

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
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7 February, 2018

Dear Secretary,

Please find attached our submission to the Committee's Family Law Amendment (Parenting Management Hearings) Bill 2017. Relationships Australia Victoria endorses the introduction of an inquisitorial based Panel for arbitrating parenting disputes. As a key provider of family dispute resolution services in Victoria, we support access for parents and carers to non-adversarial processes, leading to improved outcomes for children and families.

In this submission we briefly outline our responses regarding the proposed legislation. We would welcome further opportunities to discuss this new pilot as it progresses.

Yours sincerely,

Dr Andrew Bickerdike
Chief Executive Officer
Relationships Australia Victoria

About Relationships Australia Victoria

Relationships Australia Victoria (RAV) is a specialist and valued provider of family and relationship support services, delivering programs to over 24,000 people across Victoria annually. Our core expertise is in supporting individuals, children and families through adverse and challenging life experiences, including but not limited to family violence, complex trauma, mental health difficulties and highly complicated family law matters.

Since the 2006 Family Law Reforms, Relationships Australia has been at the forefront of the development and delivery of direct client services, research and evaluation in family dispute resolution and accredited professional training - including delivery of the Graduate Diploma in Family Dispute Resolution.

RAV has a strong collaborative presence in the Family Law sector, and are involved in a number of pilot partnerships with community services, funded by the Australian Attorney-General's Department. Our work force is genuinely inter-disciplinary with an increasingly sophisticated capacity to work collaboratively across the family law sector.

In our family dispute resolution services, families often present with past and current histories of family violence, co-occurring issues such as serious mental health difficulties, gambling and drug and alcohol problems. With 12 centres across the state, RAV offers a diverse range of core therapeutic services and programs to provide joined up, systemic and comprehensive support to parents, children and families with complex family law difficulties.

Submission into the Family Law Amendment (Parenting Management Hearings) Bill 2017

Overall comments

RAV believes that the Parenting Management Hearings Panel, staffed by members with expertise in family law and co-occurring complex issues, is a constructive and viable option for less adversarial resolution of disputes relating to children. In particular, the alignment with the existing principles and Best Interests of Children contained in the Family Law Act 1975, and the safety provisions detailed in the Bill, could provide vulnerable parents and children with determinations to support safety and well-being.

Additional significant benefits we note include:

- The Parenting Management Hearings Bill (2017) engages human rights principles contained in the UN Convention on the Rights of the Child (CRC, 1989)
- The opportunity for carers, including grandparents and significant others to apply
- a Pre-Hearing conference can determine factors on a case by case basis, including legal representation, suitability, and capacity of parties
- No legal representation without leave of the Panel, thereby promoting the inquisitorial nature of proceedings
- The Panel Members will have an expertise in family violence, and co-occurring issues such as mental ill health and substance misuse.
- The inquisitorial approach prevents perpetrators of family violence cross-examining victim/survivors
- The inquisitorial approach allows the Panel to control more effectively the process and the evidence presented
- Family members will be referred to support services and programs as needed to build family alliance, safety and well being

Specific comments

1. Consent

Section 11KC—Consent of relevant parties required in relation to applications for parenting determinations

140. New section 11KC would require relevant parties to consent before the Panel makes a parenting determination in relation to an application. If this requirement is not met, the Panel would be required to dismiss the application under subsection 11NA(1). (Explanatory Memorandum, p. 47)

Relationships Australia Victoria agrees that parties who voluntarily participate in a decision-making process are more likely to agree, to make durable and workable arrangements, and form positive parenting alliances. Ideally, these are the cases that attend family dispute resolution to resolve any parenting matters.

However, the 2006 Family Law Reforms radically altered a cornerstone of voluntary participation in FDR, with the issuing of 60I certificates whereby refusal to participate could have legal implications, including court costs being awarded against a party. While there are some exceptions to attending, parents now understand (and are advised by lawyers) that attempting family dispute resolution is expected. In spite of, or perhaps because of a more mandated approach to attempting FDR, services generally report high rates of agreements. It is our experience that agreement rates have remained similar pre and post reforms – indicating that those clients who might not have attempted FDR in the past are able to achieve agreements in FDR.

Arguably, it is the more complex cases that have not resulted in agreements, which would be ideally suited for a Parenting Management Hearing. These hearings are designed to resolve disputes in a timely, affordable and fair manner, are overseen by an expert Panel, and would have the added benefit of reducing Federal Circuit Court loads.

But it is unclear why this new Panel should require the written consent of all parties with parental responsibility, when both FDR services and the Court do not.

We *want* parties who are unable to resolve disputes through mediation, and who cannot afford further legal proceedings or are ineligible for Legal Aid, to have access to the Parenting Management Hearings. This is particularly important when family violence victims are often unable to access the Court, and can be re-traumatised by the experience of court.

While RAV concurs that the more willing a party, the better for all concerned, we do not agree that referrals to the Panel by the Federal Circuit Court should only occur with consent from both parties (s 13L (3)(b)).

RAV endorses the expertise of the Panel Members, and believes that they should have the authority to determine the suitability of matters to be decided by the Panel, in cases where one or more parties do not consent to a Hearing.

RAV submits that in cases where one party does not consent, that suitability to proceed be determined at a pre-hearing conference. (We note that it would appear that s 11NA (7) would then need to be amended; a party should not be able to circumvent the Panel by issuing in Court.)

RAV submits also that the Federal Circuit Court be able to mandate parties to attend a Panel Hearing.

a) Family Violence

The Family Law System has unintentionally provided opportunities for some perpetrators to abuse their former partners with repeated requests for mediation, or vexatious applications to the Family Court. Likewise,

perpetrators can continue to control their former partners by refusing to participate in family dispute resolution, knowing that the other parent cannot afford to proceed to Court.

RAV suggests that in cases where one parent does not consent to a Hearing, that this be reviewed on a case by case basis to ensure that a victim/survivor of family violence is not precluded from participating in the Parenting Management Panel Program.

b) Grandparents

Difficulties may arise with the requirement for each person with parental responsibility (usually the child's biological parents) to consent in the case where a grandparent or other family member applies for a Hearing. In cases where the relationship between a grandparent and the other parent breaks down, the relationship between a child and their grandparent also suffers. It is not uncommon in family dispute resolution for a parent to decline FDR with the grandparents (parents of their former partner). Currently, grandparents have little recourse apart from taking the matter to court, which is often unaffordable.

RAV submits that there should be a case- by- case assessment of matters, at the Pre-Hearing stage, where one biological parent does not consent.

c) Additional matters

The Bill stipulates that consent must be provided by both biological parents, in writing. We are concerned about cases where a parent or other carer has no contact with the other parent (for example, where there is severe family violence)? If the aim of this Panel is to provide timely, affordable access to arbitration of a dispute, then again, we would encourage a case by case decision about parental consent.

2. Complexity of matters

3. The Bill would amend the Act to establish a new forum for resolving less complex family law disputes—the Parenting Management Hearings Panel... (Explanatory Memorandum, p. 4)

Since the family law system reforms in 2006, family dispute resolution services report dealing with increasingly complex matters, including family violence and mental health issues. If the Panel is to be staffed by specialists in a range of complex areas, it is unclear what 'less complex' means.

RAV submits that given the expertise of the proposed Panel Members, they are able to hear complex matters that would not be suitable for FDR, providing an alternative to the Court system.

RAV submits that this Panel is also able to determine matters where parties have attempted FDR but have not been able to resolve a dispute, and would benefit from a more determinist approach.

Relocation

11NA When Panel must dismiss an application for parenting determination

When application is for the relocation of the child

(2) The Panel must dismiss an application for a parenting determination in relation to a child if the application seeks a change of where the child lives in such a way as to substantially affect the child's ability to live with or spend time with a parent or other person who is significant to the child's care, welfare and development.

Relocation matters are not, in and of themselves, grounds for a case to be assessed as unsuitable for family dispute resolution, and so we query why a relocation matter would not be suitable for the Panel.

RAV supports assessment at a Pre-Conference Hearing to determine the suitability of a relocation dispute on a case by case basis.

3. Fees

We note that the Panel *must* dismiss an application if the prescribed Panel fees have not been paid (s 11NA (15)). We would submit that this should read "*may* dismiss..." It may be, for example, that one party refuses to pay the fee while the other party pays their fee. A party who suffers real financial hardship should perhaps be able to apply for waiver of the fee.

4. Resourcing

In order for this Panel to be fully effective, it is essential that the program be well resourced. If it is properly funded and resourced, RAV believes that the Parenting Management Panel can provide families with improved processes and outcomes. It will be damaging if these Panels are not able to deal with disputes promptly and efficiently – one of the stated Objectives (in s 11TA (1)(a)). It is important to avoid the experience of the Federal Circuit Court in this respect, where the stated intention was to provide a Court process of no more than 6 months; this has blown out considerably. We would submit that a speedy resolution of disputes as a result of determinations by the Panel, will assist parents considerably to reduce the conflict that often escalates during a lengthy wait for Court.

RAV advocates that this Panel and associated referral services are properly funded to resource this Program.