

The Manager
Family Law Review
Australian Law Reform Commission
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Dear Sir / Madam

Thank you for the opportunity to comment on the discussion paper concerning the Australian Family Law System. I appreciate the work that the ALRC has undertaken to date however on reading the discussion paper I am concerned that the work is not effectively responding to the terms of reference provided to it, that being reporting on the appropriate, early and cost-effective resolution of all family law disputes, the protection of the best interests of children, and a range of other supplementary matters set out in the referral made by the Hon George Brandis QC.

The ALRC paper provides discussion on education, legislative clarity, advice and support, dispute resolution, changing the adjudication landscape, working with children, reducing harm, ancillary legislative issues, a skilled and supported workforce, information sharing and system oversight and evaluation. Certainly, looking at these issues are sensible.

Nowhere however, does it consider what are the most common causes of disputes in the first instance. This is a real disappointment. If you cannot distil the essential elements of the problem, the root cause of the majority of disputes, basically what is making the litigation necessary in the first place, then I think that you cannot hope to recommend to government a suitable response.

Most persons working with environmental, social or economic problems, and more broadly business matters in general, implement a hierarchy of controls, and have depth and diversity in those controls to bring about an optimum management response. This process is just as applicable to a legal process or system. I see nothing however in the discussion paper that really does this.

There is no real substantial management response being considered. It appears to me that many of the proposals in the discussion paper are simply administrative quick fixes, recommended to codify the existing court processes or re-arrange existing processes so that they are applied in a different order. Ostensibly I suppose, so that the proposed Family Hubs can take the blame for future family law failures, rather than the government or the Judiciary. That may be a restructure of the process, but task and hence blame shifting can hardly be considered to be a genuine reform.

When implementing a hierarchy of controls, the first principle is to stop the problem arising. In this regard, a reform process that is truly innovative, must consider how to stop a parenting dispute occurring in the first instance. There is no consideration of this within the existing body of work.

The discussion paper indicates on several occasions that family law matters are complex, involve family violence, drug and alcohol abuse and mental illness, and certainly that element is there. But there are around about 80,000 cases per year being filed in the Federal Circuit Court and another

20,000 in the family court. They can't all possibly relate to parties with substance and mental health issues.

If you look at the issue with brutal honesty, perhaps go out and talk to the average person in the street, in the majority of cases, the number one cause of disputes is obviously the financial imperative. It's not a complex issue at all. Separating causes major financial stress to both parents having to restructure their lives. Regretfully that drives perverse behavior. Children are being used as a commodity.

Controlling and limiting access after separation maximises the property settlement for the controlling parent based on the perceived future need. Controlling and limiting parental access after separation maximises child support payable to the controlling parent. Controlling and limiting access, maximises access to welfare in family tax A & B payments to the controlling parent.

It is morally repugnant for a child to be used as a source of income. Yet this issue is not identified or discussed at all, within the discussion paper.

If social policy and hence legal obligations are reformed, so that time spent with a child does not drive a financial imperative, the number of cases brought to court would drop significantly. The costs to government would drop significantly. The toxicity of this entire area of law would be immeasurably improved. Yet the discussion paper does not provide any analysis of this issue, nor provide any analysis what so ever of any other alternative propositions relevant to understanding and then managing the root cause of family law litigation.

Further, holistically, there appears to be no articulated aspirational goal in the discussion paper from which to develop more specific objectives, actions and targets for the system. Without such, reform is doomed to failure. Straight off the bat the first suggested response in the paper for reform is an educational and media campaign. As if that would be like waving a wand to magically resolve all of the systems problems. When you see something like that suggested, one really starts to despair.

What is equally and perhaps even more disappointing is that within the discussion paper, the old chestnut concerning the issue of equal parental responsibility versus the equal presumption of time is raised (page 38 paragraph 3.21, page 44 paragraph 3.37 etc. et al). Time after time this is raised in papers and in enquiries, with the imputation being that the 2006 law reforms were never about creating intergenerational change in family law and a cultural shift in the management of parental separation towards co-operative parenting. This doesn't make any sense to me.

The 2006 family law reforms were clearly made to improve equitable processes in post separation parenting and to encourage men to step up to the plate and take an interest in the welfare and development of their children. The existing Act was amended by these reforms to specifically note that it was in the best interest of the child to know and be cared for by both parents and consequently require judicial officers to consider the merit of equal time at Section 65DAA.

Dismissing this matter as a common misunderstanding of people making submissions to the ALRC or writing it off as a broader "community confusion" or misconception on family law is simply an insulting purview. The *Family Law Amendments (Shared Parental Responsibility) Act 2006* as made, indicates that the community had and given submissions to this enquiry, still has, a strong desire for both equal responsibility and equal time arrangements being made for parents and children.

This discussion paper provides no analysis on why those reforms, a decade later, have comprehensively failed. The failure is evident by the 2015 ABS data that indicates that over one million Australian children live in single mother families and only half of those children, some 500,000 of them, spend time with their fathers in any meaningful way.

Certainly, a review of the procedural or administrative processes of the Family Law system is warranted, which is what you have been doing, but without closer scrutiny of the broader policy failure, this enquiry will fall well short of its objectives. Effectively, who cares what administrative reforms are made to the family law process to make it more efficient and timelier, if from a management perspective it still churns out the same old putrescible arrangements.

There is a strong view in the community that equal time and equal responsibility arrangements for parenting would be the optimum outcome for children post separation, but an equally entrenched and opposite viewpoint is abundantly obvious when you have to work through the system. As a father, I can tell you from bitter experience that you have to fight every inch of the way to get any time.

So, in relation to that, certainly there is always going to be a lag between community expectations, legislation and judicial reform. The big question here is why has the judiciary failed so comprehensively to work with those reforms. From where I am standing, a survivor of the system, it seems to me that the cultural inertia is so institutionally embedded in the court system that no reform is possible.

So, whilst your proposals look for that administrative quick fix, none of your proposals cut to the chase and address the root cause of the issues, nor discuss, address or even encourage a cultural institutional shift within the legal profession and the courts. I am certain that if the ALRC applied itself, perhaps took an additional moment, an extension of time and refocused on what it has been asked to look into, it could constructively do so much more.

Yours sincerely

Roland Bow