



## First Comprehensive Review of the Family Law Act since 1976

The Federal Government has announced that the Australian Law Reform Commission will conduct a wide-ranging review of the *Family Law Act 1975*

### INTRODUCTION

On September 27, Attorney-General George Brandis QC commissioned the Australian Law Reform Commission (ALRC) to undertake what he described as “the first comprehensive review of the family law system” since the commencement of the Family Law Act in January 1976. The review of the family law system will be broad and far reaching, focusing on key areas of importance to Australian families.

### BACKGROUND

The system, a landmark reform of the Whitlam era, has been operating for more than 40 years. The federal legislation on which it is based has frequently been revised and amended.

In the past, different parts of the system have been the subject of academic studies and analyses, but no comprehensive examination has assessed the system as a whole.

### PREVIOUS REFORMS

The Family Law Act initially introduced several revolutionary changes. For example, it established the Family Court of Australia; introduced “no-fault”; and totally revamped laws about determining children’s cases and property settlement.

It also set up a new system of alternative dispute resolution and established the Australian Institute of Family Studies (AIFS) as a dedicated research body, along with the Family Law Council (FLC) as a representative body to monitor and advise the federal government on operational and policy matters.

Since then, various aspects of our family law system have been examined and changed.

Family law legislation has undergone significant expansion and reform. It now covers divorce, nullity, parental responsibilities and obligations in respect of all children, and children’s rights.



Further, it covers de facto relationships (marriage is dealt with specifically by the Marriage Act), spousal maintenance, division of property, binding financial agreements, and family violence. There are now two federal family law courts, but they are overburdened and have long waiting lists.

### **PURPOSE OF REVIEW**

Australia's new Family Court Chief Justice John Pascoe said there is a "unique opportunity" to ensure the family law system is meeting the needs of modern families.

The purpose of the review is to ensure the family law system prioritises the best interests of children, best addresses family violence and child abuse, and supports families, including those with complex needs, to resolve their family law disputes quickly and safely while minimising the financial burden.

Another focus of this review will be the adversarial nature of many family law disputes such as divorce or child contact. Hon George Brandis QC stated that there was "certainly a body of opinion among family law practitioners that the adversarial mode in which family law proceedings are conducted is not the perfect model.

### **SCOPE OF THE REVIEW**

The ALRC will have regard to existing reports relevant to: the family law system, including on surrogacy, family violence, access to justice, child protection and child support; and interactions between the Commonwealth family law system and other fields, including family law services, the state and territory domestic and family violence, child protection, and child support systems, including the ALRC Family Violence Report.

### **LEADER OF REVIEW**

Professor Helen Rhoades is to lead this historic and important work. Professor Rhoades has extensive experience and a deep knowledge of family law.

She has been a professor at the Melbourne Law School since 2012, the Co-Convenor of the Melbourne Law School's Family and Children's Law Research Group, the Chair of the Family Law Council from 2010 to 2016, and a member of the National Advisory Board of the Family Law Section of the Law Council of Australia.

Professor Rhoades has written and edited numerous publications focused on the family law system, and on issues related to family violence, children's needs and alternative dispute resolution.



## CONSULTATION

The ALRC will consult widely with the community, practitioners and experts in family law and family dispute resolution, the legal, services and health sectors, as well as interested members of the public.

## TIMEFRAME

The review commenced on 1 October 2017 and will report by 31 March 2019.

## SUPPORT OF REVIEW

There has been universal support for such a review from key players in family law, as well as those more on the periphery such as politicians espousing party-dictated views or representing individual (usually aggrieved) constituents.

The Law Council of Australia (LCA) has strongly welcomed the wholesale review of the family law system, announced by Attorney-General Senator George Brandis QC. LCA president Fiona McLeod SC said the legal body is looking forward to contributing to the review. McLeod stated that the Law Council has long been warning that the family law system is in crisis, primarily due to a lack of funding and resourcing.

Other groups that are in support of this review include: Some of the groups that called for a royal commission include child protection organisation Bravehearts, Lone Fathers, the National Council for Single Mothers and Children, and the Luke Batty Foundation.

Bravehearts founder Hetty Johnston said the family law system was a "toxic institution" and only a royal commission was "capable of overcoming the constitutional, legal and jurisdictional hurdles" that prevented its problems from being thoroughly examined.

## CURRENT SYSTEM ISSUES

### *Children*

There have also been important bipartisan state and federal parliamentary inquiries, most notably the federal inquiry into child custody arrangements in the event of family separation. This in turn produced "Every picture tells a story" in 2003 and the parliamentary inquiry into how family law can better support and protect those affected by family violence in 2017.

There has also been concerns about the rights of victims and children are being overlooked by a system strained by demand.



### *Access to justice*

The family law system has been criticised for being painstakingly slow and prohibitively expensive, putting undue pressure on those hoping the Family Court and its other services can resolve some of the most emotional legal disputes.

The high cost of legal representation and cuts to legal aid means large numbers of self-represented litigants. Also, there is the question of mandatory education for judges and legal professionals in areas such as family violence and child abuse, which comprise over half of the courts' workloads.

Also, a shortage of judges to hear cases, and of registrars – who prepare cases and, where possible, record the terms where parties agree – has lengthened the waiting time, and the anguish, for families in distress.

### *Gender bias*

There is also a wider, more intractable, issue: the long-standing criticism by men's advocacy groups of what they claim is an institutional anti-male bias in Family Court decisions.

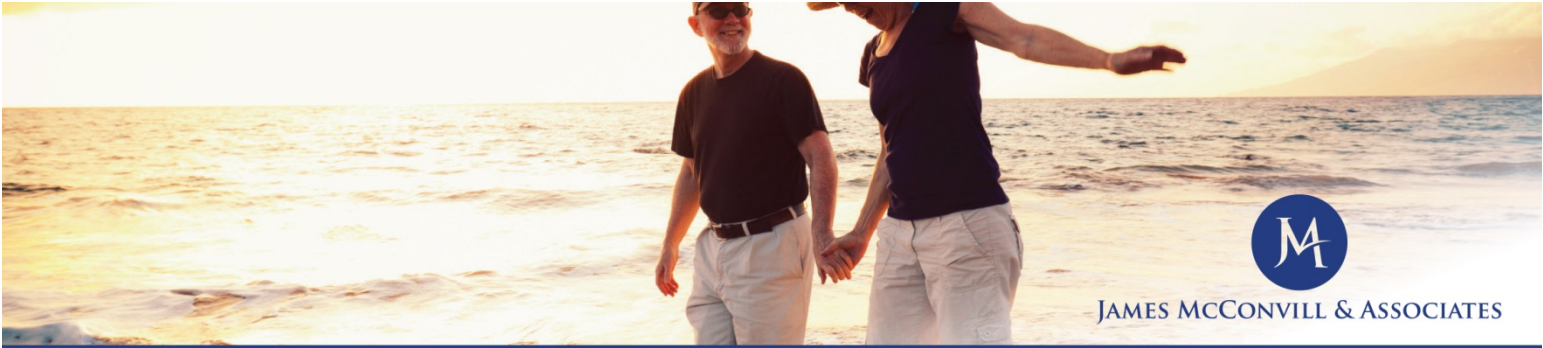
This localised battle of a broader gender conflict has degenerated into ideological trench warfare of the most depressing and unproductive kind. The sides have become identified with extremes of the political spectrum. Minds have become closed to debate. Instead, embittered advocates on both sides shout themselves hoarse trying to deny legitimacy to their opponents, or to silence them altogether.

## **COMMITTED REFORMS**

First, the Turnbull Government will invest \$12.7 million to establish Parenting Management Hearings – an innovative forum for resolving simpler family law disputes between self-represented litigants. Unlike the traditional system where two opposing sides present their cases, those managing the hearings will run enquiries and gather evidence to inform their decisions. This new approach will be initially rolled out in Parramatta, with a second early site to be identified in consultation with stakeholders.

Second, to assist having cases involving vulnerable families dealt with sooner, \$10.7 million will be directed to the Federal Circuit Court of Australia, the Family Court of Australia and the Family Court of Western Australia to engage more family consultants. Family consultants are qualified social workers and psychologists who specialise in child and family issues after separation or divorce. This will give courts earlier access to independent assessments of family issues, including the best interests of children.

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. This new funding will establish up to six new domestic violence units that deliver integrated specialist legal and social support to women experiencing, or at risk of, domestic and family violence.



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Finally, the family law system will develop better ways of dealing with family breakdown that saves money and ease the trauma on children. Instead of subjecting children to multiple hearings after family breakdowns, the government wants a single set of proceedings to deal with children's issues wherever possible.