

# The new face of parenting



Significant changes to the parenting provisions of the Family Law Act have passed through parliament. The changes are the result of the biggest review of family law legislation since 1996. Chris Turnbull sums up some of the critical changes.



**T**he *Family Law Amendment (Shared Parental Responsibility) Act 2006* (the new Act), which was passed on March 30, 2006, comes into effect on July 1, 2006. Although the new Act is lengthy, the changes are nowhere near as radical as those first proposed.

## Objects of the Act

The objects of the *Family Law Act 1975* (the Act) as currently set out in s60B have been changed and extended. Specifically, instead of children having a "right of contact", the new Act sets the objects of the part now to:

- a) Ensure the children have the benefit of both of their parents having a meaningful involvement of their lives to the maximum extent; and
- b) Communicate on a regular basis with both their parents and other people significant to their care, welfare and development.

The best interests of the child remain the paramount consideration.

## Determining the best interests of a child

Under the Act, s68F(2) sets out the matters which a court must consider in determining what is in a child's best interests. No particular priority is afforded to any of the factors set out in that section. The new Act preserves all of the original elements of s68F(2) but reduces them to 'Additional Considerations' and adds two 'Primary Considerations':

- a) The benefit of the child having a meaningful relationship with both of the child's parents; and
- b) The need to protect the child from physical or physiological harm and from being subjected to, or exposed to abuse, neglect or family violence.

## Dispute resolution

In 2004, the Family Court of Australia amended its rules to add 'Pre-action Procedures' that require the parties to attend a form of primary dispute resolution prior to the commencement of proceedings.

To some extent, this requirement has been thwarted by applications being made to the Federal Magistrates Court of Australia (which operates under its own rules that do not include an obligation to undertake Pre-action Procedures).

The new Act applies the dispute resolution provisions of the Family Law Rules 2004 to a parenting application to any court exercising jurisdiction under the *Family Law Act*.

Subject to the usual exceptions, all parties in all parenting cases will now be required to undertake Pre-action Procedures.

## Presumption of equal shared responsibility

The Act confers parental responsibility for a child on a person, but only to the extent that any orders confer duties, powers, responsibilities or authority in relation to the child on the person.

The new Act requires the court to apply a presumption that it is in the best interests of the child for a child's parents to have equal shared responsibility for the child. This presumption can only be dislodged where a parent has engaged in abuse of the child or there is family violence. This is not a presumption of equal time with both parents.

## Obligations of advisers

The new Act adds entirely new obligations upon advisers. An adviser means a person who is a legal practitioner, a family counsellor, a

family dispute resolution practitioner, or a family consultant. If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:

- a) Inform them that they could consider entering into a parenting plan in relation to the child; and
- b) Inform them about where they can get further assistance to develop a parenting plan and the context of the plan.

If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser *must*:

- a) Inform them that, if the child spending equal time with each of them is reasonably practicable and in the best interests of the child, that they could consider the option of an arrangement of that kind; and
- b) Inform them that, if the child spending equal time with each of them is not reasonably practicable or not in the best interests of the child, that if the child spending *substantial and significant* time with each of them is reasonably practical and is in the best interest of the child, that they should consider the option of an arrangement of that kind.

## Residence and contact re-defined

Under the Act, an order about where a child is to live is a 'Residence Order' and an order about whether a child is to have contact with another person or persons, is a 'Contact Order'. Anything else (in effect) is a 'Specific Issues Order'. The new Act enables a parenting order to now deal with one or more of the following:

- a) A person or persons with whom the child is to live;

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