

OVERVIEW ON THE IMPLEMENTATION OF PARENTAL RESPONSIBILITY MODEL IN AUSTRALIA

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OVERVIEW ON THE IMPLEMENTATION OF PARENTAL RESPONSIBILITY MODEL IN AUSTRALIA

In 2006, the Australian Government introduced a series of changes to the family law system. These included changes to the Family Law Act 1975 .



Background of the Family Law Reforms

Fathers' Right



Background of the Family Law Reforms

➤ Men's groups considered the current legal system **deprived their rights to care and access of their children after divorce** and voiced out furiously for law reform by enlisting supports from politician;



➤ Some divorcees (especially mothers) abuse the current legal system to **reduce the contact of the children with their ex-spouse**(especially father) which is a barrier to maintain a meaningful relationship among the non-residential order parent and the child(ren);

➤ Research findings supported the significance of ' in the development of children after divorce;



Background of the Family Law Reforms

➤ Also, the public is not satisfied with 1995 approach so that the 2006 reform promoted the “share parental responsibility” which ceased the use of “residence order” or “contact order” by making the concrete caring time arrangement, like 20-80, 30-70, 40-60, or even 50-50 in court and being named as “equal share parental responsibility”. However, this principle will only be exercised if it is reasonably practical, in term of the following two conditions:

- a. the parents are cooperative in the child caring matter; and
- b. the distance between the two parents is not far.



Background of the Family Law Reforms

● The House of Representatives Standing Committee on Family and Constitutional Affairs (2003) made an inquiry and it recommended **changes to the family relationship services system** and the **legislation** for their proposed changes to the family law system;

● The committee's reported “ Every Picture Tells a Story”, made recommendations that aimed to make the family law system “fairer and better for children”;



THE POLICY OBJECTIVES OF THE 2006 CHANGES TO THE FAMILY LAW SYSTEM

- Building strong healthy relationships and prevent separation.
- Encouraging greater involvement by both parents in their children's lives after separation, and protect children from violence and abuse.
- Helping separated parents making agreement on what is the best for their children (rather than litigating) through the provision of useful information and advice, and effective dispute resolution services.
- Establish a highly visible entry point that operates as a doorway to other services and helps families to access these other services.



MAJOR LEGISLATIVE CHANGES

- Require parents to **attend family dispute resolution (FDR)** before filing a court application, except in certain circumstances, including where there are concerns about family violence and child abuse.

- **Introduce legislative support** for less adversarial court processes in children's matters.



- Place increased emphasis on **the need for both parents to be involved in their children's lives after separation**, through a range of provisions, including the introduction of a presumption in favor of equal shared parental responsibility



MAJOR LEGISLATIVE CHANGES

- The **50-50 principle** will be exercised if it is reasonably practical that it is in the best interest of the child in term of the parents residence distance and their cooperation ;



- It places greater emphasis on **the need to protect children exposure to family violence and child abuse.**

WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

- The legal effect of the presumption of Equal Shared Parental Responsibility is that when making a parenting order, the Court will usually approach the issue with the presumption that it is in the **“best interests of the child”** that their parents have equal shared parental responsibility for the child.
- Equal shared parental responsibility is not the parents having equal time with their children or shared care of their children
- Equal shared parental responsibility requires parents to consult each other and make joint decisions about major long-term issues for the child.
- If equal shared parental responsibility applies, then the parents must consult each other and make a genuine effort to attempt to make decisions jointly in relation to any major long term issues for their Child.



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

- The presumption of Equal Shared Parental Responsibility only applies to **“major long term issues”** for a Child. It does not apply to short term day to day only decisions.

'Major Long Term Issues' for a Child are defined to include decisions as to:

- ✓ the child's education (both current and future);
- ✓ the child's religious and cultural upbringing;
- ✓ the child's health (including for example a decision to immunise or not immunise);
- ✓ the child's name;
- ✓ changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

Who makes the what type of decisions for a Child depends on:

- What the Court Orders says as to who has “Parental Responsibility” for the Child; and whether the decision relates to a Major Long Term issue or whether it is a day to day welfare issue.
- Usually the parent who has the care of the Child that day, will be responsible for decisions about the day to day welfare of the Child.



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

What does the “Best Interests of the Child” mean?

While most people will have their own idea about what the ‘Best Interests of the Child’ means, it is actually given a specific meaning in the *Family Law Act 1975* in Australia.

- Parents should also bear the ‘Best Interests of the Child’ principle in mind **when making Parenting Plans**.
- The *Family Law Act 1975* makes it clear that:
“Both parents are responsible for the care and welfare of their Child until the Child reaches 18 years of age; and parenting arrangements which involve shared responsibilities and cooperation between the parents are usually in the best interests of the Child.”



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

The ‘Best Interests of the Child’ considerations apply to all Children, whether or not their parents:

- are married or were married;
- are or were living together (cohabiting); or
- have never lived together.
- Section 60CC of the *Family Law Act 1975* states how a Court determines what is in a Child’s Best Interests.

There are 2 levels (or tiers) of considerations the Court looks at to determine what is in the ‘Best Interests of a Child’.

The first level is known as “Primary Considerations” and the second level is known as “Additional Considerations”.



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

The Primary considerations are:

- the benefit to the Child of meaningful relationships with both parents;
- the need to protect the Child from physical or psychological harm, from being subjected or exposed to abuse, neglect or family violence.

If these 2 considerations conflict, then the need to protect the Child is more important consideration.



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

The Additional considerations are:

These factors include such things as any views expressed by the child, the kind of relationship the child has his or her parents and others (such as grandparents), and any practical difficulties or expense of a child spending time with a parent. The following are some of the listed statements:

1. any views expressed by the Child and any factors (such as the Child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the Child's views;
2. the nature of the relationship of the Child with:
 - each of the Child's parents; and
 - other persons (including any grandparent or other relative of the Child);
3. the extent to which each of the child's parents has taken, or failed to take, the opportunity:
 - to participate in making decisions about major long-term issues in relation to the child; and
 - to spend time with the child; and
 - to communicate with the child;



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

4. the extent to which each of the child's parents has fulfilled, or failed to fulfill, the parent's obligations to maintain the child.
5. the likely effect of any changes in the Child's circumstances, including the likely effect on the Child of any separation from:
 - either of his or her parents; or
 - any other Child, or other person (including any grandparent or other relative of the Child), with whom he or she has been living;
6. the practical difficulty and expense of a Child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the Child's right to maintain personal relations and direct contact with both on a regular basis;



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

7. to provide for the needs of the Child, including emotional and intellectual needs;
8. the attitude to the Child, and to the responsibilities of parenthood, demonstrated by each of the Child's parents;
9. any family violence involving the Child or a member of the Child's family; if a family violence order applies, or has applied, to the child or a member of the child's family - any relevant inferences that can be drawn from the order, taking into account the following:
 - the nature of the order;
 - the circumstances in which the order was made;
 - any evidence admitted in proceedings for the order;
 - any findings made by the court in, or in proceedings for the order; any other relevant matter."



WHAT IS EQUAL SHARED PARENTAL RESPONSIBILITY?

10. the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the Child and of either of the Child's parents, and any other characteristics of the Child that the court thinks are relevant;

If the presumption of Equal Shared Parental Responsibility is successfully rebutted, then the Court might consider instead **making an Order for Sole Parental Responsibility.**



SUPPORTIVE SERVICES TO THE REFORMS

- After, the Australian Government introduced a series of changes to the family law system. These included amending the Family Law Act 1975 to **the Family Law Amendment (Shared Parental Responsibility) Act 2006**, the government has increased funding for new and expanded family relationships services, **including the establishment of 65 Family Relationship Centers (FRCs) and a national advice line, and**
- The aim of the reforms was to bring about “generational change in family law” and a “cultural shift” in the management of parental separation, **“away from litigation and towards co-operative parenting”**.



FAMILY SUPPORT SERVICES



- The establishment of 65 FRCs (in 2 years) throughout Australia are designed to provide a gateway to the system for families needing assistance; and they provide assistance for families at all relationship stages, and offer impartial referrals, advice and information aimed at helping families to strengthen their relationships and deal with relationship difficulties.
- FRCs provide family dispute resolution (FDR) to separating families to assist with the development of parenting arrangements^c



FAMILY SUPPORT SERVICES TO DIVORCEES

- Family Relationship Advice Line (FRAL) and the associated Telephone Dispute Resolution Service Program (FRSP) were included in the evaluation.
- Family Relationships Online (FRO);
- Family dispute resolution and regional (FDR).
- Children's Contact Services (CCS);
- Parenting Order Program (POP);
- Family relationship counseling services;
- Mensline Australia;
- Men and Family Relationships Services (MFRS)
- Specialized Family Violence Service (SPVS) and
- Family Relationship Education and Skills training (EDST).



DEFINITION OF FDR

What is FDR?

FDR is the legal term for services (such as mediation) that help couples affected by separation and divorce to sort out family disputes and agree on a range of issues relating to property, money, and issues on children.



Is FDR compulsory?

Divorced parents can only apply a parenting order when they have a certificate from an accredited FDR practitioner which states **that** you have made a genuine effort to resolve your dispute through FDR.

FAMILY SUPPORT SERVICE FOR THE DIVORCEES

The certificate will say one of the following:

- the other party did not attend
- Both divorced parents attended and made a genuine effort to resolve the dispute
- Both divorced parents attend but one or both did not make a genuine effort to resolve the dispute.
- the FDR practitioner decided the case was not appropriate for FDR, or
- the FDR practitioner decided it was not appropriate to continue through the FDR process.



FAMILY SUPPORT SERVICE FOR THE DIVORCEES

- **Exceptions?**
There has been, or there is a risk of, family violence or child abuse.
- **Will your child be included in FDR?**
A family counselor may talk to child with parental consent.
- **Will lawyer be included in FDR?**
Maybe and a pioneer project run by Victoria Legal Aid from June 2010.
- **What if FDR doesn't work?**
Even if parents can't obtain an agreement, FDR may help the divorced parents communicate better



Certificate by family dispute resolution practitioner Section 601 of the Family Law Act 1975 (Cth)

Dispute about matters that may be dealt with under Part VII of the Act between

(parties)

in relation to

(issues in dispute)

I, _____, (**Name of family dispute resolution practitioner)

state:

- (a) _____ (party or parties) did not attend family dispute resolution with me and the other party or parties to the proceedings but that person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend.
- (b) _____ (party or parties) did not attend family dispute resolution with me and the other party or parties to the proceedings because I consider, having regard to the matters mentioned in subregulation 62 (2), that it would not be appropriate to conduct the proposed family dispute resolution.
- (c) _____ (parties) attended family dispute resolution with me and all attendees made a genuine effort to resolve the issue or issues in dispute.
- (d) _____ (party or parties) attended family dispute resolution with me and the other party or parties to the proceedings but _____ (party or parties) did not make a genuine effort to resolve the issue or issues in dispute.

_____, (**Name of family dispute resolution practitioner) _____, (**Signature of family dispute resolution practitioner) _____, (Registration Number) _____, (Organisation, if applicable) _____, (Date of certificate) _____, (Date of last attempted attendance at family dispute resolution (for (a) and (b)))

OR (Date of last attendance at family dispute resolution (for (c) and (d)))

*The family dispute resolution practitioner has the discretion to give, or not to give, his or her surname. **The family dispute resolution practitioner has the discretion to sign, or not to sign, the certificate.

FAMILY SUPPORT SERVICE FOR THE DIVORCEES

What is Roundtable Dispute Management?

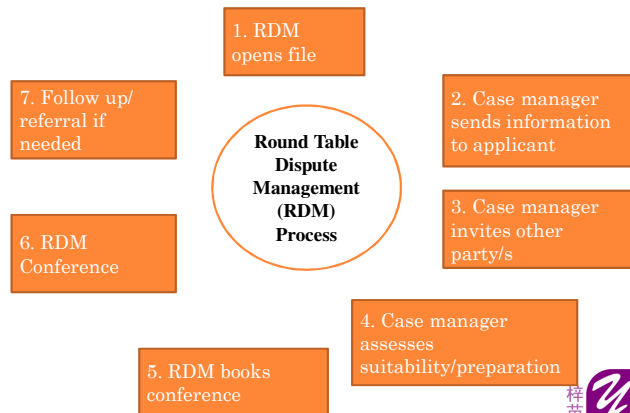
Roundtable Dispute Management (RDM) is a service that helps parents going through separation or divorce resolve their family disputes.

How can RDM help the person(s)?

- Work out decisions that support your children's needs
- Develop a parenting plan or court order which sets out arrangements for the care of your children
- Sort out financial issues, such as child support for children over 18 years old.
- Improve family communication and co-operation
- Reach solutions that work for both parties.



FAMILY SUPPORT SERVICE FOR THE DIVORCEES



PARENTING PLANS

A parenting plan is an agreement that sets out parenting arrangement for children. It can take any form, but to be recognised by a court it must be in writing, dated and signed by both parents. It must also be made free from any threat, duress or coercion. Because it has been worked out and agreed jointly, it means separating parents do not need to fight things out in court.

A parenting plan can deal with any aspect of the case, welfare and development of a child. The kinds of issues that may be covered in the plan include:

- Who a child will live with.
- What time a child will spend with each parent.
- What time a child will spend with other people, such as grandparents.
- How the parents will share parental responsibility, such as deciding on schools.
- How a child will communicate with the other parent or other people.
- What arrangements need to be made for special days such as birthdays and holidays.
- What process can be used to change the plan or resolve any disagreements about it
- Any other issues the parents want to include.

EVALUATION FINDINGS

According to statistics, only 15% of the court case which is granted for the 50-50 arrangement while there is only 18% of the FDR case which is finally granted for that arrangement.

The evaluation evidence indicates that the 2006 reforms to the family law system have had a positive impact in some areas and have had a less positive impact in others. Overall, there is more use of relationship services, a decline in filings in the courts in children's cases, and some evidence of a shift away from an automatic resource to legal solutions in response to post-separation relationship difficulties.

A significant proportion of separated parents are able to sort out their post-separation. There is also evidence that FDR is assisting parents to work out their parenting arrangement.

EVALUATION FINDINGS

However, many families are affected by issues such as family violence, safety concerns, mental health problems and substance misuse issues, and these families are the predominant users of the service and legal sectors.

In relation to these families, resolution of post-separation disputes presents some complex issues for the family law system as whole, and the evaluation has identified on-going challengers in this area.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

- The report on “Evaluation of the 2006 family law reforms” by Australian Institute of Family Studies commissioned in 2006 by the government to assess the extent to which, by 2009, the changes to the family law system had been effective in achieving the policy aims received **much credibility**.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Observation:

- **2006 family law reform** was made possible largely due to **government’s determination** to the radical legislative change and concomitant **resources injection** to both judicial and family services systems, though the reform seemed to come a bit abrupt.
- **Compulsory FDR** was basically favoured. However, there was **ineffective screening of risk factors for non-FDR suitable cases** resulting in **more involuntary clients**, and **delay in handling complicated cases involving family violence** that require straightaway court intervention. Besides, there was **unclear channel of providing clients with necessary legal information at the start of FDR**, and this affected service effectiveness.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Observations:

- Away from the pre-reform perception of 80-20 rule in care arrangement according mothers 80% care time, there is **evidence of more creativity in making care-time arrangements involving fathers** more in children’s day-to-day routine as well as special activities.
- Widespread public expectation equating “equal shared parental responsibility” with “50-50 care time entitlement” unfavourably led to disputes among separating parents. As there is **financial implication behind the new caring model** that somehow intensified arguments over maintenance and property allocation.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Observations:

- With the presumption of “equal shared parental responsibility”, there was strong concern towards the **wellbeing of children of highly conflictual parental relationship like in cases of family violence and child abuse**. Post-reform, more of these children being put in shared care-time arrangements were **worse off**.
- **Inadequate coordination among services, lawyers and courts** is evident to have adverse implications for the wellbeing of children and other family members **in cases presenting with complex family issues** like family violence, child abuse, mental health, etc



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Observations:

- Amendments introducing **increased no. of legislative provisions** stressing on “child’s best interest”, “equal shared parental responsibility”, child-focused principles in court proceedings, discouragement against false allegation, etc were seen by judicial officers to **add flexibility but at the same time complexity** in the process of applying the legislation.
- **2006 family law reforms** were seen by many legal professionals to **favour fathers over mothers, and parents over children**. There were **strong voices from women advocacy groups** to revamp the family law.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Reflections:

- Adoption of the concept of “**Shared Parental Responsibility**” seems a **global trend**.
- Success of any law reform rests on **government’s determination, adequate resource allocation** to both judicial and family services systems, **public understanding and consensus**, and **effective interfacing among concerned professionals**.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Reflections:

- **Adequate child protection** to complicated cases like family violence and child abuse must be accorded top concern. **Effective screening and assessment**, and **timely, efficient and well-coordinated intervention** / support must be in place to avoid unintended blind obligations to the cherished value of “shared parental responsibility” at the expenses of child wellbeing.
- **Independent and well-structured evaluation research** on the implementation of any reform is indispensable to alert concerns and give advice on necessary modifications / rectifications / improvements in an on-going manner.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Way Forward:

- The concept of “custody” is deeply rooted in our local culture. A **cultural shift from “parental rights” to “parental responsibilities”** and the **promotion of “child’s best interest”** and “**co-parenting**” necessitate **extensive public education and view exchange** among concerned sectors so as to **pave a solid ground** for any reform if seemed desirable.
- Any law reform will never be successful if there is no **alternative way to resolve the disputes away from court**. Therefore, it is highly desirable to **step up the promotion and facilitation of use of family mediation**, as a less adversarial approach, in handling child / financial / property disputes for separating parents.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Way Forward:

- The court system can consider to further **actualise “child-focused principles” in the legal proceedings** by adopting **“less adversarial approaches”** e.g. introduction of **“family consultants”** to assist in pre-trial family assessment and to involve throughout the court proceedings where necessary.
- Any adoption of **legislative change towards “parental responsibility”** must secure **consensus among legal, judicial, child protection, family services sectors** through thorough deliberation, consultation and debate. Sort of **multi-disciplinary platforms** may be considered for such a purpose to encourage concerted effort in the process.



OBSERVATIONS, REFLECTIONS AND THE WAY FORWARD

Way Forward:

- **Adequate injection of resources** to introduce new services/practices and improve existing services/practices to **support separating and post-divorce parents in both judicial and family service systems** is a must. There should be a detailed review on the **legislative pathways and cross-sector service interfacing** to put an effective mechanism in place.
- Careful examination of **handling vulnerable cases with safety concerns or special needs such as family violence, child abuse**, mental problem, drug abuse or high parental conflicts to work out **an effective and a convincing service model to safeguard their safety and wellbeing** must come first before any reform implementation.



END OF THE SHARING

