



Important Proposed Changes to the Australian Family Law System in 2017

The Commonwealth Attorney-General has announced a comprehensive review into the Australian family law system

In May 2017 the Federal Government announced a comprehensive review into the Australian family law system, coupled with a \$80 million funding boost to frontline family violence services.

The Federal Attorney-General will direct the Australian Law Reform Commission to conduct a comprehensive review of the current system. The review aims to make reforms to ensure the family law system effectively addresses family violence and child abuse and meets the needs of Australian families.

The review will report to the Government by the end of 2018, with interim reports to be delivered on key issues.

FOCUS ON FASTER RESOLUTION OF PARENTING DISPUTES

The Turnbull Government proposes to invest \$12.7 million to establish "Parenting Management Hearings". The proposed Parenting Management Hearings envision a case-managed forum for resolving simpler disputes between self-represented litigants. Currently, child-related proceedings are conducted in the model of the Less Adversarial Trial System, however opposing parties are still required to present their case and marshal the evidence. The new model proposes a more managerial approach by the courts, where those managing the hearings will conduct inquiries and gather evidence to inform their decisions. The new model will be rolled out in Parramatta, New South Wales.

The next proposal is for the Government to direct \$10.7 million into the Family Courts to engage more Family Consultants. The funding aims to facilitate the Courts in the faster dealing of cases involving vulnerable families. Family Consultants are qualified social workers and psychologists who specialise in family counselling and child and family issues after separation or divorce.

Family Consultants give independent assessments of family issues, including the best interests of the children, to the Courts during parenting proceedings. An increased resource of Family Consultants will give the courts earlier access to independent assessments of family issues.



MINIMISING TRAUMA TO VICTIMS OF DOMESTIC VIOLENCE DURING CROSS-EXAMINATION

The Government will also soon release for public consultation proposed amendments to the *Family Law Act 1975* (Cth). Those amendments propose changes to the cross-examination of victims of family violence matters, in order to respond to concerns that family violence victims may experience further trauma from being directly cross-examined.

The Family Court's "Family Violence Best Practice Principles"¹ acknowledges that victims of family violence can be vulnerable witnesses during family law proceedings and traumatised as a result of cross-examination. The Family Violence Best Practice Principles aim to ensure that those at risk of harm are not re-traumatised by the court process, and that, judicial officers utilise the court's powers to achieve a fair hearing.

Cross examination presents a particular problem in family law proceedings where parties are self-represented. In contrast to criminal proceedings where the victim is called as a witness, the victim of family violence in family law proceedings is a party to the proceedings and present throughout the whole hearing. Where a self-represented perpetrator wants to cross-examine the victim, they do so personally. The victim's responses may be negated or compromised by the victim's fear of the perpetrator. Further, when the victim is required to cross-examine the perpetrator, their ability to question the perpetrator may be similarly affected.

The National Domestic and Family Violence Benchbook² notes that in some cases a perpetrator may choose to be self-represented as to secure the opportunity to directly cross-examine the victim. The victim's fear may compromise the quality of their evidence and as a result, the probative value of the evidence may be diminished.

Both the *Family Law Act*³ and the *Evidence Act*⁴ currently give Family Law Court judges powers to make orders regarding the questioning of witnesses to minimise the impact to victims of being cross-examined by perpetrators. The Courts have considerable flexibility in allowing persons to give testimony and/or appear by video or audio link. The Courts can also forbid the asking of offensive and abusive questions. Where a judicial officer is concerned about the safety of the party, they may facilitate a safety plan which may provide for the party to give evidence by video or allow for the person to be attended by a support person in the courtroom.

¹ Family Court of Australia, Family Violence Best Practice Principles, 4 December 2016,

<<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/family-violence-best-practice-principles>; accessed 21 June 2017>

² Australian Government, Attorney-General's Department, National Domestic and Family Violence Benchbook, May 2017, <http://dfvbenchbook.aija.org.au/dvbb/docs/NDFVBB-May-2017.pdf>, accessed 17 June 2017.

³ Part VII, Division 12A of the Family Law Act 1975 (Cth) and Part 5, Division 11A of the Family Court Act 1997 (WA) (FCA) contain provisions relating to the conduct of child-related proceedings; Section 69ZN FLA and Section 202B FCA set out the governing principles, including the court's role in actively directing, controlling and managing the conduct of the proceedings, and in safeguarding children and parties against family violence. Section

⁴ Section 41 Evidence Act 1995 (Cth).



Stakeholders have recommended further reforms to strengthen the Court's powers under the Family Law and Evidence Acts. These proposed changes include providing funding for unrepresented parties so that they may be represented. This would allow for cross-examination to be conducted by the legal representative and not the perpetrator party personally with the aim of reducing the impact of trauma to the victim.

ADDITIONAL FUNDING FOR SIX NEWDOMESTIC VIOLENCE UNITS

Additional funding will establish up to six new domestic violence units across Australia that deliver integrated specialist legal and social support to victims of domestic violence. The Government is also injecting a further \$3.4 million over two years to expand the Domestic Violence Unit Pilot, established as part of the Women's Safety Package in September 2015. The Pilot program takes a case management approach to ensure that services are tailored to each woman's circumstances and includes not only legal assistance, but other practical help, such as access to counselling and crisis accommodation. The Domestic Violence Pilot program combines with the new Health Justice Partnerships. These partnerships offer legal training and support for health professionals and provide on-site legal advice at select hospitals or health centres.

In November 2016, the Attorney-General launched the addition of the Domestic Violence Legal Support Unit in Canberra. The Attorney-General commented that the domestic violence units are showing promising early results and have delivered vital services to over 530 women across Australia in the first half of 2016 alone.

BOOST TO COMMUNITY LEGAL CENTRES AND ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES

The \$80 million funding boost to the Australian Family Law system included a \$55.7 million boost to Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services.