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**Reform Family and Child Support Law**

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Dear ALRC member,

It was with little belief that I read the latest discussion paper from the ALRC concerning a review into the Family Law system in Australia. I was not disappointed in my disbelief. This does not go even near the issues affecting Family Law in Australia.

The most glaring issue is one of affordability, especially for parents (fathers most affected) who are alienated from their children. There appears to be a current trend for one parent to gain control over another by withholding children for the benefit to the withholding parent through the means of: financial, legal, moral and/or out of sheer spite and vindictiveness. There is a case to be made here for parental alienation to be recognised, addressed, and laws considered to address this as child abuse. Which in fact it is. FVRO legislation needs to be re-written to include the withholding of a child from a parent without lawful excuse. It is not that difficult to be able to prove a parent should not be in contact with their child because of harmful behaviours to that child. Parental alienation is causing a sharp spike in the suicide rates, especially amongst fathers. To ignore this issue, or to simply say it does not exist is naïve at the least, and dangerous at the most.

CHARTER FOR CHILDREN’S RIGHTS – HUMAN RIGHTS COMMISSION.

Australia is a signatory to the Charter for Children’s Rights. In Family Law, these principles are not being adhered to, which I find personally hypocritical of the Australian government and its elected representatives. In particular **Article 9.3**: *3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.* In light of parental alienation that exists in a large percentage of separated parents, where does this sit? To state that parental alienation is not recognised is a ludicrous statement at best. It does. Where is the research on this topic from Australia? Why is this being constantly ignored by the ALRC and the politicians and the judiciary? Surely, a child needs to be heard as to what is in their best interests.

Article 8 of the CCR states: ***Article 8***

*1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*

*2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*

If a child is being withheld from a parent without lawful excuse, where does this sit? Again, why is this not being recognised and researched by the ALRC? The backbone of all children’s identities is their parentage, yet children who are often alienated from one parent and/or extended families have this basic Human Right violated. How can a child form their identity unless they have regular contact with both their parents and extended families? Yet, Australia continues to ignore parental alienation as a concern. This Article states clearly that a child has a right to know their own identity. Under Australian Family Law, this Article is being violated on a daily basis, especially for fathers, and requires immediate addressing and research. Currently we have a new Stolen Generation developing and it is being ignored. Mostly through the use of a very lax Violence Restraining Order system, through the States.

In 2015 the National Children’s Commissioner conducted a national investigation into the impact of family and domestic on children. The key concerns raised in 2015 still exist as key concerns today. I did note the gender bias used during this investigation and I am alarmed at the promotion of women being victims whilst men are promoted as the perpetrators. As an Australian society in the 21st century surely this bias/discrimination should be eliminated from the narrative. If women do make up the majority, then it should be simply stated that way, therefore making it more gender neutral. Men are victims of domestic violence as well but the narrative and reporting (especially in reports such as this) are all focused on women as victims. This needs to change. I have highlighted two key concerns that still are to be addressed. Parental alienation is worded here as a conflict between parental contact and the best interests of the child, and the inappropriate use of mediation.

These key concerns were raised in 2015 through the Human Rights Commission

Key concerns raised during the examination included:

• lack of understanding and inappropriate responses to family and domestic violence by those working in the family law system

• conflicts between the right of parental contact and the rights and best interests of the child

• court decisions which do not yet fully reflect the amendments to the Family Law Act 1975 (Cth) in 2012

• inappropriate use of mediation for some families

Until Parental alienation is recognised and addressed legally, these two key concerns will continue to be unaddressed concerns.

WA FAMILY COURT SYSTEM

The WA Family Court system stands alone. This is a complication that many WA families suffer. The WA family court system denies WA from being in line with the rest of Australia. Surely more pressure should be applied to WA to become a signatory to the Family Law Act instead of arrogantly insisting on WA residents to become embroiled in the Family Court Act (WA) instead. Are we not all one nation? And as one nation should we not all be treated equally? It is too easy for WA residents to file paperwork under the wrong court, and at present WA residents cannot file through the e-courts portal because of this arrogant approach by WA through insisting WA’s way is the only way. This also applies to the Family Restraining Order system. At present all WA’s restraining orders are dealt with through the Magistrates Court and not through the family court system. This is open to abuse as the two courts are independent of each other. An application, even an interim application can be used in the family court as evidence when in reality the allegations have not been tested in the Magistrates Court. The outcome of a restraining order application in the Magistrates Court is not then transferred to the family court, making the process even more complicated for WA residents.

RESTRAINING ORDERS

The current restraining orders provisions and legislation operate on the premise of guilt before innocence. An untested allegation is taken as being factual. Since when does Australian law allow for this? Our Westminster system operates on the premise of innocent until proven guilty. How on earth did anyone allow an unproven allegation as being truth until it was proven beyond reasonable doubt? Should domestic violence exist then it can and is proven by a variety of avenues – police reports, counsellors, schools, neighbours, doctors, hospitals and outreach services. This new approach should be revoked immediately, and all allegations of domestic violence needs to be supported as per the old system. At present restraining orders are devalued because of the misuse and abuse of a system designed to protect victims. A true victim is able to support their claim of abuse through a myriad of sources. It is difficult to hide a true domestic violent situation in this day and age. The damage caused to an alleged perpetrator is immense, under the guilty till proven innocent legislation. Homelessness, suicide and self harm, loss of employment and earnings, loss of reputation and good standing, alienation from children, mental health issues are all costs the alleged perpetrator faces as being guilty until proven innocent. How is that restorative? How do we as a society give all this back when and if an allegation is proven false or misleading? How do we give back an innocent life? This genie cannot be put back in the bottle. This is why the standard of proof was necessary in all allegations of domestic violence. All family violence restraining orders should be and must be dealt with through the family law system and not through the magistrate’s courts, as is the case with WA. That way the family law system is fully aware of all matters pertaining to these orders and applications and is not open to abuse by vexatious litigants trying to obtain an advantage.

COST OF FAMILY LAW

At present, a great many Australians are denied family law access due to the high cost of resolving family law matters. Many are selling the family home, becoming destitute, and becoming bankrupt trying to resolve family law issues surrounding children in the main. This is denying a child an inheritance, and in many cases seeing children less supported because of the high cost of trying to enforce contact issues. Surely it is more appropriate for a child to have access to these funds for their development instead of lawyers and courts. Mediation is not effective in its current form. One party can play the mediation system along by simply not turning up for the appointments, leaving the other party with high costs to attend. The use of change-over venues should not see the non-residential parent facing daily costs, as well as travel costs, so a child has contact with both parents. It should be either no cost to both parties, or shared costs to both parties. The cost prohibitive nature of family law in Australia needs urgent addressing and consideration.

A tribunal system similar to the State Administrative Tribunal is a far better option, with no or limited financial outlay. Only in the most extreme cases should family law matters be returned to the Family Courts to adjudicate. This would also eliminate the feeling of being punished simply because a marriage broke down. Having to attend a formal Court leaves one with a feeling of doing something wrong or illegal. It is not illegal for a marriage to break down so why are we as Australians being sent to a formal Court in much the same way as if we committed an offence.

CHILD SUPPORT

The current child support legislation and administration is causing great angst amongst Australians. Surely no 5 year old child cost over $2000.00 per month to raise, yet many fathers in the mining industry and other higher paying employment are being asked to pay that amount. Child support is not spousal support but is viewed that way by the majority of receiving parents. Paying parents are living below the poverty line as a result of child support obligations. Paying parents have no chance of rebuilding their broken lives until their children become independent – either at 18 or 25 if still at university. The current rate of child support needs urgent review so no parent is left behind. A cap of $100 per week needs to be applied so the maximum amount of child support payable for any amount of children is $400.00 per month. A sliding scale and applied on a case by case basis should govern the amount of child support payable. A paying parent who is reliant on Centrelink income should be exempt from child support. All child support is taxable by the receiving parent, therefore child support from the paying parent is taken from net wages and not gross income. In modern Australian society it is now the norm for both parents to be working and the current legislation is outdated and archaic in its view that mothers stay at home with the kids. With the introduction of Paid Parental leave and other entitlements, it is now no longer necessary for women to be viewed as stay at home mothers. Child support assists in the support of a child and should not be viewed as being the sole means of raising a child. Child support payable should be based on household income and not parental income. With such a high divorce rate in Australia, many households constitute second relationships – both with or without children subject to child support. This is a true reflection of how much additional support a child requires.

In conclusion my views are:

1. That the Family Court/Law be only for those extreme cases.
2. That a family dispute tribunal (free from exorbitant lawyers and court fees) be implemented.
3. That each party who requires legal representation at the tribunal be afforded a legal aid solicitor free of charge.
4. That the current restraining order legislation be amended to prove all allegations of domestic violence.
5. That a 50/50 shared responsibility for children be implemented unless there is proof of mistreatment and abuse.
6. That the child support and restraining orders be applied for, and adjudicated through the tribunal, and until a tribunal is established then through the Family Law Court.
7. That WA be incorporated into the Family Law Court and the Family Court of WA be abolished.
8. That child support be urgently reviewed and a maximum amount to be set at $100 p/w so that both parents are able to support and move on with their lives.
9. That child support be based on net income for paying parent. That child support be taxable for the receiving parent.
10. That support be calculated on household income and not parental income alone.
11. That all children have a voice and be heard by the tribunal. Younger children can express their views through pictorial content.

I wish to thank you for reading my views of the reform of the Family Law system in Australia.

Kind regards

Karen Payne

Member of Families for Children’s Rights

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