

Please note my below responses to the proposals and questions found within the following document:

“Review of the Family Law System” (Discussion Paper DP86)

Question 2. - Education, Awareness and Information

Proposal 2.1

Re: The Australian Government should develop a national education and awareness campaign to enhance community understanding of the family law system.

Agreed – However, I note that all the respective bullet points in proposal 2.1 are all “reactive” in nature (e.g. focus on individuals either experiencing or anticipating future separation). Surely, individuals contemplating committing to a defacto relationship or marriage (one of life’s biggest decisions) need to have access to detailed pre-relationship education prior to committing to a relationship (e.g. shared parental responsibilities, sustainable and equitable relationship configuration, risks and the often lifelong negative consequences associated with relationship breakdown).

The current situation whereby the majority of individuals blindly stumble into defacto relationships or marriages with little or no understanding of the 600+ pages of the Family Law Act, the decision making biases and gender stereotyping of the Family Court and the life changing consequences of making a poor/uninformed relationship decisions are the major precursors of conflict / eventual relationship breakdown.

Question 3. - Simpler and Clearer Legislation

Proposal 3–11

Re: The provisions for property division in the Family Law Act 1975 (Cth) should be amended to provide that courts must:

- **in determining the contributions of the parties, take into account the effect of family violence on a party’s contributions; and**
- **in determining the future needs of the parties, take into account the effect of any family violence on the future needs of a party.**

Agreed – However, the term “family violence” is not appropriate (infers physical violence only) and should be replaced with the term “intimate partner abuse” thereby capturing other abusive behaviours (e.g. emotional and/or financial abuse) that all sit under the umbrella of intimate partner abuse.

It is crucial that any revision of family law recognises that “family violence” is simply one aspect of “intimate partner abuse”. A partner who is financially abusive (e.g. is not meeting their shared financial responsibility to share all the financial costs of supporting the family or who pressures their partner into becoming the sole financial provider) must be subject to the same above mentioned considerations.

Proposal 3–12

Re: The Attorney-General’s Department (Cth) should commission further research on property and financial matters after separation, including property adjustment after separation, spousal maintenance, and the economic wellbeing of former partners and their children after separation.

Agreed – Increasingly, many divorced men who have worked all their lives are arriving at retirement age denied the dignity of a self funded retirement / become financially dependent upon the government. The current practice of

family law professionals pushing separating couples toward a 50/50 division of assets in many cases simply creates two impoverished individuals who the state must then support in the later 15 -20 years of life. This is especially true where one partner has withdrawn from the workforce for an extended period and so has ceased contributing to the asset pool / failed to secure their own financial future. In this situation it is totally unacceptable for the diligent partner who has financially planned for their own retirement to be denied that retirement simply because of their former partner's failure to financially plan for their retirement.

The pre-relationship education that I have referred to in proposal 2.1 must specify that it is the sole responsibility of each adult to plan for and thereby secure their own financial future.

Proposal 3–13

Re: The Australian Government should work with the financial sector to establish protocols for dividing debt on relationship breakdown to avoid hardship for vulnerable parties, including for victims of family violence.

Strongly Disagree – *Whether in a marriage or defacto relationship “sexually transmitted debit” should not be condoned. Couples should receive intensive pre-relationship around the importance of remaining financially independent of each other. Family law to be amended to ensure that couples stay financially independent of each other thereby securing their individual financial future.*

I do agree that the financial sector should be consulted as to the creation of contractual agreements that eliminate the possibility of one partner being held financially liable for the debts of their partner (e.g. create contractual processes that allow a couples to jointly purchase property while remaining financial independent of each other)

Proposal 3–15

Re: The Australian Government should develop information resources for separating couples to assist them to understand superannuation, and how and why superannuation splitting might occur.

Strongly Disagree – *Superannuation must remain the sole property of the person who earned it. Superannuation splitting should not be permitted. Australia should follow the lead of the UK and exclude pensions/superannuation from any division of assets process.*

A divorcing partner that for his / her own reasons (or due to ignorance) chooses not too financially plan for their own retirement should not have the right to financially disadvantage their former partner by accessing their superannuation.

If family law continues to enable superannuation splitting, thereby knowingly disadvantaging / denying a former partner access to a dignified self funded retirement it must become the responsibility of government to fund the family court so that the court is able to financially compensate the disadvantaged partner.

Question 3–3 Which, if any, of the following approaches should be adopted to reform provisions about financial agreements in the Family Law Act 1975 (Cth):

Facilitated creation of a suite of legally binding agreements (including financial) capable of dealing with all matters that are of personal importance to each partner (we are all individuals after all) provides each partner with the confidence that both they and their partner have absolute clarity (“on the same page”) with regards to their shared parental responsibilities and individual commitments. Facilitated binding agreements also provide an opportunity to “pause the process” / for a partner to reconsider if the relationship is appropriate for them should a partner not agree with the content of a proposed binding agreement (e.g. responsibility of both parents to physically share the workload of caring for children).

With regards to the proposed approaches to financial agreements - I agree with the following proposal;

- amendments to increase certainty about when financial agreements are binding;

Proposal 3–18 & 3-19

Re: The considerations that are applicable to spousal maintenance (presently located in s 75 of the Family Law Act 1975 (Cth)) should be located in a separate section of family law legislation that is dedicated to spousal maintenance applications ('dedicated spousal maintenance considerations').

A former partner's access to spousal maintenance must be removed from the Family Law Act for the following reasons:

1. Mature aged men enduring divorce or relationship breakdown are financially crippled far more so than women. Many of who feel financially "entitled" even though their financial contributions to the relationship may have been far less than their partner.
2. Mature aged women who make a "lifestyle" decision to abandon their marriage / relationship often do so with the knowledge / intent of lodging a future spousal maintenance claim against their former partner at some future time.
3. Mature aged men who have been financially disadvantaged due to divorce and faced with restarting their lives often have to make the difficult / unwanted decision to withdraw from the workforce because of the risk of a future spousal maintenance claim (conceivably many years into the future) destroying their efforts to financially re-establish themselves.
4. Young women today are very, very vocal about marriage equality / their independence / not needing a man to support them (all great values). However many mature aged women don't seem to share these values or want to accept that with "equality comes an equal responsibility" to support oneself and not financially burden a current or former partner.
5. Young men today have been educated around the principles of gender equality and simply will not accept anything less than absolute equality from women with whom they interact....without exception.

The principle of a former partner being able to access spousal maintenance and/or superannuation is abhorrent to the majority of men and women and is symptomatic of the procedural deficiencies within the current Family Law Act.

As we enter into the third industrial age where precarious / transient employment opportunities are likely to become the norm, each individual must have the confidence and security of process to financially plan / invest in their own future without the fear of being financially crippled by a often vindictive ex-partner with the support of our biased family law system. Ignoring this reality will simply create yet another financially disadvantaged and bitter generation many of whom will now require both material and financial support from the government in the later 15 to 25 years of life.

The men and women of Australia desperately need a new family law system that is "fit for service and hence reflects the real world pressures and challenges of the 21st century, not simply a cosmetic rehash of our current antiquated and outdated family law system.

4. Getting Advice and Support

Proposal 4–1

Re: The Australian Government should work with state and territory governments to establish community-based Families Hubs that will provide separating families and their children with a visible entry point for accessing a range of legal and support services.

Agreed – However, the descriptor “Families Hub” is somewhat bland and does not emphasise the importance that every family must also be “sustainable” if it is to survive. Therefore I would suggest a more appropriate title would be “Sustainable Families Hub”.

I would also suggest that focusing these hubs on assisting “separating families” alone is counterproductive and reactive when the ideal order of service priorities should be access to:

1. Pre-relationship education (getting the relationship “right” initially is far better than trying to fix it later)
2. Relationship advice (for individuals experiencing the early symptoms of relationship difficulties)
3. Relationship counselling (for couples needing facilitated assistance in resolving relationship difficulties)
4. Dispute resolution (for couples who wish the end their relationship but cannot agree (e.g. property))
5. Untying the knots (for individuals / couples who are committed to ending their relationship).

I suggest that the primary role of the Hub should be providing pre-relationship education programs (lets be proactive) thereafter referring clients with other needs to other internal or external specialist service providers as required.

5. Dispute Resolution

Proposal 5–3

Re: The Family Law Act 1975 (Cth) should be amended to require parties to attempt family dispute resolution prior to lodging a court application for property and financial matters. There should be a limited range of exceptions to this requirement.

Agreed – However, the priority should be (via the Sustainable Family Hub) to encourage (not compel) couples intent on marrying / cohabiting to create a facilitated legally binding agreement/s that sets out how property and financial matters are to be:

1. Managed during the relationship (e.g. shared financial responsibilities agreed via negotiation)
2. Finalised in the event of the relationship ending thereby avoiding the expense and interpersonal conflict.

Clearly, in the above situation the role of the hub would be limited to advising the individual or couples as to the desirability of pre-agreeing how matters financial are to be concluded should the relationship fail with the intent of avoiding the expense and interpersonal conflict that often utterly destroys any possibility of maintaining a reasonable relationship with a former partner and often results in some parents to losing contact with their children (without exception– every child has the right to know and be loved by both parents).

Question 8–1

Re: What are the strengths and limitations of the present format of the family violence definition?

Limitations – Does not have legal remedy for those experiencing emotional, psychological and financial abuse (monetary theft)

Question 10–2

Re: What qualifications and training should be required for family dispute resolution practitioners in relation to family law disputes involving property and financial issues?

FDR practitioners must receive training on the creation and application of BFA’s in order to be able to identify where an individual has been coerced into signing a BFA ... or conversely ... has been coerced into not signing BFA which they otherwise would have preferred to sign.

12. System Oversight and Reform Evaluation

Proposal 12–1

Re: The Australian Government should establish a new independent statutory body, the Family Law Commission, to oversee the family law system. The aims of the Family Law Commission should be to ensure that the family law system operates effectively in accordance with the objectives of the Family Law Act 1975 (Cth) and to promote public confidence in the family law system.

Agree – But why “in accordance with the objectives of the Family Law Act 1975?????” ... isn’t this process about replacing the 1975 Act with a new Act that addresses the deficiencies / injustice with the existing Act?

Final comment - it is essential that this body must be truly independent of the legal profession and comprise members of the public (late teens to adults). Using the current ALRC Review as an example – it is totally unacceptable to have former/retired members of the family law profession (quite possibly those who were instrumental in the creation of the current Family Law Act) providing comment on the very processes that they created (that’s akin to asking the police to investigate an allegation of police brutality you just wouldn’t do it).

End of my comments.

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