customer service, staff training and improved agency access was announced by the Minister for Human Services. It is hoped that a shift in agency culture will help support the implementation of far-reaching changes to the scheme itself, as recommended by the Ministerial Taskforce on Child Support headed by Professor Patrick Parkinson (the membership of which included past and present staff members of the Institute), and will complement reforms to the wider family law system.

Dubbed the 'Parkinson reforms', changes to the assessment and enforcement provisions of the scheme will be introduced in three stages over two years, commencing on 1 July this year. The first phase of reform includes increased minimum payments, more stringent enforcement provisions, and mechanisms to allow non-resident parents to pay a greater percentage of their child support liability directly on children. From January 2007, agency users will be able to seek a review of an agency decision at the Social Security Appeals Tribunal, and the role of the courts in enforcement matters will be enhanced.

The final phase of reforms, due to be implemented from July 2008, will contain the most significant changes to the scheme. A new assessment formula will be introduced that is based on recent research on the costs of raising children and will be indexed to the age of the child, with greater child support being paid for older children. The income and outgoings of both parents will be treated more equally in the calculation of support and the formula will take greater account of the costs of parent-child contact for the non-resident parent. Non-resident parents who work overtime or have second jobs will be given some grace for the first three years following separation to assist them to re-establish themselves.

More flexible rules for the capitalisation of child support will mean that couples who wish to enter into arrangements for support other than by way of periodic payment (for example, by way of transfer of an interest in the family home), will find it easier to do so.

In addition, there will be changes to ensure that the financial responsibility of non-resident parents to children (and, in certain circumstances, stepchildren) resulting from a new relationship, will be included in the equation.

Subsequent updates will contain a more detailed review of the changes as they come into effect.

### **Referral of state powers to legislate over de facto couples to the Commonwealth**

The assent to the Commonwealth Powers (De Facto Relationships) Bill 2004 (Vic.) on 23 November 2004 brings Australia one step closer to having a uniform family law jurisdiction for married and de facto couples who separate.

The Victorian Act and similar legislation in a number of other states<sup>2</sup> enable the Commonwealth to extend the application of laws relating to property disputes and superannuation splitting, currently only available to couples who have married and to de facto couples. In the event that South Australia and Tasmania enact similar legislation, and at some future point the Commonwealth legislated to implement the referral of powers<sup>3</sup>, separating couples, regardless of their marital status and the gender of the parties, in all state and territory jurisdictions would have access to the same laws and processes to resolve disputes over property as their married counterparts.

This position means that Australia is slowly moving towards a more uniform family law system, with heterosexual couples having access to one federal forum to resolve all matters resulting from the breakdown of their relationship. Currently, federal laws apply in relation to disputes over children, regardless of the relationship status and sexual orientation of their parents, but individual state laws and courts determine disputes over property. Western Australia, with its own family law legislation and court, legislated in 2003 to make state laws relating to children's matters and property redistribution applicable to married couples, and both heterosexual and same-sex de facto couples.

### **Same-sex couples included—South Australia closes the breach**

South Australia is poised to join the rest of the states and territories in broadening the definition of 'de facto' to include same-sex couples in a range of

state provisions impacting on families and couples. The Statutes Amendment (Relationships) Bill 2004 (SA), introduced on 15 September 2004, amends 70 different Acts, giving same-sex spouses the status of family members on issues ranging from consent to medical treatment, organ donation, autopsies and cremation, to laws relating to domestic violence, stamp duties, superannuation, succession and guardianship.

Other proposed amendments will see the length of cohabitation required to establish a de facto relationship for the purposes of the *Family Relationships Act 1975* (SA) reduced from five years to three, and changes to the *De Facto Relationship Act 1996* (SA) to make state provisions relating to the division of property after separation available to same-sex partners.

### **Endnotes**

- 1 House of Representatives Family and Community Affairs Standing Committee of inquiry into child custody in the event of family separation, 2003.
- 2 Including legislation introduced by the Australian Capital Territory as recently as March 2006.
- 3 For the states, this requires a referral of powers to the federal jurisdiction under section 51(xxxvii) of the Commonwealth Constitution. The territories, however, only need to agree to the Commonwealth legislating for their constituents.

### **References**

- Australia. Attorney-General and Deputy Prime Minister for Transport and Regional Services (2005). \$397.2 million generational change to family law system. News release. Canberra, issued 10 May 2005.
- Australia. Department of Families, Community Services and Indigenous Affairs (2006). *Factsheet One: An overview of the reforms, Factsheet Two: Questions and answers about the reforms, Factsheet Three: Stage One—Changes to the Scheme from July 2006, Factsheet Four: Stage Two—Changes to the Child Support Scheme from January 2007, Fact Sheet Five: Stage Three—Changes to the Child Support Scheme from July 2008, Factsheet Six: The new Child Support Formula*. Canberra: Department of Families, Community Services and Indigenous Affairs.
- Australia. Minister for Human Services (2006). *Building a better CSA. Media release*. Canberra, ACT: Minister for Human Services, issued 28 February 2006.
- Australia. Parliament (2003). House of Representatives, Standing Committee on Family and Community Affairs. *Every picture tells a story: Report on the inquiry into child custody arrangement in the event of family separation*. Canberra, ACT: Commonwealth of Australia.
- Australia. Parliament (2005). *Family Law Amendment (Shared Parental Responsibility) Bill: Explanatory Memorandum*. Canberra, ACT: Commonwealth of Australia.
- Australia. Parliament (2005). House of Representatives Standing Committee on Legal and Constitutional Affairs. *Report on the exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005*. Canberra, ACT: Commonwealth of Australia.

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