**LONE FATHERS ASSOCIATION OF AUSTRALIA INC SUBISSION TO THE REVIEW OF THE FAMILY LAW SYSTEM**

**Australian Law Reform Commission (ALRC) pursuant to the *Australian aw Reform Commission Act (1996)* (Cth)**

**PREAMBLE**

We mention that the time frame for the ALRC to report to the Attorney General by the 31 March 2019 seems very rushed raising concerns. We thank you for the opportunity to make our submission.

Major reforms to family law in Australia were enacted by the Parliament in 2006.These reforms have in hindsight been referred to by many of our members as band aids.

Strong families are the basis of a sound and successful society. The current divorce rate in Australia is around 53%. Recently news broadcasts have referred to the average marriage lasting 12 years. Whether this is an indication of a society which in major respects is dysfunctional and failing its children is very contentious and debatable.

**INTRODUCTION LONE FATHERS ASSOCIATION AUSTRALIA**

After extensive consultation with members of the Lone Fathers Association of Australia and other interested stakeholders the following views were presented, and we are requested to make the suggestions from LFAA Members and other organisations and citizens throughout Australia in our submission to the 2018 Review of the Family Law System.

Over the last 45 years Lone Fathers Association Peak Body (LFAA) Parents Without Partners Australia (PWP) and some Grandparents Associations, has been requesting changes through submissions to Family Law ACT (Cth), and to the Family Court procedures, and since its commencement, the Child Support Scheme. Many of these submissions took place after LFAA National Conferences which were held in the main Committee Room in Parliament House, which were all well supported by members and members of the public from around Australia. We have support also from Ministers, Senators and members of the Parliament. An example is the LFAA 2010 National Conference titled “we have witnessed a Second Stolen Generation of our Children”, “Systems Failing Fathers and Children”;” A Fatherless Society in Waiting” also attracted 13 Ministers and Senators many of whom were guest speakers, which included both the Attorney General Robert Mc Cleland, and Shadow Attorney General George Brandis.

Over the last 8 years the Family Law system has nosedived backwards with many countless thousands of Children not been awarded their natural rights as Australian Children, under “The Paramount Rights of The Child”, Much of this has occurred through the discriminate and as we believe the criminal amendment to the 2010 Family Violence Bill that accepts a person is guilty on accusation alone. This is a smack in the face to the Australian law presumption that one is innocent until proven guilty. The Government of the day and indeed the Senate was made aware that this Bill was a bill that borders on discrimination and indeed would wreak havoc on many lives as it was written with no consequences for perjury or other punishment included, meaning an innocent person would be found guilty on the probability he or she must be guilty. One must ask that in an assault allegation -**Is this truly Australia Law**, I think not. Assault should be judged not on the probability but without reasonable doubt.

The many letters etc that this organisation has received from mums, dads and grandparents referring to this bill and the broken Court system is responsible for many lost lives because they become the victims of these unjust and discriminate laws which sent them to see no end to the tunnel and end their lives.

As I travel around the Country visiting LFAA and PWP, and other Organisation Branches, we hear the view that the whole Family Law System and Family Court System is broken beyond repair, a system that cost them not only most of their income, and property but in many cases their blood. The cost of ligation and the cost of transcripts are outrageous.

All members agree that there was a good feeling of satisfaction and support for the 2006 rebuttable presumption of shared responsibility and shared care laws that saw more shared equal time outcomes than ever before in the history of Australia Family law. Our members report that there were more happy and contented children who had a relationship with both parents, Grandparents and extended Families. However, they see a terrible decline since 2011, were the system has broken down completely in every avenue. There has been Parliamentary enquiries into both the family law and the “CSA” but only band aid solutions, something they don’t want to see again as a result of this enquiry.

**Tribunal and A Child Orders Enforcement Agency**

Lone Fathers Association and our Associates puts forward a recommendation to the Australia Family Law Reform Commission and to the Australian Parliament.

1. Replace the Family Court with a Tribunal of experts to deal with parents who can’t solve their own problems dealing with Children’s issues,
2. Both parents must attend compulsory mediation before any orders are made where one or both can’t agree on primary care or access including shared parenting and care.
3. Mediators are to be trained fully in Family Law and appropriate Social Sciences
4. The tribunal would start the with shared care and work through the process with both parents on why it could work or why it can’t work. If it can’t work then the tribunal would look at substantial care, or Primary Care and access say every second weekend and half of school holidays.
5. The Courts will have an appeal jurisdiction only

LFAA believe this could work well and would show that the **Paramount Rights of the Child** has been considered in each case and was free of the alarming cost of lawyers. We also believe that more parents would see this as fair and would pay their child support willingly and on time.

The Child Orders Enforcement Agency ‘s would be to enforce the access when selfish partners refused to acknowledge the orders.

Denmark has a system that if a person pays their child support and they are a good person and not in any way a threat to the child the access is enforced something our system fails to do. Enforcement is shunned by the Court system.

**PREVIOUS ISSUES**

LFAA have raised many other issues in respect of fathers in previous submissions such as

1. **“Rural Australia”. High rates of family breakup and male suicide have been notable in recent times in rural Australia because of the effects of drought conditions, and the link between the two issues should be treated as a critical area for policy.**
2. **“Indigenous Australia”. The perspectives and status of Indigenous men (traditionally leaders in those communities) need to be respected if there are to be effective improvements in the conditions under which most Indigenous people live.**
3. **serious misinformation in relation to the supposedly “gendered” nature of family violence.**
4. **The shortfall of the analysis and practical reality of fatherhood issues that could have been influential in the development of recent major policy reforms.**
5. **The absence of funding to organizations like ours to conduct those analysis and papers**

**THE RELATIONSHIP AND COOPERATION BETWEEN PARENTS**

LFAA believe that dysfunction and failing of children in respect to parenting children is often because of the parent’s inability to develop a post separation relationship and not simply because they separate. Many times, the parents blame each other for not being able to reach parenting agreements or do not try.

The definition of “Family” must include post separation relationships between the parents which are necessary for parenting their children. Arrangements are family arrangements. These arrangements must encompass parents and children.

The relationship and cooperation between parents which necessarily occurs under a shared parenting model improves parental attitudes, in many cases very markedly, and results in great benefits to the children.

**Recommendation**

LFAA recommend that the services to build post separation relationships are available both before and after separation

Adequate funding is made available for all parents to attend to family arrangement planning before and after separation

**THE PARAMOUNT RIGHTS AND BEST INTEREST OF CHILDREN**

The Lone Fathers Association (Australia) Inc have grave concerns about the current Family Law Legislation and whether the Current Act and interpretation of that reflect the views of society. We have concerns about the Act and how it can effectively apply to the different parent / parent litigants particularly in respect to children.

The paramount rights and the best interests of the children of separated families surely is met by separating parents having a responsible family relationship which allows for them to be consistently joint parented and having the opportunity of spending equal time with their parents.

Separated Parents must have a primary responsibility to continue a family relationship even in separation and divorce. This responsibility must be fostered and supported as a principle of Family Law. The integrity and strength of separated families and the post separation parenting relationship is not reflecting the fact that one of the fundamental units of our society is separated families.

Society must have services in place to support this principle. Adequate timely appropriate and professional mediation.

The current approach to mediation ignores the above principles. Rather at litigant level the Court tends to award compensation to a party in cases of allegation of Family Violence, squandering of finances and other considerations. At mediation level, often the father’s role is diminished, particularly in the children’s age group up to 5 years of age.

These services must be properly trained in the right disciplines and available to all separating parents and all potential litigants. Surely the focus must be on pre and post separation skills development wherever short comings are found to exist

**Recommendation**

1. LFAA recommend that the services to build post separation relationships are available both before and after separation
2. The Family Law Act must reflect and support the principle that families and family arrangements survive separation and divorce
3. Broaden the concept of families to include parenting relationships and arrangements after separation
4. Broaden the concept of families to include blended families and other legislated relationships couples such as same sex and
5. Make adequate funding available for all parents to attend to family arrangement planning before and after separation
6. The *FAMILY LAW ACT* 1975 must be amended to focus on a principal of
   1. Strengthening the functionality of Families separated /contemplating separation.
   2. Improve the welfare of those Families separated /contemplating separation.
   3. Recognize the critical role of both parents in the upbringing of their children.
   4. Family arrangements or Orders must address the temporary obstacles and short comings parents may be experiencing
   5. Provide that either or both parents may need time to adjust in respect to their domicile, financial hardship, employment, emotions parenting style,

All interventions must give parents the opportunity to develop a parenting relationship after separation.

**FAMILY ARRANGEMENT ENFORCEMENT**

The LFAA are of the view that in circumstances where a “Family Arrangement” (Plan) is not followed or breached it would be enforceable only after compulsory mediation takes place and if it remains unresolved. The matter would then go before a tribunal. (See paragraphs relating to tribunal).

***FAMILY LAW ACT* 1975 - SECT 65DAA**

LFAA respectfully point out that the *FAMILY* ***LAW ACT 1975*** - SECT 65DAA is difficult to understand

Term used such as in Section 65DAA have a modicum of interpretations which causes significant problems to separating parents.

Equal time is challenged for many reasons. The LFAA observe that significant resistance to equal time occurs for financial reasons including maximisation of Centrelink payments and Child Support payments. The CSA work based on nights.

Many other tensions and dynamics are present.

1. Access to Activities they normally attend
2. Appropriately domiciled
3. Time frame with age appropriate considerations
4. Financial cost of duplicating households
5. when the father/mother relocates

**“Parents”** Diverse in culture and structure

**“Best Interests of Child”** is open to many interpretations and does not always consider cultural differences in interpretation

Several different stakeholders have views on what is in the best interest of a child

1. This information/opinion is not adequately shared with parents either during or after the relationship
2. Many Jurisdictions have an interest in Childs best interest
3. Family Court,
4. State Territory Children’s court
5. Magistrates / local courts
6. Agencies
7. Child Protection Services in all States and Territories
8. Counselling Services

Unfortunately, there is very little connection of these views or agreement on what is in the child’s best interest in respect to a family arrangement. In fact, unless the matters are litigated not all parties have access to all the information considered.

**Reasonably Practicable** is not defined

**Consider** the word is not strong enough There should be an assumption made and then rebuttal if necessary

FAMILY LAW ACT 1975 - SECT 65DAA

Section 65DAA –

Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances

Equal time

(1) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

(a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

***LFAA Comment: The best interests of the child is not defined and is open to manipulation by a party***

(b) consider whether the child spending equal time with each of the parents is reasonably practicable; and

***LFAA Comment: Again, this is undefined and open to manipulation by a party***

(c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 2: See subsection (5) for the factors the court considers in determining what is reasonably practicable.

***LFAA Comment: Substantial and significant time is not defined and relies on practicality which is also undefined and open to manipulation***

(e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

“Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.”

***LFAA Comment and posit that decisions about the best interests of the child as the paramount consideration must account for the weight given to aspects and benefits of a child having a continuation of the relationship with both parents with a minimum interruption to that relationship and what consideration is given to the studies of the effects of interruption to the relationship with both parents or the children of the relationship***

***LFAA propose that in the absent of any agreement or Family arrangement that an assumption is made to share time with a child equally and that the Court considers rebuttal from either party see paragraphs on tribunal***

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court considers in determining what is reasonably practicable.

(3) For the purposes of subsection (2), a child will be taken to spend substantial and significant time with a parent only if:

(a) the time the child spends with the parent includes both:

(i) days that fall on weekends and holidays; and

(ii) days that do not fall on weekends or holidays; and

***The boundary falls short of considering each parent’s working commitment. Consideration must be given to other needs***

(b) the time the child spends with the parent allows the parent to be involved in: (i) the child's daily routine; and (ii) occasions and events that are of significance to the child; and

***LFAA Comment:* This boundary also falls short of work considerations and is open to manipulation. Either/both parent should be able to attend some activities**

(c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

***LFAA Comment: This definition/boundary is open to manipulation and is not serving cultural differences very well***

(4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

***LFAA Comment: This is an area which must have examples such as Christmas, Easter, Ramadan or other religious days, Aboriginal culture.***

Reasonable practicality (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

(a) how far apart the parents live from each other; and

***LFAA Comment Courts too often allow relocation. Relocation is often manipulated and unnecessary***

***Some LFAA members have relocated at great expense just to keep significant contact***

(b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and

(c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

***LFAA Comment This is an area which is highly controversial and open to manipulation***

***This needs to be re worded and the emphasis should be on “requiring both parents to do everything in their power to develop a post separation relationship to allow for proper joint parenting.” This requires a change to the philosophy of all mediation services who resist any mediation with couples who claim domestic violence.***

(d) the impact that an arrangement of that kind would have on the child; and

***LFAA Comment: There is no proper mechanism for this to be assessed. Can be manipulated***

(e) such other matters as the court considers relevant.

***LFAA Comment: This is an area where some examples would be advisable particularly in areas of special needs of children or where a parent is not participating in mediation, therapy or following a mental health plan.***

Note 1: Behaviour of a parent that is relevant for paragraph (c) may also be considered in determining what parenting order the court should make in the best interests of the child. Subsection 60CC (3) provides for considerations that are considered in determining what is in the best interests of the child. These include:

(a) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent (paragraph 60CC(3)(c));

***LFAA COMMENT Court Must allow for Intervention*** ***Government / Community to provide better services***

(b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (paragraph 60CC(3)(i)).

***LFAA Intervention Court Must allow for Intervention Government / Community Provide better services***

(c) the extent to which each of the child’s parents has fulfilled, or failed to fulfil, the parent’s obligations to maintain the child.

***LFAA Comment Court Must allow for Intervention Family Adjustment time Provide better support services Government / Community***

**Child support considerations**

1. The parents must be given an adjustment period
2. Employment
3. Domicile
4. Emotion/ mental health

Where a family court makes an order for contact which is inadequate or unsuitable, or the government fails to provide the administrative resources (e.g., through departmental or agency support) necessary to make the enforcement of these orders a practical reality, an effective support system is not being provided to the families affected.

**A Child Orders Enforcement Agency**

A Child Orders Enforcement Agency should be established in accordance with earlier recommendations by:

(1) the LFAA, in evidence to the House of Representatives Standing Committee Inquiry in 2003to the effect that:

“An effective administrative mechanism for enforcing court orders is essential to restore balance in a system which rigidly enforces child financial support obligations, in part for the benefit of residential parents (and with draconian child support percentages in some cases), but effectively ignores enforcement of contact orders designed to provide for the emotional support and guidance of their children by non-residential parents”, and

(2) a similar recommendation by the Family Law Council in October 2007 that:

“The Government establish a child orders enforcement agency, or in the alternative that the government provide additional specified funding to enable the State and Territory legal aid commissions to assist parents to bring applications that serious contravention to parenting orders before the family courts”.

The Child Orders Enforcement Agency would, where a complaint has been received that access is not being provided, or not being provided on a satisfactory basis, examine and evaluate the case and provide prompt advice to a Magistrate designated to deal with the case. The Agency, appropriately funded by the Government (e.g., through a dedicated tranche of legal aid funding), could initiate cases on account of for example a parent who was reliably paying child support but being denied access to his or her children by the payee.

In order to make maximum use of the staff and other resources available within the Australian Public Service, the Child Orders Enforcement Agency could, if necessary, be established initially as a semi-autonomous area within an existing agency. The Agency would maintain a database on access time specified in court orders and parenting agreements and access time provided and would organise this information in a way which would permit it to provide useful advice to any enforcement process that was required.

An effective administrative mechanism for enforcing court orders is essential to restore balance in a family support system which rigidly enforces child financial support obligations, in part for the benefit of residential parents (and with high child support amounts in the case of middle income earners), but effectively ignores enforcement of contact orders designed to provide for the emotional support and guidance of their children by non-residential parents.

Such a mechanism would help to prevent an entrenched pattern of behaviour developing where some residential parents flout court orders from the separation onwards by denying the access ordered by a court. The present situation is one where provision of access by residential parents is essentially optional, because in most cases there is little or no effective follow up by the system and attempts by an aggrieved parent to obtain redress are extremely expensive and often futile. What is needed is a change in community attitudes which accepts that access of children to the emotional support and guidance of both their parents is an essential human right of the child, and that court orders for access are serious matters and must be implemented.

To bring about this change in community attitudes, and to enforce court orders in relation to access, it will be necessary to make some very substantial changes, additional to those already made with the establishment of the Contact Orders program (which has, at present, far too narrow a geographical scope). Notice should be taken of successful enforcement practices used in other jurisdictions, e.g., Denmark, which work smoothly through prompt and effective decision-making and enforcement via an administrative process. The introduction of a similar system in Australia would bring the enforcement of contact orders onto more of an equal footing with the way in which the payment is enforced of child support.

The effect of the new arrangements would be to integrate much more closely than at present the process by which courts make access orders and the actual process of implementation of those orders, in the best interests of all the members of the family

**Systems in other countries**

The LFAA has examined systems for enforcing contact in several other countries. Of those examined, one system that seems to work particularly effectively is the system employed in Denmark, which is informal, much less expensive, relatively non-adversarial, and expeditious. The Danish system has been drawn on in the drawing up of the present proposal.

Danish decision-makers who deal with such cases have a wide range of options to deal with recalcitrant parents, including imposition of substantial “on-the-spot fines” for each offence, and, if necessary, the physical transfer of the child.

The Danish experience demonstrates that informal processes - that is, office-based rather than more formal court-based processes - work best in this area. Efforts should be made to adopt as much as possible of this informal approach in Australia. There would, however, need to be appropriate facilities for recording proceedings.

The arrangements proposed above would to some extent follow the spirit of recommendations made by the House of Representatives Standing Committee in 2003 for the establishment of a (three-person) “Families Tribunal”, involving close consultation between legally qualified persons, holders of relevant official information, and psychologists and social workers.

**Parenting Orders Handbook**

The suggestion by the Family Law Council that a “Parenting Orders Handbook” containing model parenting advice be made available to all interested parties should be energetically pursued, and the preparation of the material for such a Handbook should take into account the work already done by the Family Relationship Centres.

**Integrated system**

The above proposal, in the LFAA’s view, effectively integrates the best ideas which have been put forward in recent years for an overall system which would effectively enforce child support orders made by family courts in Australia.

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National President

LFAA Inc

11 April 2018