

Joint Select Committee on Australia's Family Law System
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Parliament House
Canberra ACT 2600

Submissions to an inquiry into the family law system

The Prime Minister has stated “We want to ensure families can resolve issues as quickly and fairly as possible, so everyone can move on with their lives.”

“This inquiry will allow the Parliament to hear directly from families and listen to them as they give their accounts of how the family law system has been impacting them and how it interacts with the child support system.”

Of particular concern are the reasons why so many men commit suicide/murder following marital breakdown with no solutions to their issues raised, while others including children resort to drugs and other anti-social behaviour. Recently a report was completed by the ALRC but it made no reference to these issues. **The mental health of men affected due to separation/ divorce is a serious concern, therefore it is recommended that supportive services be on hand and readily available. The court process also can add to mental trauma so it is recommended the system look at psychological assistance and assessments to all parties involved.**

The broad scope of a marital separation can affect whole families. It is claimed that 16,000,000 family members have been affected since the Family Law Act was introduced in 1975. This Act is not only for children and parents but grandparents as well. A strong family unit is the cornerstone of our society and marriage is mentioned in our Constitution, therefore it is up to us as a society to promote its value and do what we can to strengthen the institution. **Marriage is a contract and the law enables a right to a claim due to a breach of contract. Courts should therefore be given power to award damages to a party that has seriously breached a marriage contract, as often, it is the innocent party members that experience the most loss, both mentally and financially. Furthermore the fact remains that many of those who were wronged by their partners will be raising kids by themselves following a divorce. Hence, an award to damages should be considered.**

There are some main points the Attorney General has mentioned about the focus of the inquiry.

1. The Attorney General has stated that the Select Committee's focus would be on specific areas where there may be scope for improvement in the family law system, the courts or other policy areas such as child support.
2. It will also look at how the family law system, state and territory child protection systems, and family and domestic violence jurisdictions can communicate better. **The present scheme allows for the incentive of primary caregivers to resist children spending more time with the other parent to avoid a reduction in child support services. This abuse of the system is grossly unfair and may result in a loving parent being denied access to their child. This must be altered.**

3. Amongst other issues, it will address important operational issues of enforcement of court orders and legal costs to families of family law proceedings, with a particular focus on instances where legal fees are disproportionate to the total asset pool or issues in dispute.

It is recommended that both parties have equal opportunity for court representation and fees to be proportionate to the income of both parties.

4. Importantly for older Australians who find themselves taking on the parental role for grandchildren, the Committee will have a particular focus on issues affecting grandparent carers in family law matters and family court proceedings. **Support for grandparents that look after children following divorce / separation is recommended.**

The Australian Law Reform Commission notes the Interests of Children in the Family Law Act. It states under section 4.34: In custody matters the court is required to regard the interests of the children as the paramount consideration. This is reiterated in Section 4.35 in which it states “The original Family Law Act contained a provision that in custodial proceedings, the court was to regard the welfare of the child as the paramount consideration.” **Therefore it is recommended that shared custody be strictly enforced as research has shown shared parenting is the best scenario for children after a divorce / separation. Children should also be offered support services and have recommended mental health assessments. This is due to the fact that many children from broken families turn to drugs and engage in anti-social behavior. Often when they are assessed they cite instances such as marriage breakdown and mental trauma as a reason for their behavior. Hence it is recommended that support services be offered to these children.**

Preserving the institution of marriage is also noted in the Family Law Act in section 4.38 which states “The Family Law Act has a variety of functions, many of which are designed to support marriage and family life rather than put an end to them.” Once again this section seems good in theory, but we are left pondering how easy it is to end marital status now, and what support systems are in place to ensure the mental health of those affected receive adequate help. **Support services and counseling services should be readily made available for men, women and children following separation as all parties are prone to mental distress following family breakup which can lead to depression / suicidal tendencies. Therefore, holistic services should be on hand and mental health assessments recommended following completeness of the separation process.**

We at the Australian Family Association therefore remind you that Section 43 of the Act provides that one of the overarching principles to be applied by the courts in their deliberations is “the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children.” We trust this will be upheld.

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