

# SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

## BUDGET ESTIMATES 2017

### Attorney General's Department

#### Program: 1.4 Justice Services

#### Question No. BE17-151

**Senator Pratt asked the following question on 05 June 2017:**

- 1) Where did the idea for these Parenting Management Hearings originate? Was it the Department?
- 2) I refer to a seminar given by Mr Patrick Parkinson on May 9 this year – in fact the same day as the budget, in which he states that he gave a “private paper” to the government, along with two other academics in January 2017, to establish a tribunal for child custody cases outside of the court system, with a pilot program in western Sydney. The ideas expressed in this paper are very similar to those in the Parenting Management Hearings budget proposal. Is the Department aware of this “private paper”?
- 3) Can the Department provide the committee with a copy?
- 4) I also refer to an interview given by Professor Parkinson on ABC 702 Sydney radio on May 12. In the interview Professor Parkinson said the policy was an outcome of his proposal, and that he had personally briefed the Chief Justices of the Family and Federal Circuit Courts on the Parenting Management Hearings.
- 5) Did Professor Parkinson write this policy himself? If not, which other external stakeholders had input?
- 6) How much input did the Department actually have in the design of this policy? Did it have any?
- 7) Do you think it appropriate for an external stakeholder like Professor Parkinson to be personally briefing the Chief Justices of the Family and Federal Circuit Courts?
- 8) Can the Department explain why it believes these Parenting Management Hearings are a better solution to Family Court backlogs than just filling vacancies left by existing judges? Or even increasing the number of judges?
- 9) Will Professor Parkinson have continuing involvement with the establishment of the scheme? Will Professor Parkinson be involved in the running of the pilot in Parramatta?
- 10) Where will the second pilot be located?
- 11) Is the Department aware that Professor Parkinson runs a business, called the Alternative Courtroom which arbitrates property disputes in family law cases?
- 12) If legislation were changed to allow non-court entities, like “the Alternative Courtroom” to also arbitrate child custody matters, Professor Parkinson could be in line for a significant windfall, could he not?
- 13) Does the Department not consider this a blatant conflict of interest?
- 14) Can you confirm legislation will be required to establish the first Parenting Management Hearing pilot in Parramatta, as suggested by Professor Parkinson?
- 15) Will it be mandatory or voluntary to participate in a Parenting Management Hearing?
- 16) What kind of qualification or accreditation will appointees to Parenting Management Hearing panels be required to have?
- 17) How much power will those on the panel have to “collect evidence”? What kind of

investigations will be permitted?

18) How will the constitutional issues be resolved?

19) The budget measure mentions additional money for legal aid lawyers for involvement in Parenting Management Hearings – can you explain to me where they come in?

20) What recourse will families have if they don't agree with the results of a Parenting Management Hearing?

**The response to the honourable Senator's question is as follows:**

**1) Where did the idea for these Parenting Management Hearings originate? Was it the Department?**

Many reviews and reports have recommended that consideration be given to establishing a less adversarial, and multi-disciplinary, approach for resolving parenting disputes. This includes the Family Law Council's final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (2016); the House of Representatives Standing Committee on Family and Community Affairs report, *Every Picture Tells a Story* (2003); and a model for resolving disputes proposed by Professor Patrick Parkinson and Mr Brian Knox SC.

**2) I refer to a seminar given by Mr Patrick Parkinson on May 9 this year – in fact the same day as the budget, in which he states that he gave a “private paper” to the government, along with two other academics in January 2017, to establish a tribunal for child custody cases outside of the court system, with a pilot program in western Sydney. The ideas expressed in this paper are very similar to those in the Parenting Management Hearings budget proposal. Is the Department aware of this “private paper”?**

Yes.

**3) Can the Department provide the committee with a copy?**

Yes.

**4) I also refer to an interview given by Professor Parkinson on ABC 702 Sydney radio on May 12. In the interview Professor Parkinson said the policy was an outcome of his proposal, and that he had personally briefed the Chief Justices of the Family and Federal Circuit Courts on the Parenting Management Hearings.**

**5) Did Professor Parkinson write this policy himself? If not, which other external stakeholders had input?**

No. The policy was developed by the Government.

The policy has been informed by reviews and reports that have recommended that consideration be given to establishing a less adversarial, and multi-disciplinary, approach for resolving parenting disputes. These sources include, but are not limited to, the dispute resolution model suggested by Professor Parkinson and Mr Knox SC.

- 6) **How much input did the Department actually have in the design of this policy? Did it have any?**

The department provided advice to Government in the development of the policy proposal.

- 7) **Do you think it appropriate for an external stakeholder like Professor Parkinson to be personally briefing the Chief Justices of the Family and Federal Circuit Courts?**

Professor Parkinson did not brief the courts on behalf of the Government. Who the courts meet with and what they discuss is a matter for the courts.

- 8) **Can the Department explain why it believes these Parenting Management Hearings are a better solution to Family Court backlogs than just filling vacancies left by existing judges? Or even increasing the number of judges?**

Determining the best approach to resolving Family Court workload issues is a matter for the Government.

- 9) **Will Professor Parkinson have continuing involvement with the establishment of the scheme? Will Professor Parkinson be involved in the running of the pilot in Parramatta?**

The Government will consult key external stakeholders in developing the legislation to establish Parenting Management Hearings. This may include consultation with Professor Parkinson.

No decisions have been made about specific personnel for the pilot in Parramatta.

- 10) **Where will the second pilot be located?**

The second pilot location has not yet been decided.

- 11) **Is the Department aware that Professor Parkinson runs a business, called the Alternative Courtroom which arbitrates property disputes in family law cases?**

Yes.

- 12) **If legislation were changed to allow non-court entities, like “the Alternative Courtroom” to also arbitrate child custody matters, Professor Parkinson could be in line for a significant windfall, could he not?**

The Department is not in a position to comment on hypothetical reforms.

The Government’s proposal is to establish Parenting Management Hearings.

- 13) **Does the Department not consider this a blatant conflict of interest?**

The Department is not in a position to comment on what conflicts of interest might arise from the posited hypothetical.

- 14) **Can you confirm legislation will be required to establish the first Parenting Management Hearing pilot in Parramatta, as suggested by Professor Parkinson?**

Legislation will be required to establish the Parenting Management Hearings.

**15) Will it be mandatory or voluntary to participate in a Parenting Management Hearing?**

The Government is considering the appropriate mechanism for matters to come before Parenting Management Hearings.

**16) What kind of qualification or accreditation will appointees to Parenting Management Hearing panels be required to have?**

The Government has indicated that Parenting Management Hearings will be overseen by statutory officers with significant experience in dispute resolution, and with expertise in family law, psychology, social work and child development. Specific qualification and accreditation requirements are a matter for government.

**17) How much power will those on the panel have to “collect evidence”? What kind of investigations will be permitted?**

Panels will have the power to collect evidence and conduct investigations. Specific powers are under consideration and are a matter for Government.

**18) How will the constitutional issues be resolved?**

The Government will carefully consider any constitutional and legal issues when drafting the legislation to implement the Parenting Management Hearings.

**19) The budget measure mentions additional money for legal aid lawyers for involvement in Parenting Management Hearings – can you explain to me where they come in?**

The funding allocated to the Legal Aid Commissions represents funding for Independent Children’s Lawyers to be appointed to represent the best interests of children in Parenting Management Hearings, where appropriate.

**20) What recourse will families have if they don’t agree with the results of a Parenting Management Hearing?**

The enabling legislation for the Parenting Management Hearings will provide for judicial review of Parenting Management Hearing determinations.