

17 January 2017

Our ref: (NDC - Fam)

Mary Devlin
Acting Director, Family Law Section
Law Council of Australia

By email: mary@familylawection.org.au

Dear Ms Devlin

Family Law Amendment (Parenting Management Hearings) Bill 2017

Thank you for the opportunity to provide comments on the Family Law Amendment (Parenting Management Hearing) Bill 2017. The Queensland Law Society (QLS) appreciates being consulted on this important legislation. This response has been compiled with the assistance of the Family Law Committee who have substantial expertise in this area.

QLS supports measures that allow parenting matters to be heard and resolved in a timely, fair and cost effective way, particularly in light of the enormous pressure currently on the family law system. However, we have serious concerns about Parenting Management Hearings and oppose the introduction of this Bill.

This legislation has been introduced in circumstances where the Australian Law Reform Commission (ALRC) has recently commenced a comprehensive inquiry into the family law system. The ALRC will make recommendations in relation to the reforms necessary to ensure the family law system better meets the needs of Australian families. Importantly, these recommendations will be supported by expert advice and a thorough research and consultation process. The introduction of Parenting Management Hearings prior to the conclusion of this review is premature.

The ALRC's Terms of Reference include consideration of appropriate, early and cost-effective resolution of family law disputes. We strongly recommend that Parenting Management Hearings be considered as part of the ALRC inquiry, rather than implemented as an isolated reaction to the overburdened family law system.

QLS is concerned that funding of Parenting Management Hearings may impact the already limited resources of the Family Court and Federal Circuit Court. Again, a comprehensive

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review of the family law system by the ALRC will allow for priorities to be identified and funded accordingly.

With reference to the Law Council's Memorandum dated 12 December 2017, we make the following comments:

1. QLS agrees that the proposal represents a dramatic departure from the established position under Australian law whereby matters relating to children are determined by judges. The inquisitorial model proposed, whereby the Panel is not bound by rules of evidence and "may inform itself any way it thinks fit", is vastly different to the current model. The consequences of introducing this significant reform will be considerable and warrant careful scrutiny.
2. QLS agrees there appear to be issues around investing judicial decision making power in an administrative body, particularly given the limited avenues available to participants in appealing a decision or determination.
3. QLS agrees that the proposal potentially increases the complexity of the family law system, in a context where fragmentation and complexity is one of the greatest challenges for litigants in navigating the system. Family law system reforms should instead be considered in a holistic manner and with regard to previous inquiries and reviews of the system.
4. QLS agrees that the proposal creates two different forums for determining parenting decisions and two different classes of litigants. Again, this adds to the complexity of the family law system.
5. QLS agrees that there is a significant and unacceptable risk that complex needs of litigants will not be identified where neither party is represented. This concern relates particularly to matters involving family violence.
6. QLS is very concerned about the limitations on legal representation. Under proposed section 11LJ, parties may only be legally represented with leave of the Panel. Although this reflects the idea that the forum is designed to be less formal, legal practitioners play an important role in resolving family law matters, including by identifying relevant issues and providing relevant information to the Court. Access to legal advice and representation is crucial in the resolution of matters, but also helps to ensure vulnerable or disadvantaged litigants are properly informed and understand legal matters.
7. QLS agrees that Parenting Management Hearings are an inappropriate response to the crisis in legal assistance sector funding. This includes not only Legal Aid, but also Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. In our view, additional resources for the legal assistance sector, courts and other support services must be prioritised.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Natalie De Campo by phone on (07) 3842 5889 or by email to N.DeCampo@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ken Taylor', with a long horizontal flourish extending to the right.

Ken Taylor
President