**Marie Wood**

**Family Law Submission**

1. **Introduction**

I have written this submission because my experience of the Family Law System – unfortunately through close observation of and support for family members needing to engage with it – has shown me that the system distorts conflict resolution, because it is constructed within a legal framework, rather than being structured within a mediation/arbitration framework with The Court only as the final arbiter.

There are reasons why partners and parents in dispute may need to resort to the law to resolve complex parenting or financial issues. And certainly in the case of family violence, or of extreme intransigence on the part of one parent, the legal system may well be the only mechanism that can resolve issues to safeguard the interests of affected parties.

But for most of those engaged in family dispute, neither party, neither parent, is necessarily in breach of the law in their actual behavior, and so, having to resolve issues within the framework of the law distorts the differences between them and extends their antagonism in ways that seem to exacerbate conflict rather than ease tensions.

And so, what for many people begins as a difficult personal situation, becomes a legalistic, antagonistic conflict, in which ‘winning’ rather than agreeing is the intended outcome.

**2 Family Law Precept**

Before I encountered the family law process first hand, I had not been aware of the key underlying precept: that the child has rights, while the parents (and grandparents) have responsibilities. This is a profoundly wise and valid concept; it provides priority and perspective. I strongly support it, and trust there is no thought of modification.

So too, i endorse and seek the unqualified maintenance of the precept that the child has the right to the love and support from both parents, equally.

Often the threat of domestic violence, usually associated with the father, is used as grounds for arguing that this balance needs changing, but the child has the right to loving care from both parents, so paternal as well as maternal responsibilities should be protected.

Another oddly common circumstance is that of a parent with a quite extreme personality disorder, giving well founded grounds for concern about possible damaging long term psychological effects. It is the father’s loving engagement with the child that offers the best hope of weathering possible adverse influences.

So more generally, the concept that both parents have equal access and responsibility for the child, from the outset, is a starting precept for the law that must be preserved and protected.

1. **Issues in the Family Court System**

I have now observed a court system at work for the first time in my long life. I have been profoundly impressed with the astuteness and fairness of the judge we have witnessed. However, it is also my sense that she handles an impossible and exhausting workload, with sometimes up to 30 cases being listed on one day. Trying to master and remember all of them would be beyond anyone.

The court system I’ve observed has excellent practitioners, just nowhere near enough of them; the starting point for any review has to be that the family law system needs more judges.

*Are there ways in which the load on the court and system itself can be lightened?*

There seem to be two voids for those needing to face the law in order to determine personal and parenting issues – and it is issues concerning children that most concern me:

3A               there does not seem to be a clear helpful pathway to assist those dealing with breakup so that they can understand their options - personal, *legal,* financial, and as parents – to assist them *and hopefully encourage them* to use means other than litigation to resolve their issues;

And

3B once the matter has come before the court and ‘orders’ have been made, there is no *supportive effective* pathway to ensure the orders are followed, or to seek redress or support if they are not being followed, other than through a Court process.

For parents especially, it seems more attention is paid to the ‘fracture’ than to the ‘repair’. That is, more attention is given to the past than to the future, more focus is on rights rather than responsibilities, and each ‘party’ (as they have now become) is fighting against their former partner as this is the only means by which they can achieve the outcomes they see as rightfully theirs.

What is needed are circuit breakers early on – ready availability of counselling, mediation, arbitration – provided as and when needed, but within a system designed to ensure children’s rights and interests are protected, and parents are enabled as best as possible to understand their responsibilities and carry them through.

I know that mediation services, counselling, arbitration and legal aid all do currently exist but they are inadequately resourced to provide the immediate advice and dispute resolution needed to prevent further harm and to obviate the need to resort to the Law.

All of this is emotionally straining, financially draining and cumbersome in the extreme.

And while I do understand that the issues the court deals with are often complex, and where children are concerned, are always emotional, improvements could be made.

There seem to be three major issues once parents find themselves caught up in the Family Law System:

 ***i          Lengthy delays and excessive costs*** further compound already difficult personal and family circumstances;

***ii Difficulties for fathers*** – where a father is willing and able to continue to care for his children, everything should be done to support this continuance of paternal care. It is imperative that father’s rights and responsibilities not be diminished by the Review outcomes.

The current principle underpinning the Family Law system – that children have the right to loving care from each of their parents, and that parents have the responsibility to ensure their children are able to receive loving care from both of their parents – must be respected and I would argue, strengthened

Family Law is a ‘no faults’ jurisdiction, so everything should be done to assist parents in disagreement to work constructively to ensure the best outcomes for their children

In practice, this would mean that the Family Law support system would be as clearly based on the precept that fathers have equal responsibilities with mothers for the care of their children as is the Family Law system itself, so the presumptions in the advice and support systems that currently tend to favour maternal over paternal care should be addressed.

For example, the fact that the mother is more likely to assume responsibility for the children in the period following relationship breakdown (as the father may have been excluded from the family home and be seeking his own accommodation), should not be regarded as the basis for all future care decision making. The norm should be shifted from one of maternal decision making to one of equal paternal/maternal decision making and this should be supported through the advice and counselling services made available to both parents.

Maternal allocation of time with kids should not be able to be used as leverage for financial or other incentives. Referrals/support systems should ensure that early, perhaps highly emotive decisions made at the outset of a breakup do not shape and structure future parenting arrangements.

***iii          Lack of mechanisms to enforce Court Orders***…..this undermines stability for children going forward and therefore further compounds family life following separation – the very opposite of what is intended through the Court process.

**4 Conclusion - Recommendations**

***4.1 Properly resourcing the whole system***

The Family Law system is inadequately resourced at every level – there are not enough Judges, counsellors, mediation and legal aid services.

The whole Family Law system needs to be boosted, and I would suggest that while in the immediate future the Court system itself needs a massive boost (more Judges and auxiliary staff), once the terrible backlog has been addressed, if a considered systemic pre-court support system is put in place, then gradually over time there would be far less pressure on the Family Court, and much better long term outcomes for disputing families.

***4.2 Ensure the precept that underlies the Family Court System continues to underpin the whole Family Law system***

 *that the child has the right to love and support from both parents, and that each parent has the responsibility to ensure the child receives loving care from both its parents*

 This is a profoundly wise and valid concept; it provides priority and perspective. We strongly support it, and trust there is no thought of modification.

So too, we endorse and seek the incorporation of the precept that the child has the right to the love and support from both parents, equally, in all aspects of the Family Law system.

The concept that both parents have equal access and responsibility for the child, from the outset, is the underpinning precept for the law that must be preserved and protected.

***4.3 Appointment of Parent Coordinator***

The Parent Coordinator would have the responsibility and authority to check parents and children regularly *or if requested by one or other party*, to mediate, and if need be to report to the Court if there is a pattern of a pattern of a parent failing to implement orders. The co-ordinator could refer parents to other services if appropriate.

In other words, parents in conflict would have a readily accessible, court endorsed and court accessible support, ensuring that Parenting Orders would more likely be followed and providing a timely means for professional intervention when problems arise.

A family counselling and monitoring system should be developed where there is friction between parents regarding the care and upbringing of their children.

The Parent Coordinator would be allocated to separated parents who are struggling with their responsibilities or have been before the Court.

The Parent Coordinator would have the responsibility and authority to check parents and children regularly, to mediate, to report to the Court and to refer parents to other services as appropriate.

In other words, parents in conflict would have a readily accessible, court endorsed support,

ensuring that Parenting Orders would be followed and providing a timely means for professional intervention when problems arise.