



An Australian Government Initiative



# A New Family Law System

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## Laws for separating parents are going to change

The Australian Government is proposing changes to the family law system that encourage parents to work together to solve their problems outside of the court room where possible and to focus on the best interests of their children.

The legislation will recognise how important it is for children to have a relationship with both their parents.

The Government has released an Exposure Draft of proposed legislative changes (available at [www.ag.gov.au](http://www.ag.gov.au)). The Government referred that Exposure Draft to the House of Representatives Standing Committee on Legal and Constitutional Affairs which on 18 August 2005 provided a report on the Exposure Draft (available at [www.aph.gov.au/house/committee/laca/familylaw/report.htm](http://www.aph.gov.au/house/committee/laca/familylaw/report.htm)).

The Government is considering the recommendations of that Committee and intends to introduce the legislation this year.

The Exposure Draft contains the following provisions:

### **Joint parental responsibility**

Under the reforms, there will be a presumption or starting point of joint parental responsibility (this will not apply in cases involving violence or abuse).

This will mean parents will need to consult and agree with each other on major long-term issues affecting their children's futures, such as where their child goes to school or for significant health decisions.

### **Sharing of parenting time**

Courts will have to consider a substantial sharing of parenting time where both parents want this and it is in the child's best interests as well as reasonably practical.



## **A requirement to attend family dispute resolution**

All separating parents will need to attend a family dispute resolution process, such as mediation, before a parenting dispute can be taken to court. This is so they can try to work out practical and workable parenting arrangements for their children.

Only if dispute resolution is unsuccessful, can people then go to court.

This requirement will be phased in over three years as the new dispute resolution services are established and expanded. The Government will be opening Family Relationship Centres throughout Australia in this time to help meet the demand for these services. Other dispute resolution practitioners will also receive accreditation to provide services.

*Note:* The new requirement to attend family dispute resolution only applies if you are applying to a court for parenting orders. You will not need to go to dispute resolution if you are just seeking a divorce or filing consent orders.

If the case involves violence or child abuse, you will not need to participate in dispute resolution but you will need to attend a Family Relationship Centre (or equivalent service) to obtain information about options and relevant services available before going to court. This will not be required if there is a continuing risk of family violence. There are some other exceptions such as urgent cases.



## **Improved enforcement of parenting orders**

A lot of conflict and distress is created when parents breach court orders for contact with children or when contact arrangements break down.

The new Family Relationships Centres will play an important role in helping parents resolve their issues outside the courts. They will be a first port of call when agreements break down or orders are breached. They will also be able to assist families to access other services that can help.

However, the Government believes there should be consequences for people who regularly breach these arrangements by stopping their former partner from seeing their child.

Changes to the law will make the Courts consider:

- ‘make up’ contact (such as another weekend) where contact has been missed through a breach of an order even where the court finds there was a reasonable excuse for a breach
- compensation for reasonable expenses (such as airfares wasted or other tickets purchased but not used)
- a costs order where there is either a series of breaches or a serious disregard of a court order, unless it is not in the best interests of the child. If not appropriate, the court will be required to make some other form of order, and
- imposing a civil rather than a criminal bond for breaches of orders (payable for future breaches).

## **Grandparents and other relatives**

Grandparents play an important role in children's lives but they can lose contact with children after separation. Under the proposed changes to the law, the role of grandparents will be taken into consideration when parenting plans are developed and parenting orders are made by courts.

Grandparents will be encouraged to use the new Family Relationship Centres and additional funding will be provided to enable legal aid commissions to use dispute resolution services where grandparents are involved.

## **Changes to the courts**

For those people unable to resolve their disputes through mediation, the Government is making court processes simpler and less adversarial.

Adversarial court processes increase conflict and can make it harder for parents to deal with each other on parenting matters after the court action is over. In children's cases, judges will have to more actively manage cases to make sure that they progress in a way that minimises the stress on everyone involved, particularly children.

Court procedures will also be made more user-friendly and accessible by establishing a combined registry for family law matters for the Family Court of Australia and the Federal Magistrates Court. This will provide one court shop-front for all family law matters.

It will provide information about the family courts and help people navigate the court system. Cases will be channelled through the registry to the right court (in most matters, to the Federal Magistrates Court initially). There will be simpler forms and fees, with a single application form and a single file for each case.

The new combined registry will work closely with Family Relationship Centres and other services to ensure separating families have the best possible opportunity to resolve their disputes outside the courts.

## **Where can I find out more?**

To find organisations offering dispute resolution services in your area visit [www.familylaw.gov.au](http://www.familylaw.gov.au) or call **1800 050 321**.

For more detailed information about the family law reforms, visit [www.familylaw.gov.au](http://www.familylaw.gov.au)

