

Thursday, 11 April 2019

Resourcing, consultation key to improve family law

The Law Council of Australia will carefully consider recommendations by the Australian Law Reform Commission's (ALRC) [Family Law for the Future – An Inquiry into the Family Law System](#) report but warned immediate solutions are required to ease pressures on the Family Court and Federal Circuit Court for the good of Australian families.

“The Law Council will closely review the ALRC’s recommendations with the diligence and respect the report deserves. However, there is no excuse for failing to act now to address the immediate pressures facing the family courts,” President Arthur Moses SC said.

“In order for any reform to succeed, there must be proper consultation with the public, the courts, state and territory governments and the legal profession. Any transfer of family law jurisdiction to state and territory courts as suggested by the ALRC will be a five-to-10-year project.

“Assuming agreement can be reached with all state and territory governments, each will have to find funding and resources and will need to pass legislation for any new arrangement.

“It is unlikely state and territory governments who already carry the burden of having to fund Commonwealth criminal cases will take on more work in the absence of any proper funding.”

Mr Moses said while the points raised in the ALRC are important, Australia’s family law system is in immediate crisis due to a lack of resourcing, poor planning and outdated court rules.

He said the Federal Government has a duty to ensure the courts are properly resourced and that the Family Court and Federal Circuit Court move to advance the streamlining of rules and forms as a matter of urgency.

“These issues can and must be attended to now. This is something which the legal profession has been demanding for some time,” Mr Moses said.

“Renaming a court to solve problems was a mirage – Australian families need real solutions and prompt action. Similarly, shifting responsibility to another jurisdiction can never be the answer to a problem when a lack of resources is at its core.”

Mr Moses said several of the ALRC report’s recommendations require close attention, including the proposed abolition of section 65DAA of the *Family Law Act 1975* (Cth), which currently requires the courts to consider in certain circumstances the possibility of a child spending equal time or substantial and significant time with each parent. This change is likely to attract strong community feedback and should be the subject of respectful discussion.

“There is merit in considering the ALRC’s recommendations to redraft the *Family Law Act 1975* (Cth) for clarity, including to streamline and redefine what a court will take into account under section 60CC when considering what is in a child’s best interests in determining parenting arrangements,” Mr Moses said.

“Lengthy statutory processes that must currently be followed to make an interim parenting order are already the subject of criticism, including from the judiciary,” Mr Moses said.

“The ALRC report also makes recommendations regarding property division which must be

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worked through forensically as these unfortunately did not receive the benefit of extensive coverage or consultation during the ALRC's review.

"Suggested rebuttable presumptions regarding equality of contributions during a relationship for property settlement cases and an even split of superannuation accumulated during a relationship must be carefully scrutinised.

"There are also likely to be mixed views on the suggested creation of a statutory tort of family violence. Family violence is a matter of enormous community concern and we need to ensure that our laws properly support those affected by it."

Mr Moses said he was very troubled the report was only released after the government failed to get its flawed merger bills through the Parliament.

"This conduct appears to be a breach of faith with the Australian Parliament, the community and the legal profession," he said.

"There must always be a high level of trust between the profession and the Attorney-General.

"The government, the Parliament, the courts and the legal sector must work together to improve outcomes for families and children following the breakdown of relationships. This cannot occur when vital pieces of information, consultation and research are withheld."

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