

5 May 2018

Dear Director and Commissioners,

**Re: Review of the Family Law System**

The adversarial approach undermines justice when applied to separating families, especially justice for children and their best interests. Every effort must be made to preserve cooperation within families.

*Question 1 What should be the role and objectives of the modern family law system?*

The objective should be to advocate for the child and child's best interests throughout every stage in any parenting disputes, not only regarding final orders or outcomes.

*Question 2 What principles should guide any redevelopment of the family law system?*

A non-inflammatory approach should be a major guiding principle, with the removal of any adversarial practices within family law.

*Question 14 What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?*

A process similar to a conciliation conference is suggested for producing parenting plans.

*Question 25 How should the family law system address misuse of process as a form of abuse in family law matters?*

Key abuse opportunities exist through the cost of legal advice and representation; time off work to seek legal advice and attend court hearings, and the associated anxiety and cost of these processes; the requirement to read abusive affidavits in order to file a response; flawed family reports manipulated by an abusive parent which are subsequently used to make orders; and power imbalances in parents' relationship dynamics which are magnified in the court setting. The removal of the adversarial approach consequently would lead to less opportunity for abuse.

*Question 27 Is there scope to increase the use of arbitration in family disputes? How could this be done?*

With limited understanding of both conciliation and arbitration processes, I regard conciliation as less inflammatory and more suitable for family disputes than arbitration.

*Question 29 Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?*

Ownership of decisions by parties is a more likely outcome of conciliation than judgments made in an adversarial system. Compliance is more likely to follow.

*Question 34 How can children's experiences of participation in court processes be improved?*

The "child's best interests" principle needs to be upheld throughout the period of Court involvement, and not only as a guiding principle for Orders. In practice, this means interviewing and observing children in their natural settings for writing family reports, particularly in the home settings in which they are residing rather than in clinics. Children should not be taken to the Court environment.

*Question 38 Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?*

Children should not be asked, but their expressed wishes considered. It would be more valuable use of resources to observe children in their own settings, rather than expose them to clinical processes. Child's best interests are more likely to be protected this way, hence the process would be more cost-effective.

*Question 40 How can efforts to improve children's experiences in the family law system best learn from children and young people who have experience of its processes?*

Findings from relevant research should be incorporated into legal practice and Court processes.

*Question 43 How should concerns about professional practices that exacerbate conflict be addressed?*

Specific advice given to the client by lawyers as related to their existing circumstances should be specific to that case, not the bargaining approach as used by trade unions which may antagonise one party unnecessarily producing further division within the family. For example, a standard parenting plan should not be advocated, only one that is most likely to be accepted by both parties. Again, also, the adversarial process in family law should be abolished.

Yours Faithfully,

[REDACTED]

[REDACTED] R. Hainsworth