



The Chairperson

Joint Select Committee on Australia's Family Law System

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Parliament House

Canberra ACT 2600

SUBMISSION

1) Imagine: -

- a) you find your husband/wife is:-
 - i) Unfaithful to you;
 - ii) A spendthrift;
 - iii) A pathological liar;
 - iv) A criminal;
 - v) Unemployed and unemployable;
 - vi) Addicted to gambling, alcohol and or drugs (prescribed or not);
 - vii) Abusive, to you and or the children;
 - viii) Any or all of the above.

- b) You are behind with the mortgage payments, the bank is pressing you to sell. You can't feed the family.

You need to get some control over your life back for you and the kids. You need to put some distance between you and the ex. You need to get some financial security out of the wreckage of the marriage. You want some revenge for the failed relationship.

At a time of the highest emotion, when you are not thinking straight, you can't deal with the ex and don't trust him/her anyway, when you don't want to acknowledge your own bad judgement and your own part in this train wreck, who are you going to call?

It's the Family Court and the Family Law system. There is no alternative, it's the only game in town.

So, you lawyer up, so does the ex.

It doesn't work.

It's adversarial, uncertain, slow, disinterested and expensive. The longer the process lasts the more embittered you (and the ex) both become. You hate the ex but you hate your lawyer and the court more.

If you press the family law system with enough money, hard enough, long enough it will produce a result. More likely you will give in and leave the venue with a deep seated resentment and mistrust, after you have wasted a fortune on a process that went nowhere.

No amount of tinkering, re-regulation, resources or money will change any of this. That's what I call government "reform". More of the same. More of what you've been having that didn't work before. Why would it work now? Is this what you have in mind? Don't throw good money after bad. Here is my blueprint to fix the system.

A ROADMAP TO FAMILY LAW

The law is a mishmash of an old Act, numerous amendments and judge made law. It's incomprehensible, but it need not be.

Codify the law. Publish the law. Teach the law, in schools and public forums, as a pre-condition to marriage (if you like). It should be possible for persons entering marriage to know and understand the rules that govern its failure. If you know the roadmap there are no surprises.

REMOVE THE ADVERSARIAL ASPECT.

Call the Family Court something less formal and threatening, like the Family Resolution Centre (FRC)

When a party decides the marriage is over, he/she files a declaration in the FRC giving details of the parties, children, current living circumstances and property (so far as is known). All the family circumstances known to the party. It need not be comprehensive, that can follow.

Within 24 hours, the FRC issues a brief to one of a panel of accredited family lawyers (delegate) (in this way the existing resources are repurposed). The delegate is paid at an hourly rate out of the family's resources and if inadequate, guaranteed by the state. (Only 1 lawyer is required at this stage). The delegate is not a party's lawyer, he/she is the FRC's lawyer.

The delegate:-

- Commences an investigation into the family's circumstances that is holistic and does not depend on what relief the parties might want or how they want to proceed.

- Has a duty and power to make interim orders, who has temporary care of the children/pets etc. Who stays in the family home. What support is needed and who pays it to whom. How the mortgage is to be paid pending resolution, etc. These orders can be made almost immediately without notice or a hearing (because they are temporary and won't establish a status quo). Temporary orders are supported by reasons, filed in the FRC and served on all family members over 13 years old

- Has power to make inquiries and compel information and answers, of the spouses, family members, banks, accountants, employers, super fund managers, ASX listed corporations and private corporations; (anyone who has or might have information that is germane to the family's circumstances).

- Has power to co-opt and pay other officers, community services, housing, police, accountants, bank managers, superfund director's etc. to assist in the inquiry.

Will produce a final written resolution (reasoned) of all matters that the spouses don't agree on, within 90 days and file it in the FRC and serve it on each spouse and each child of the marriage who is over 13 years old.

If the parties accept the resolution, or parts of it then those matters are resolved in the terms of the delegate's written resolution. Except in case of fraud, the resolution is final.

If a party does not accept all of the items of resolution, he/she may apply to the FRC which will appoint a second lawyer from the panel to review the decision and give separate advice on those matters in issue. The party seeking the review pays for that advice but the reviewing delegate is the FRC's lawyer, not the spouse's lawyer. Within 30 days, the reviewing delegate files reasoned written advice to the FRC and it is served on all family members over 13 years old.

The aggrieved party can only appeal on the issues and grounds (if any) that the reviewing delegate has certified have good prospects of success on appeal.

The appeal is heard by the FRC on the papers filed in the FRC by the first and second delegates. Neither spouse is represented. The FRC publishes its decision, within 30 days.

Resolution proceeds with all the remaining issues determined on appeal.

Fair, efficient, simple, cheap and fast. Impersonal and non-confrontational.

What a good idea you say?

Give it a go.

Kind regards

Richard Barsden

