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Senate Legal and Constitutional Affairs Committee
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SUBMISSION IN RELATION TO PROPOSED
PARENTING MANAGEMENT HEARINGS PANEL
Family Law Amendment (Parenting Management Hearings) Bill 2017

Introduction

"Early in the 20th century, an American Vice-President Thomas Riley Marshall rescued himself from the obscurity that usually overtakes holders of that office by observing:

'What this country needs is a good five-cent cigar'.

The homespun philosophy underlying that thought is to be admired. It is based on the recognition that for complicated problems there are often simple solutions." [1]

This submission is made by me personally and not on behalf of, or in conjunction with any other person or organisation. In making this submission for consideration, I rely upon many years knowledge and practical experience in Family Law gained as Queen's Counsel at the Sydney Bar, 13 years as a Judge of the Family Court of Australia, Adjunct Professor of Law at the University of Sydney and, in recent times, my current occupation as an Arbitrator and Mediator in Family Law disputes.

I have read the Bill and Consultation Paper. I have separately replied to the questionnaire forwarded to me by departmental officers.

I respectfully suggest that **Arbitration** is by far the best and most practical option to meet the prime objective determination of "less complex Family Law disputes between self-represented parties" in relation to their children, as well as ensuring that the "key principles" referred to in the Paper are adhered to.

[1] A.M. Gleeson. Bar News, 1985

In contrast, the proposed Parenting Management Hearings Panel ("PMPH") is a multi-layered, cumbersome, lengthy and costly new structure.

Summary

In summary I suggest that **Arbitration** has substantial advantages over the proposed Parenting Management Hearings Panel **("PMHP")** for the following reasons:

1. PMHP and its processes require a substantive new legal system; establishment of new decision making body; panel support staff including those with professional qualifications; panel staff and, potentially, consultants. This amounts to a new organisation and infrastructure.

2. In contrast, Arbitration does not require extensive legislative amendment. Indeed only 2 sections of the Act are required to be amended, namely s10L and s13E to include a power in respect of parenting disputes.

3. The Parliament recognised its utility in financial matters by amendments to the Family Law Act ("the Act") which came into force in April 2016. This has been applauded by many experienced lawyers to whom I have spoken.

4. Arbitration is a decisive process known to most lawyers in practice.

5. An Arbitrator in practice is a practising lawyer with his or her own administrative support. No extra cost will be needed.

6. Arbitration can be facilitated by a Consent Order utilising the resources of the appropriate Legal Aid Office.

7. Arbitration practice and procedure are well known in the legal profession. In contrast PMHP will be an unknown quantity for some time.

8. The jurisdiction and power proposed to be vested in the PMHP raise serious legal issues. For example, the validity of a power given to a non-judicial body to potentially vary or set aside existing parenting orders made by a Chapter III Court.

9. Arbitration funding is likely to be minimal in contrast to the Government funding of $12.7million over 4 years.

10. The savings in Government funding will then be available to be returned to budget. That should be a plus in financial management. "Budget Repair" is enhanced.

Conclusion

I envisage that arbitration should be conducted on the established procedure in the hearing of child related disputes known as "the Less Adversarial Trial ("LAT"). The only documentation is the Application, Response and, at times, an existing family report. Each of the parties personally state the issues with proposals for resolution. A family consultant provides oral commentary. The proceedings are briefly adjourned for mediation. Historically, most matters were resolved by consent. The hearing lasted no more than a half day. My knowledge is based on personal experience over several years.

LAT was independently and favourably reviewed in McIntosh and Long, Clinical Psychologists[2]

I respectfully suggest that arbitration be operated as a pilot first, rather than the PMHP. The prospects of success in arbitration should be infinitely greater and more attractive for the reasons given.

Yours sincerely,

The Hon. Peter I Rose AM QC

[2] The Child Responsive Program operating within the Less Adversarial Trial – July 2007