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**Submitted by email: [fedcourtsconsultation@ag.gov.au](mailto:fedcourtsconsultation@ag.gov.au)**

Dear Sirs

**CONSULTATION ON REVIEW OF FUTURE GOVERNANCE OPTIONS  
FOR FEDERAL FAMILY LAW COURTS IN AUSTRALIA ("THE REVIEW")  
A SUBMISSION FROM THE FORGOTTEN STAKEHOLDER – THE  
CLIENT / CUSTOMER**

This submission follows the release of the consultation paper by Des Semple of Des Semple & Associates ("DS&A") in conjunction with The Attorney-General's Department ("AG") dated November 2008.

For the convenience of the Review, this submission is brief and focuses on a major or "material" deficiency in the Review conducted by DS&A which renders the Review unsatisfactory (or fatally flawed) such that the Government will never achieve its stated objectives and future vision for the family law system, certainly from the customer or client standpoint.

The author's review of the Review's Consultation Paper and Findings accords with professional best practice reviews and observations of approaches taken in addressing governance issues with other Australian Government departments and organisations with the private sector, based on accepted international management consulting practices relating to the identification and quantification of stakeholder issues and process resolution from a stakeholder viewpoint. Accordingly, I have focussed my attention to making comments on an "exceptions basis" relating to due process of the Review. It is hoped that this referred back by the Review to the AG and Government for further work, so that this piece of work is completed to an acceptable and of a best practice standard.

Australia's family law system is in disarray and justice is not always served to its key stakeholders, being clients/customers (or "family law litigants" in family law parlance) unfortunate enough to have been processed by the system.

Many family law litigants (or clients/customers of the Family Law Courts) are disenfranchised by the processes and judicial outcomes. Frequently, family law litigants describe their experience with the family law system as a “living hell”. Women and men family law litigants consistently say that justice does not prevail and the family law professionals milk the system for profit and operate in the shadows of the law and secrecy. Many family law litigants (and ultimately their children) are financially and emotionally destroyed from a process that has total disregard for the welfare and best outcomes/interests of litigants and basic human rights. The current family law system being adversarial in nature promotes “the winner takes it all” as the order of the day, where parties are pitted against each other as combatants, when all they and their children really require is someone to help them resolve (solve) relationship, property and children’s living arrangements at a time of immense personal and emotional distress resulting from the breakdown of a marriage or de facto relationship. Many family lawyers deal with peripheral issues and make excuses why things cannot be settled rather than solving problems quickly. Such practices would not occur in commercial deals and transactions.

For many reasons, Australia’s family law system does not deliver justice, and it is submitted that the existence of two Courts, being the Federal Magistrates Court and the Family Court, ranks at the bottom of the scale rather than tackling the real reasons. The problems with the Australian family law system are systemic in that people in many instances are forced to litigate (even when they want to settle) by family lawyers who have a vested monetary interest in doing so, and dragging out proceedings rather than sensibly resolving disputes through less adversarial means (such as collaborative practices) and instructing their clients to attend compulsory mediation at the Family Relationship Centres.

Family lawyers have a vested financial interest in the system and, in the opinion of the author and many other public commentators, the major reason that our Courts are overworked and overloaded with cases that should otherwise be resolved before even any suggestion of resorting to litigation. Similarly, gender bias is another reason that parties may litigate where there are financial benefits from doing so, in the form of favourable property outcomes and child support payments.

The pre-meditated interference of family lawyers often (and in almost every case) renders such compulsory mediation processes void, often forcing parties to litigate utilising the resources of the Family Courts. The statistics of AVO / Intervention Orders taken out by family law litigants overwhelmingly supports this contention as does the number of Certificates issued to parties where they fail to complete compulsory family dispute resolution on account of the other party not attending. This fact cannot be rebutted.

In short, the family law system in Australia is on “the nose”. It is effectively controlled by an industry of uncompassionate professionals that feed off the misery of ordinary mums and dads (and their families) for profit. They are not genuinely interested in helping families solve their problems, and delay and process is the order of the day. The Family Law Courts is the mechanism in which this occurs and family lawyers are notorious for “gumming up” the system. The Review needs to short circuit this behaviour so that timely and cost effective outcomes for family law litigants or more appropriately, clients or customers.

## **KEY DEFICIENCY OF THE REVIEW THAT RENDERS IT MATERIALLY DEFICIENT AND FATALLY FLAWED**

While the AG is to be commended on its approach to the internal governance aspects and the duplication of tasks and resources of the two Courts, a key deficiency of the Review remains. That is, the Review completely ignores the Family Court's major stakeholder, the family law litigant or the client of the Family Courts.

***Submission response:* The fact that the family law litigant or client has not been consulted at any time in this review is the key limitation of the review and therefore renders it materially deficient and fatally flawed.**

Ultimately, optimising the performance and resources required for the Family Courts to deliver on its objectives is a "supply chain" issue. Unfortunately, the Review has not considered the perspective and views of the customers (family law litigants) of the Australian Family Courts and the bureaucratic and legal profession machinery that moves the customer along, namely the processes, obstacles, family lawyers and barristers and the Judiciary, who tend to deal with matters in a most piecemeal / ad hoc fashion which leads to deals / consent orders made under duress, delays, financial and emotional damage and wastage and in many cases, tragic consequences.

Family law litigants or customers should be heard and must provide valuable feedback to the Review, based on their experiences with the Australian Family Courts and processes. They should not be ignored by DS&A and the AG as effectively "feedstock" in the supply chain of a broken system rather given the rightful status as a "stakeholder", critically important in this process.

### *Objects of the Review*

The Objects of the Review are broadly as follows<sup>1</sup>:

- a. The Government is seeking to secure better access to justice for litigants involved in family law disputes by putting in place mechanisms which will ensure that:
- b. resources to support judicial officers responsible for family law matters are allocated as effectively and efficiently as possible
- c. processes available for resolving family law disputes are appropriate for the nature of the disputes
- d. family law disputes are resolved in a timely manner
- e. self represented litigants and other litigants and their legal representatives know where to file particular kinds of matters, and
- f. the interface between the Courts and the range of associated services funded by government, including legal assistance and services provided by Family Relationship Centres, is as productive and seamless as possible.

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<sup>1</sup> Paragraph 3 of Part 1 Introduction – Future Governance Options for Federal Family Law Courts in *Australia Striking The Right Balance*, p 13.

The Review suggests that restructuring the Family Court and FMC into one family court with two Divisions would have the following benefits:

- family law litigants (including self-represented litigants) would be able to file and have their matters handled in one court
- quick and suitable procedures for shorter and less complex matters would be available
- financial and other resources to support judicial officers would be allocated and utilised more efficiently
- greater flexibility would be possible in the transfer of matters to enable more efficient
- management of court lists, and
- planning and coordination across all family law services would be improved.

*Future vision for the family law system*

It is stated in the Consultation document that the “Future vision for the family law system” is that the Australian Government is concerned to ensure the timely, efficient and informal resolution of family disputes and to maintain and build upon the existing service culture of the FMC, while at the same time ensuring the most efficient use of court resources.

It is then stated that a well-functioning family court would have the following characteristics:

- a single point of entry
- accessibility in regional Australia
- early deployment of resources to enable non-adversarial resolution of disputes
- timely and efficient resolution of disputes
- less formal proceedings
- cost-effectiveness
- flexibility
- simple and user-friendly rules, procedures and forms, and
- integration with other family law services.

While the conclusions by DS&A and the Future vision for the family law system are indeed admirable (if not utopian in theory), in fact, its difficult to believe that such findings can be made with the direct consultation of family law litigants or clients of the Family Court and FMC. Without such consultation, the status quo will be maintained, the list of disenfranchised family law litigants will continue to grow and this will only result in more dire consequences as a result.

If the Government is serious in efforts to truly reform the Family Court system in Australia, then legislators need to look at critical research pieces such as findings by leading U.S. academic **Dr Stephen Baskerville**, particularly his book, ***Taken into Custody***:

Hardcover: 352 pages

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The work of **Dr Baskerville** in his book ***Taken into Custody*** critically examines the real underlying issues of the US family law system, that parallel the situation here in Australia, that cause many of the problems that exist in comparable western world family law systems (including Australia).

Only then, when there is substantial reform and change by the Government will the public have confidence in a system that is currently in disarray and promotes dire social consequences being nothing more than tantamount to human rights abuse on a grand scale.

### **SUGGESTIONS TO REMEDY THE DEFICIENCY OF THE REVIEW**

It is humbly submitted to the AG that DS&A be instructed to extend its review to incorporate the views of the major and forgotten stakeholder, being family law litigants or clients.

It is suggested by the writer, that all family law litigants that have been subject to proceedings or have attended Family Relationship Centres over the past two years, be surveyed and then selected samples be asked to attend special focus groups to give their views and feedback on their personal experiences in being processed the Australian Family Courts and the family law profession in order to ascertain the Customer or Client perspective and what needs to change. Only then will the Government be in a position to be truly informed of what remedial action needs to be taken so as to achieve its objectives and future vision for the Australian family law system.

### **ADDITIONAL ISSUES RAISED BY THE REVIEW AND COMMENTS**

In respect to the additional issues raised by the Review, I make the following remarks:

*- If there is to be a single family law court, what should it be called?*

*Submission response:*

“Federal Family Dispute Resolution Service”

- **What new procedures should be adopted in the new court to ensure the timely, efficient and informal resolution of matters? Should these be different depending on the Division in which the matter is dealt with? If so, how?**
- **What kinds of matters should be heard by each Division?**

*Submission response:*

Judges should preside over matters with Family Relationship Centre Officers conducting the dispute on behalf of family law litigants. That is, take away the contest aspect and make it more a conciliation process. Legal advice should be provided before coming to court and the Family Relationship Centre Officers control proceedings, effectively allowing lawyers to only advise on areas of law rather than procedure and process. Orders are then made by the presiding judge as appropriate with a view to settling all matters in the one hearing.

Complex matters are then referred by the presiding judge to the Special Division for more complex cases and those requiring a traditional type hearing, but only in exceptional cases.

- **What should judicial officers of the general Division of a single family law court, and of the proposed new Division of the Federal Court, be called?**

*Submission response:*

They should be called “Federal Family Dispute Presidents” and “Customer Service Associates” (being the equivalent to Registrars)

- **What further court services are needed to achieve early, non-adversarial resolution of issues?**

*Submission response:*

- Separating couples must first attend a Family Relationships Centre before engaging the services of a family lawyer. Where it is determined that mediation or dispute resolution is not an option, the Family Relationship Centre appoints a family lawyer to provide advice to the party and then a further meeting is held with the party to determine whether a case should in fact be litigated. This would ensure that only more complex cases are litigated and the bulk of disputes are settled outside the Court.
- Family lawyer complaint service handled by non-legal profession representatives and help centre to ensure processes are not abused and delays do not occur to achieve tactical advantages. Settlement of all issues in a timely manner should be of the imperative. People should not have to be dragged through the system for more than six months.
- Legal firms are asked to explain and subject to scaled court fees if their fees exceed maximum fixed percentage of asset pools in cases where cases are purposely dragged out to maximise legal fees.

- For not complex cases, Qualified external financial professionals (from a panel) to provide proper advice to both parties regarding financial matters and not the deals done by family lawyers and barristers that have no regard to Financial Statements sworn by family law litigants.
- Contact restoration orders where contact with children is denied following separation prior to the issue of any parenting orders.

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Yours faithfully

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