

Opening Statement



Law Council
OF AUSTRALIA

23 February 2018

Opening Statement to Senate Legal & Constitutional Affairs Legislation Committee Hearing on:

Family Law Amendment (Family Violence and Other Measures) Bill 2017 and Family Law Amendment (Parenting Management Hearings) Bill 2017

Morry Bailes, President, Law Council of Australia, 23 February 2018

1. I would like to thank the Committee for the opportunity to provide evidence to its Inquiry.
2. My name is Morry Bailes and I am the President of the Law Council of Australia. As the Committee would be aware, the Law Council is the peak national body representing the legal profession in Australia.
3. I am appearing today with my colleague, Wendy-Kayler Thomson, who is the Chair of the Family Law Section of Australia. The Law Council acknowledges that our submission has been prepared by the Family Law Section in consultation with many of the Law Council's state and territory law societies and bar associations.
4. Since its inception in 1985, the Family Law Section has developed a strong reputation as a source for innovative, constructive and informed advice in all areas of family law reform and policy development. With a national membership of more than 2600 it is committed to furthering the interests and objectives of family law for the benefit of the community.
5. I would also like to acknowledge Mr Geoffrey Dickson QC who is fellow witness and a member of one of the Law Council's Constituent Body, the Victorian Bar Association.
6. I will make some general remarks regarding the legislation before the Committee today before handing over to my esteemed colleagues.
7. In relation to the Family Law Amendment (Family Violence and Other Measures) Bill 2017, the Law Council and the Family Law Section supports legislative amendment to enhance the capacity of the family law system to provide effective outcomes for people who are experiencing family violence.
8. However, we note with concern that the Bill is not accompanied by any confirmed increase in funding for the authorities which will be affected by the terms of the Bill, in particular the courts that exercise *Family Law Act 1975* (Cth) jurisdiction; state, territory and federal police forces who will be called upon to investigate and prosecute breaches of Family Law Act personal protection injunctions; and Legal Aid Commissions that provide advice to litigants.
9. In relation to the Family Law Amendment (Parenting Management Hearings) Bill 2017, the Law Council and Family Law Section regard the making of decisions about matters such as where a child lives, with whom a child spends time, and how a child communicates with a parent, let alone questions of parental responsibility, as each being matters that are and should remain within the remit of judicial decision-making power of judges.
10. The Bill proposes a radical departure from the established position under Australian law. The Law Council and Family Law Section strongly oppose the purported investiture of judicial power in the Parenting Management Hearings Panel and queries the ability to do so as proposed in the Bill. To

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promoting justice and the rule of law.*

describe the Panel as an administrative body operating in the manner in many respects of other Tribunals, does not necessarily remedy these deficiencies. The Bill also contains a very broad delegation of powers, the validity of which may be open to question.¹

11. The changes proposed by the Bill, and the radical steps they seek to implement, must be viewed with even greater concern, in the context of the ongoing Australian Law Reform Commission (**ALRC**) *Review of the Family Law System (the Review)*.
12. In addition, the Law Council and Family Law Section notes that the Government has committed \$12.7 million over the next four years to establish and operate the Panel.
13. The Law Council and Family Law Section are of the view that the Government could achieve a far better outcome both for children and parents involved in family law disputes and for Australian taxpayers generally, by instead:
 - (a) undertaking a simplification of Part VII of the Family Law Act and adopting the Chisholm model² to enable a simplified parenting decision framework to be applied by Judges of the Family Court and the Federal Circuit Court (thus saving money and promoting better understanding of decision making); and
 - (b) allocating the \$12.7 million in extra funding over the next four years to improve resourcing of the existing court system, as well as counselling and support services such as contact centres. Funding of this magnitude could make a significant improvement to the capacity of the Family Court and the Federal Circuit Court to triage and hear cases more quickly. If the aim of the proposal is to respond more quickly to the needs of unrepresented litigants with less complex disputes, then both Courts would be in a position to respond appropriately to those needs by, for instance, funding for the recruitment of registrars.
14. The Law Council and Family Law Section contend that if there is a willingness by the Australian Government and Parliament to invest in improving access to justice for people with family law problems, then investing in the Courts that already exist to enable them to innovate their case management processes, would produce a better outcome for children and families, as would proper funding and resourcing of Legal Aid services.
15. Thank you.

You can access the Law Council's submissions to the Senate References Committee on Legal and Constitutional Affairs on [Family Law Amendment \(Parenting Management Hearings\) Bill 2017](#) and [Family Law Amendment \(Family Violence and Other Measures\) Bill 2017](#).

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¹ See, eg, *Harris v Caladine* [1991] HCA 9; *Lane v Morrison* [2009] HCA 29.

² Prof Richard Chisholm AM, 'Rewriting Part VII of the Family Law Act: A modest proposal' (2015) 24(1) *Australian Family Lawyer* Volume 1 <https://www.familylawsection.org.au/images/documents/australian-family-lawyer/AFL_Vol24_3_ModestProposal.pdf>.