**Adam Tate**

**Review of the Family Law System**

**By Adam Tate**

The role and objectives of the modern family law system should be to assist those going through separation or divorce and their children compassionately and in a timely manner.

Within the context of this submission I’m proposing the concept of a three stage process to deal with the majority of family law cases as they arise. Something of this nature could be given the opportunity to be trialed and evaluated for consideration.

This is not an attempt to reduce the numbers of lawyers or the volume of work that they receive and I believe if that aspect of this submission is appreciated they could be quite receptive to changes that get better outcomes for all.

This allows scope for a tribunal style process to better help encourage parties to achieve a single outcome. This would allow judges to be more connected to their clients and less influenced by lawyers during the initial process.

This three stage process can be utilised as in efficient and effective way of dealing with a high volume of cases in seeking the best outcomes for all. It is intended that parties resolve their differences during either the first, second or third stage.

If this cannot be achieved then their case escalates into the family courts as it would have done previously but with a high volume of quality information available to the judiciary, where as previously very little of this information would be available and many cases would be presented with false and antagonising information that does nothing towards an amicable resolution.

The system should not enable support services and judicial officers to influence their clients in taking an adversarial and protracted approach and nor should they be allowed to encourage these clients to make exaggerated and even blatantly false allegations in an attempt to control custody and the proceedings.

The current structure seems to encourage an adversarial and competitive model so I would suggest that giving the parents an opportunity to be competitive by both equally being allowed to be the best and most loving parents they can be to their children in the first instance would give everybody a chance to show how competitive they can be in this way rather than aggressively throwing mud at each other in the hope that some will stick.

This adversarial approach often ensures that the relationships may never heal and is very damaging to all involved over the longer term.

The family courts should encourage 50:50 Shared parenting as a starting point and offer a redesigned and streamlined process that does not entertain protracted conflict with far more emphasis being placed upon mediation in the hopes of conflict resolution and an amicable solution that will almost always be in the best interests of children in comparison with the process that is currently available.

It has been stated to me that the current system has been designed to merely keep men working and keep women spending money.

I would also propose that custody and property issues be handled through separate processes by appropriately trained professionals. This would allow for the restructuring process to offer family lawyers the opportunity to further specialise in areas that they can add greater value to in capitalising on their skill sets and experience.

As family courts around the world are investigating and moving towards a shared parenting model based primarily on the fact that it is the only fair and decent way of providing balance for children, in circumstances where at least one parent and especially the children request this during proceedings.

Divorce should not mean that one parent needs to be bankrupted or as in far too many cases handed a potential death sentence.

Divorce should not be a traumatic experience that potentially negatively impacts the lives and futures of children and parents alike.

Many parents enter into the family law courts and initiate proceedings because they are being kept from their children by the use and overuse of protection orders.

These protection orders allow the accuser to often hold 100% custody, gain a number of financial and taxation based incentives, entitlement to child support, entitlement to a much larger percentage of the families existing assets and finances, free legal representation via legal aid and more.

These protection orders also allow the protected person and unbalanced amount of power over the accused and we can reference numerous situations where the accused has been arrested and even jailed due to a technical breach of orders when there is no threat or harm and they are merely seeking to communicate with the other party as they should be allowed to do given they have formerly shared a life together, especially if they have children together that they both love.

**I’ve seen some very cruel and illogical uses and abuses of these protection orders and I believe the family courts can offer a way to reduce these type of underhanded activities.**

No wonder we have seen a huge increase in allegations of abuse and family violence as well as incidences of parental alienation and unnecessary childhood trauma through separation anxiety in children not being Informed about or allowed to participate in the dispute resolution process at the discretion of the parent making the accusations, let alone be able to have contact with a parent they love.

**The family court could play a much more active role in redefining and evaluating family violence to better suit positive and more loving outcomes for all.**

Under section 109 of the Australian Constitution the Family Court being a Fedral court can override state and municipal laws and I believe the family court should play a more active role in relation to family violence and abuse but not from the point of view of using false allegations and exaggerated claims to extract financial and emotional value from its clients but to help better shape, pacify and modernise society as a whole.

I would like to see the family courts take a leadership role in this area because the current definitions of family violence and abuse seem to me to be nothing more than a set of overbearing definitions and legislation that does not do anything to solve the problem and in fact it often exacerbates it.

In recent years there has been a major push from government and media to promote the concept of family violence almost as if they are selling something to the wider public. It also appears that this “sales pitch” is very one-sided and often references statistics that seem to have been ‘cherry picked’ to portray this particular narrative despite a large volume of data and research that suggests that it is certainly not gender-based and every individual case should be addressed on its own individual circumstances.

For example we can easily uncover information that suggests infanticide is committed in the majority by women but we have no legislative or media push by the government to remove all small children from women based on this information, and rightly so.

In a way it seems that this blanketed advertising campaign is actively influencing people to report incidents of family violence regardless of actual context and without the type of investigation that should be carried out subsequent to such reporting of these incidents.

Family conflict and breakdown is a very complex issue and it would be almost impossible to assume that it would ever be one-sided except in the most obvious of cases and there are already numerous and genuine mechanisms in place to deal with these obvious cases.

Most people just need some counselling and often people’s problems are generally of a similar nature. Financial pressures, differences of opinion especially related to parenting styles and other issues that could be seen as quite frivolous that blow up in the context of cohabitation.

The current legislation does nothing to protect an individual whose partner is antagonistic, abusive and violent yet seeks to stitch the other person up if they are reactive to it in the slightest and it does nothing to address the fact that this individual may have gone out of their way to avoid conflict and drama but unnecessarily and unfortunately got caught up by a form of entrapment.

It is quite commonly acknowledged that male victims of abuse and family violence do not report it anywhere near as often as females do and it could be assumed that most men are quite accepting of the fact that their wives or partners can behave in this manner and although they are not happy with it they don’t just go and involve the police and use protection orders to remove the mother of the children from their daily lives.

This is quite a common characteristic of people who have been diagnosed with narcissistic personality disorder (NPD) where as with their overbearing sense of entitlement, they often seek to win at all costs without boundaries or restrictions to their behaviours based on consequences.

It would not be out of the question to make the general assumption that narcissism is a rapidly increasing aspect within our society and it would be wise if the family courts were to pay more attention to how this personality disorder affects relationships and influences the individuals decision-making process when it comes to parenting, divorce and the legal process.

It is my opinion that narcissistic personality disorder is almost always prevalent in cases of parental alienation and that family lawyers directly or indirectly exploit this characteristic for their own gains in some cases.

There is currently no mechanism in place to evaluate the extent that this is occurring and it would appear that many high conflict people seem to simply just ‘get in first’ with accusations and allegations that allow them to control the narrative beyond anything that could be seen as reasonable or even legal, and certainly not in the best interest of the children as they get caught up in this degenerative process.

It is also my view that to have any branch, subbranch or body of law in the true sense of the definition, there needs to be not only a mechanism of detection of perjury but an active procedure that seeks to prosecute accordingly.

Of course perjury has been included in the family law act for obvious reasons but unless it is actively detected and prosecuted there would be reason to assume that by definition the use of the framework could be bordering outside of law in and of itself. I feel this needs to be considered at this stage.

If these protection orders were originally intended to be abused in the way that they are being abused then that aspect of all of this needs serious consideration at a state and federal level by the appropriate legislators as it makes up a very large component of family law cases these days and it appears to overlap so much in family law that it needs to be addressed in context by this review process accordingly.

It should be noted that police have no discretionary powers in relation to these protection orders.

**It is my view that when protection orders are issued there should be a mechanism for either parent to be able to approach the Fedral Circuit Court seeking immediate interim orders that allow for the following:**

**Stage 1**

* At this stage parental rights are equal and the courts are in favour of 50:50 shared parenting as an initial starting point to work towards.
* Initial communication with the children via telephone and Internet be made available.
* Initial supervised access so that the children and other parents are not isolated from each other for lengthy periods of time which can be detrimental and traumatic to the children and not in their best interests.
* Reports from supervised access are to be completed and lodged as part of this process.
* A process to determine the validity of the accusations that went towards the protection orders and to investigate into more details of the complexities of the family relationships and breakdown and additional contributions to that process that led to the protection orders being granted.
* At this stage both parties should be informed of their obligations to be truthful and made aware of the penalties for making false accusations and committing perjury with in the legal system.
* Both parties are to attend a short 2 to 3 hour seminar on parenting after separation in order to immediately reiterate the importance of coparenting and the implications of positive coparenting with regards to the children’s needs and best interests.
* Follow-up counselling should be made available to the parents and children separately and combined where practicable.
* A mediation process that is monitored to determine the likelihood of a swift an amicable solution as well as to identify which party or parties appear to be reasonable in their approach to this.
* Discussions and mediation in relation to child-support in an attempt to allow individuals the opportunity to bypass the child-support system due to it’s in flexibility and adverse affects.
* The issuing of a smart phone application to allow for all communications between all parties to be directed through this for the purposes of genuine intelligence gathering as well as sharing important information with all parties relating to family law, their specific case and their individual obligations under the Family Law Act. This application would also be very valuable regarding court dates and for sending real-time alerts as case information is updated.
* There is also potential in high conflict situations for both parties to easily utilise the technology of a wearable body cam with audio when it comes to change overs and other face-to-face encounters. This would be compatible with the application.
* Restrictions upon the involvement of family lawyers until this initial stage has been completed.
* This process should take no longer than a few months and can be modified to suit the particular dynamics and scenarios of each individual case.

It is my view that with a far more proactive approach in the first instance we could see a huge increase in amicable mediation and reunification between good children and good parents and I feel that this is a very important aspect of family law to consider given the volume of protection orders that are issued, whereas the party under restraint does not feel that they have been given a fair go in the slightest.

This process would also greatly help to determine the extent of conflict and nature of the said family violence that has led to protection orders being issued as part of a risk analysis process that would be very beneficial to the judiciary if the case progresses.

**Stage 2**

For those cases that cannot be mediated and resolved and for cases that appear to look as if the situation will improve but have taken a turn for the worse, there will be a lot of very valuable information available for referencing during this second stage of the process.

Self representation:

Why should a parent who is self representing be penalised when they have no experience operating within the legal system or filling in complex legal paperwork?

Being a good parent has nothing to do with this.

This much more streamlined and controlled process will better allow for self representation without unnecessary penalty to the value of the relationships.

At this point both parties are well aware that the Initiating process consists of three stages and as they were unable to exit the system during the completion of the first stage, their financial burdens will increase and this more often than not will have an impact directly upon their children’s futures and immediate lives.

There should be a set of guidelines and criteria ensuring that both parties and their legal representative’s have met and agreed to in order to proceed.

All parties need to be aware that this is a three stage process and has been designed to free up the courts for more serious cases that cannot be resolved after genuine attempts to do so have been made.

At the beginning of this stage both parties are ordered to participate in a more detailed parenting after separation course that once again reinforces the desire of the courts to see them act in the best interests of the children.

At this stage the children will be invited to have their say.

Although the current system tends to exclude the children from the process to avoid them being manipulated by either party at least if they are allowed to have their say it can be taken into consideration.

This process may actually be more revealing in the sense that if the children have not been manipulated they will freely be allowed to speak their minds.

If the children have been manipulated it may be revealed in one of many ways during this consultation process with them.

At this stage if there is information that suggests the children are being manipulated by one or both parents there should be a mechanism to provide counselling specifically in relation to the effects upon children and this counselling could be conducted with the individuals as well as all parties involved.

I do not believe in stipulating whether or not they can contribute due to age appropriate constraints as I have seen huge variations in maturity, intellect and articulation across different age groups of children and I believe that excluding them from the process offers them no justice in regards to the core objectives of the Family Law Act of 1975.

I also feel that the use of an independent children’s lawyer allows for too much variation and not enough consistency at this stage of the process.

It could be seen as the deprivation of basic human rights of the child according to the United Nations by not allowing them to have their voice during court proceedings of this nature.

Not to mention the depravation of their human rights when it comes to their ability to have a meaningful and loving relationship with both parents.

Upon completion of this course both parties are invited to seek interim orders and are once again offered facilitated mediation in an attempt to achieve an agreement that is suitable.

If interim orders can be a chiefed through consultation, mediation and consent then they can be issued efficiently through the Fedral circuit court with a defined period of time attached to them between 3 to 6 months.

This process will give the parties and all stakeholders and opportunity to prove themselves and to more focus upon their needs and through trial and error, their ability to adapt to their changed circumstances.

As issues relating to this adaptation arise they will be able to be highlighted and flagged through the use of the application, along with any involvement of police and other supporting services during the process.

The main aim of this stage is to help all parties to work together cohesively and hopefully exit the system without any further need to move to the next stage but of course with the opportunity to do so at any point down the track.

**Stage 3**

At the completion of the Second stage, agreed interim orders can be evaluated for their effectiveness and any breaches of said orders can be reviewed with the scope to re-education as opposed to lengthy punishments depending on the scale of the breach.

Obviously breeches will be dealt with outside of the criminal court system still but they can be evaluated and addressed on a scaled basis that can be then used in further deliberations.

The third stage allows for the tribunal process or for a judge and legal representatives to either seek final orders by consent, to extend the period of the second stage with reissuing of interim orders that are based upon the information presented or by request of either party if they genuinely sick to make adjustments based on their own circumstances in relation to their ability and effort’s and what they think is in the best interests of the children going forwards.

It would be encouraged that the grandparents and other influential elders would be involved in the process from the first stage for reasons being that they can help to hopefully influence both parties and offer a nurturing presence during the process.

Hopefully they have been able to help to nurture this process and if there has been an identification of the external family members negatively influencing the process it will with any luck have come to light by this stage.

This stage will hopefully encourage parents to communicate effectively together and to better adjust to living separately along with the arrangements that come with this.

This process gives scope to the potential to avoid a lot of the unnecessary actions that are often taken using the current system that are costly, negative and very time-consuming.

After the three stage process if there is still conflict and dysfunction then the case is moved upwards to the family courts as it would’ve done previously.

The judge can then seek to either extend the period of orders including modifying them from stage three of the Initiating process or instruct for a family report to be conducted which will utilise all information gathered to this point from the three stage initiating process.

**Conclusion:**

It is my view that given the ALRC have been given the task to review the current family law environment it is admission by the government that the system needs genuine reform.

I appreciate the commission taking submissions from the public as well because they may be able to gather valuable information from people who have had experience with the current system but who obviously have no professionally vested interest or ties to it that may make it harder for them to offer genuine suggestions for reform.

I would be most welcoming of any feedback in regards to my submission from the ALRC.