

From: [James Reid](#)
To: [Claudine Kelly](#)
Subject: Submission on Discussion Paper on "Review of the Family Law System"
Date: Tuesday, 13 November 2018 8:36:38 PM

Hi –

I would like to make a brief submission on the Discussion Paper on the Review of the Family Law System.

Proposal 3–8 The Family Law Act 1975 (Cth) should be amended to explicitly state that, where there is already a final parenting order in force, parties must seek leave to apply for a new parenting order, and that in considering whether to allow a new application, consideration should be given to whether: · there has been a change of circumstances that, in the opinion of the court, is significant; and · it is safe and in the best interests of the child for the order to be reconsidered.

I strongly feel that there should be more barriers in place to prevent a case being reopened when it can be demonstrated that the children are doing well under the existing orders, and that to reopen a case might not be in their best interests. In my view the existing system (or the practical implantation of the law) is such that it is biased towards the 'rights' of the parents rather than the wellbeing or best interests of the children. An example of this could be where a parent may have been absent for (or effectively absent) for a number of years (e.g., because they have been resident overseas, or because of medical condition such as mental health issues or drug or alcohol addiction), but they are able to easily return the matter to court at any time with very little impediment and without any regard to the disruption this may cause to the lives of the children. In situations such as these I feel the custodial parent is likely to have achieved a workable arrangement for the children's lives in the absence of the other parent, and it is not fair on either them or the children to allow these arrangements to be disrupted after what may have been a long period of stability.

The above argument might also apply if the children have reached a significant age (15+?) and where reopening of proceedings would potentially disrupt their lives during the important late high school years.

I understand that, at present, the passage of time is generally regarded as a change of circumstances in terms of whether or not a case can be brought back to court. This is not sufficient. I feel that there should be a review of each case by a court-appointed counsellor or mediator prior to a case being allowed to be reopened, and that this include a review of the children's current status and an assessment of whether it would be in their interests to disrupt the status quo. This review could include school records and reports from teachers, reports from medical professionals or any other relevant evidence. The focus must be on the best interests of the children and whether it is genuinely in their best interests given their present circumstances.

I realise there is compulsory FDR prior to a case being allowed to go back to court, but in the case of a highly acrimonious relationship between the parents, this dispute resolution can be effectively bypassed, ie the case is assessed as unsuitable for mediation and court proceedings are allowed to commence. At present I feel this FDR process does not take sufficient account of

the best interests of the children before allowing a matter to return to court.

Regards,

James Reid