

LONE FATHERS ASSOCIATION OF AUSTRALIA INC: SUBMISSION TO THE JOINT SELECT COMMITTEE ON AUSTRALIA'S FAMILY LAW SYSTEM

Joint Select Committee on Australia's Family Law System
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A. PREAMBLE

We thank the Joint Select Committee on Australia's Family Law System for the opportunity to make our submission. We note that the Committee was appointed by resolution of the Senate on 18 September 2019 and resolution of the House of representatives on 19 September 2019. We have managed to consult with our members and interested groups around Australia in the time frame to enable us to make our submission. We receive comment representing all States and territories of Australia

We have taken into consideration the recommendations by the 2018 Review of the Family Law System and comment sadly that the recommendations if implemented undo much of the improvements brought about by previous changes. We report that we have many separated parents saying that they will not rely upon the Courts for fairness and do not want to make an application. We also hear many separated parents saying that the counselling institutions fail them badly. Many institutions simply are not equipped or knowledgeable or trained well enough. Sadly, some parents are walking away from their children due to the bureaucratic, legal and social wall standing in their way.

We express our disappointment at the proposed changes particularly aimed at changing the existing presumption of shared care. There appears to be no evidence that the many separating parents who have gone down this pathway by consent have had their experiences considered, rather we suspect that the presumption for shared care is under attack for reasons considered in respect to parents who are unable to reach any parenting agreement and take the matter to the Federal Circuit Court or the Family Court as their first and only option. There appears to be little or no account for facts which apply to a significant number of successful shared care arrangements by consent. There appears to be no organisations who put themselves forward as having a service aimed at helping separating couples successfully enter a relationship of shared care. There appears to be no funding for organisations or courses with this specific aim. There appears to be no evidence that since the legislative changes any funding has indeed been made available to implement the changes. 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. Our thoughts are that band aids are useful but are significantly more effective if you treat the wound first. Mediators are to be trained fully in Family Law and appropriate Social Sciences.

When the children of our society cannot have a meaningful relationship with both their mother and their father it is indication of a society which in major respects is dysfunctional and failing its children and is very contentious.

B. 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 our contributing organisations and citizens throughout Australia in our submission to the 2019 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, have 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 litigation, reports 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, where the system has broken down completely in every avenue.

Lone Fathers Inc has attended overseas conferences in America. Funding for a conference here was rejected recently

C. PREVIOUS ISSUES

LFAA have raised many other issues in respect of fathers in previous submissions which our members continue to view as highly relevant today:

(a) 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, the link between the two issues should be treated as a critical area for policy.

(b) Indigenous Australia

The perspectives and status of Indigenous men (traditional leaders in those communities) need to be respected if there are to be effective improvements in the conditions under which most Indigenous people live.

(c) Family Violence

Significant misinformation in relation to the supposedly “gendered” nature of family violence.

(d) Analysis and research into Father Issues

The shortfall of the analysis and practical reality of fatherhood issues that could have been influential in the development of recent major policy reforms.

(e) Funding

The absence of funding to organizations like ours to conduct those analysis and reports and papers

D. PREVIOUS RECOMMENDATION

- a. The services to build post separation relationships be available both before and after separation
- b. Adequate funding is made available for all parents to attend to family arrangement planning before and after separation
- c. The services to build post separation relationships are available both before and after separation
- d. The Family Law Act must reflect and support the principle that families and family arrangements survive separation and divorce
- e. Broaden the concept of families to include parenting relationships and arrangements after separation
- f. Broaden the concept of families to include blended families and other legislated relationships couples such as same sex relationships
- g. The **Family Law Act 1975** must be amended to focus on a principal of
 - i. Strengthening the functionality of Families separated /contemplating separation.
 - ii. Make adequate funding available for all parents to attend to family arrangement planning before and after separation
 - iii. Improve the welfare of those Families separated /contemplating

separation.

- iv. Recognize the critical role of both parents in the upbringing of their children.
- v. Family arrangements or Orders must address the temporary obstacles and short comings parents may be experiencing
- vi. Provide that either or both parents may need time to adjust in respect to their domicile, financial hardship, employment, emotions parenting style
- vii. All interventions must give parents the opportunity to develop a parenting relationship after separation.

ADDRESSING THE TERMS OF REFERENCE, A

- a. Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including:
 - i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and
 - ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;

STATE AND TERRITORY CHILD PROTECTION SYSTEMS

We have spoken to many clients both male and female. Many perceive that the Institution is not held accountable and operates in secrecy. They must become transparent, accountable and prepare factual accurate reports according to law. For example ,in terms of the family law we have had parents tell us they have been alienated after a report has contained advice that a 4-year-old child should not spend overnight time with the father because separation from the mother will cause the child to develop autism. In terms of the jurisdiction of the Children’s Court we hear reports of a parent being totally alienated for long periods without proper evidence, and in the Magistrates and local Courts DVO Domestic Violence Orders are put in place and extended without a hearing for over 6 months. Other parents have advised that the child protection services have stated they have no file active simply because the child is in the care of one parent and keeping the child from the other parent. No further action required means no file. They threaten to remove a child if contact is commenced. They then close the file without proper investigations. Reports from Care and Protection Services, the Family Court and FCC are being used by parties to alienate a parent from the other party and are causing significant legal costs and delays in resolving matters. Sometimes a parent is litigating across 3 separate Jurisdictions There is no burden of proof, rather decisions are based on more probable than not. Many parents and grandparents have contacted us and said that they will not use the Family Court or FCC as there is no proper finding and decisions are based on presumptions and not facts.

DOMESTIC VIOLENCE

Assault should be judged not on the probability but without reasonable doubt. Thousands of Children are 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, phone contacts and emails 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.

Allegations of family Violence often lead to parental alienation of one parent

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. Trust is a major missing element. Allegations of violence are a factor.

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.

RECOMMENDATIONS TERMS OF REFERENCE A

1. Reports must be prepared by all Child Protection Services about any reported allegations and be promptly made available to the accused.
2. The report writers must be accountable to the Courts
3. All family report writers must be held professionally accountable for their expressed views, content and recommendations in their reports
4. Violence like all violence should require evidence in the same way as a criminal matter. Violence is violence. The elements of the offence should be the same as that of the criminal code Assault should be judged not on the probability but without reasonable doubt.
5. A finding of deliberate False allegations of Domestic Violence is made the accuser should face a Court imposed penalty

ADDRESSING THE TERMS OF REFERENCE B

2. The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;

We have applicants and respondents who tell us about the Court failing to act against parties who are untruthful and who make false declarations about financial matters and children matters. We are told that getting information and disclosures is like “extracting teeth “A matter before the Court may take years before reaching final hearing and the cross examination rarely is allowed before then, if at all. We are told by members and associates that the Court is most unwilling to punish the mother rather accepting the theory that anxiety causes the person to make incorrect claims, statements, allegations and disclosure. **The deliberate action of not complying with a Court Order is contempt of Court. A penalty should apply immediately.**

RECOMMENDATIONS TERMS OF REFERENCE B

- 1 Introduce immediate penalties for misleading the Court, providing false information to the Court and contempt of court
- 2 The penalty should include a costs order where contempt causes additional cost to the other party which is most of the time

ADDRESSING THE TERMS OF REFERENCE C

Beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;

We express our objections to the merger of the Courts. Rather we prefer a third tier We support an additional Tribunal Jurisdiction.

The Family Court must give more assistance to brokering agreements between parents. Deputy Registrars should be introduced into the Court proceedings particularly where children are involved and assist parents achieve agreement and develop parenting plans. This may save costs. Too often lawyers are attempting to negotiate in the court foyer. We have received complaints that some parties are outside the entrance to toilets without privacy attempting to negotiate. Deputy Registrars chairing negotiation and assisting reaching final or interim orders in privacy is a minimum standard. We are advised that some parties are unable to complete negotiations because of child minding problems which arise unexpectedly during the day.

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

RECOMMENDATIONS TERMS OF REFERENCE C

1. Introduce Deputy Registrars to chair negotiations and give assistance 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 where it is found to be suitable. A presumption of suitability should be the rule.
2. Develop a set of criteria and assessments to establish unsuitability.
3. Only matters which fail a suitability criterion should then go to a Court jurisdiction
4. Provide more facilities such as private rooms
5. Provide childcare facilities
6. The **Family Law Act 1975** must be amended to focus on a principal of:
 - (a) Strengthening the functionality of Families separated /contemplating separation.
 - (b) Make adequate funding available for all parents to attend to family arrangement planning before and after separation
 - (c) Improve the welfare of those Families separated /contemplating separation.
 - (d) Recognize the critical role of both parents in the upbringing of their children.
 - (e) Family arrangements or Orders must address the temporary obstacle sand short comings parents may be experiencing
 - (f) Provide that either or both parents may need time to adjust in respect to their domicile, financial hardship, employment, emotions parenting style

- (g) All interventions must give parents the opportunity to develop a parenting relationship after separation.

ADDRESSING THE TERMS OF REFERENCE D

The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees', and:

- iii. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and
- iv. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;

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

See above Tribunal Recommendations

Too often property is settled before the children matters are finalised. This is not ideal. We are aware of a parent losing the family home superannuation and cash assets and then having to bring up the children with little or no financial assistance from the other parent who was given 80% of the pool. We are aware of a father who lost his work tools, work vehicle and left unemployed. The children ended up back in care with this father without recourse to having assets redistributed.

On the other hand, we have had comments made regarding advice about costs such as "I prefer the lawyer got the assets if I can't keep them and she gets them." There needs to be a cooling off period. We speak often with litigants who have been litigating property for 3 years and are highly emotional. This demonstrates the need for significant and meaningful counselling and support. There is little available for the fathers.

Rather than cap fees, an investment by community organisations and parents into counselling mediation and conciliation aimed at less costly resolution practices.

Out of Court agreements and less final hearings should be a priority for the Courts.

The intricate nature of finances within families and such things as family home loans and potential for default require some urgency in finalisation and property settlement is problematic. We often hear from tradesmen who lose their income because they are forced to sell up their tools of trade, motor vehicles and trucks/ trailers. Orders by the Court of this nature cannot be in the family's best interest or the children. Unfortunately, these orders are shrouded in the character of the tension between short term immediate monetary benefit verses longer term monetary benefit.

Unfortunately, property is often divided on a formula which does not reflect proper or acceptable financial principles and adjustments are made reflecting highly emotional considerations or simply desperation.

RECOMMENDATIONS TERMS OF REFERENCE D

1. Make available Professional Financial Advice or expert advice.
2. Provide for professional financial reports to be entered as evidence and taken into consideration

ADDRESSING THE TERMS OF REFERENCE E

the effectiveness of the delivery of family law support services and family dispute resolution processes;

Lone fathers have reports of

1. Relationship Counselling Services who simply decide not to provide the service in certain circumstances known only to them
2. Giving up on mums and dads because of problematic circumstances
3. Legal aid withdrawing funds because a client disagrees with advice
4. Inordinate delays in seeing Relationship counsellors
5. Manipulation of clients who rely on legal aid
6. Discrimination against fathers relying on legal aid

Loan fathers are aware of the threat of funds being withdrawn used to force fathers into submitting to such actions as withdrawing a DVO or FVO against a mother where opposing legal advice is that their action has a high probability of success

RECOMMENDATIONS TERMS OF REFERENCE E

1. We recommend an enquiry into the Legal Aid services in the following areas
2. Allocation and approval of funds by purpose, gender and by State and Territory
3. Number of persons having funds withdrawn and reasons by purpose, gender and by State and Territory

ADDRESSING THE TERMS OF REFERENCE F

the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;

Organisations need to work more closely with each other.

Loan fathers has been an organisation which is significantly involved in suicide prevention.

Relationship breakups are generally as a result of financial and emotional stress being experienced by one or both the parents. It has often had an impact on children before the break up occurs. All parties effected by relationship breakup should have access to professional support and this should be given priority consideration for funding. Too often Dads or Mums develop mental health issues which can end catastrophically.

RECOMMENDATIONS TERMS OF REFERENCE E

1. More Funding to increase research into the causes of relationship breakups
2. More funding to increase research into the developing mental health issues
3. More funding to organisations for the training of professional counsellors in suicide prevention

ADDRESSING THE TERMS OF REFERENCE F

any issues arising for grandparent carers in family law matters and family law court proceedings;

LFAA has many grandparents. As members we have discussed issues raised with us and firmly believe that often grandparents are a significant contributor to the resolution process and unfortunately are too often ignored and we have reports that they are often banned from proceedings. Often Grandparents have been the primary or the joint carers. They have great potential to offer supervisory role until parents develop a post separation parenting skill and agreement. They are often overlooked. Many grandparents report that they are treated disrespectfully by the Family Law Professionals.

RECOMMENDATIONS TERMS OF REFERENCE F

The Family Court and FCC should give more weight to Affidavits and evidence from Grand parents

If the grandparents have a significant role with the grandchild/children, they should be actively encouraged to participate in the solution and parenting plan.

ADDRESSING THE TERMS OF REFERENCE G

any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

The cost of expert reports to mums and dads is far too much to expect to be paid by the average parent. We receive reports of costs from \$8,000 to \$12,000. The terms of reference are often weighted towards a particular view and often we have reports that Independent Children's Lawyers write these reports and draft terms of reference. The reports are not challenged in terms of the Uniform Evidence Laws and when reports are ordered by the Court, we do not know what weight will be given to the report. We have been told by a member that one expert report claimed that Autism is a consequence of a child being separated from the child's mother before the age of 5 and therefore the child should not spend overnights with the father. The Court did not give any weight to the fact that the same child spent overnights with the grandparents from time to time.

Courts, other than appeal courts give weight, little weight or no weight without explanation. Many key stakeholders in Family law are not accountable, prejudiced by their own views of the law which is extremely subjective in interpretation and not held to each other's decision. We hear often of presumption being the rule rather than evidence. Some of our members have in fact said at times the system is not just broken but blatantly dishonest and prejudiced against a parent and or grandparents.

Many of our members would prefer not to use the current Judicial System because it is broken, unreliable, costly and never final. Final Orders are not Final. We hear of cases being reopened repeatedly some going for 15 years according to some members accounts to us.

RECOMMENDATIONS TERMS OF REFERENCE G

1. Introduce financial penalty such as awarding costs against vindictive reopening of a case
2. A Tribunal should decide about suitability of further Judicial Intervention or whether to refer back to counselling professionals

ADDRESSING THE TERMS OF REFERENCE H

Any improvements to the interaction between the family law system and the child support system;

We refer you to our previous submissions on Child Support (see Attached)

RECOMMENDATIONS TERMS OF REFERENCE G

Child support considerations

- a) The parents must be given an adjustment period
- b) Employment
- c) Domicile
- d) 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.

ADDRESSING THE TERMS OF REFERENCE H

the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes; and parents or future

Legal Prenuptial agreements which address all current and agreed future circumstances should be required and made enforceable.

Agreements must include financial details and anticipated family size, role of both, agreements about living arrangements etc. Agreements must relate to reality and intentions. Only factual variations and unexpected events should be open to adjustment. Allegations should be ignored. The cost to society because of relationship failure and property settlement is out of control.

The Lone Fathers believe that a Template should be developed to assist persons entering a relationship in their endeavours to make out a contract in the form of a prenuptial agreement and a presumption of shared care and responsibility should be made in consideration of the reasonable expectation of parents to do that.

RECOMMENDATIONS TERMS OF REFERENCE H

A committee should be formed, and terms of reference developed to assist in the development of a template

ADDRESSING THE TERMS OF REFERENCE H

any related matters.

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 calculations are based on nights.

We provide these responses and recommendations after extensive consultation and research of our members views. The LFAA's view, effectively integrates the best ideas which have been put forward in recent years for an overall system

We attach the following reports and submissions previously made which would effectively enforce child support orders made by family courts in Australia.

Attachments

Attachment 1 : LONE FATHERS ASSOCIATION OF AUSTRALIA INC SUBMISSION TO THE REVIEW OF THE FAMILY LAW SYSTEM Australian Law Reform Commission (ALRC) pursuant to the Australian Law Reform Commission Act (1996) (Cth)

Attachment 2: Policy on enforcement of child contact orders

Yours Faithfully,

Barry Williams OAM, BEM, USAM

National President

LFAA Inc

17 December 2019