

Reply of Happy Parenting Malta for Happier Children (HPMHC) VO 1819
to the Family Law Reforms submitted to the public in October 2024

1. Introduction

HPMHC notes with satisfaction that the debate on family reform has been elevated to formal public consultation. This is an important step in the right direction still this is not enough. Consultation is moving too slowly, and some uncontroversial reforms, such as improving the notification system in the Family Court, need no consultation and can be done easily by the administration through subsidiary legislation. More radical reform can take more time.

HPMHC believes that family reform should happen on three fronts:

- 1. Change of mentality and culture especially from the established professionals in the field.**
- 2. Legislative changes**
- 3. Training of staff and investment in the infrastructure.**

HPMHC notes that while there is a good attempt at addressing points 2 and 3 above, point 1 is missing completely. The language and the linguistic expression of the text proposals clearly show that they are being drafted by a lawyer whose mentality and culture are heavily entrenched in the current failed system. The impression is that this is more of an attempt at improving the image of the current *status quo* without real changes that will improve the lives of the public.

For example, the current system where mediation and the court are issues strengthened in the proposal rather than limiting litigation and the court's role. Wrong terminology, such as 'child access' (children are being treated like objects such as having access to an electronic device or access to a field), is maintained and strengthened. Enforcement through police and the role of criminal law in separation cases is enhanced instead of softened. Malta now has a liberal approach to divorce, but one becomes too exposed to criminal liability should one need to

separate from one's partner. Malta allows persons to divorce, but as divorce is never easy, it is easy for the other partner to be able to blackmail partners with criminal penalties. Resources are being wasted with unnecessary and useless cases. Recently, shock was expressed in the media where a DV case has been scheduled for a date in 2026 while we are still in 2024! With fewer useless cases about maintenance and Child access, the courts can work more effectively and use resources better on real cases.

Parental obligations in the Maltese family system seem to start when one gets separated. Parental obligations start from birth and even from conception, irrespective of matrimonial status. If one loses his/her job while married, the state may help such a person, but if the job is lost while separated, one might end up risking jail. **There is clear discrimination based on marital status** when it comes to the enforcement of child obligations. Also, while on paper, it may look fine, statistics show that the current stereotypes are more likely to work against males than females. Effective gender equality is lost. One can prove this by just looking at statistics of how many fathers end up in jail because of Article 338 z and 338 ll of the Criminal Code compared with mothers. Children still do not eat when their parent is in jail. Educating and reforming the person if it is the case, is much better than punishing by imprisonment. Further some people are ending up in prison while being morally right not to pay or unable to pay. It is not true in some circumstance that one can ask the court to review circumstances. There may be several reasons why this does not work in practice. One example may well be, the potential mission impossible to notify the other party with your application and the time it takes for the procedure to be completed. When a mother was going to end up in jail for 'child' access' failure in 2012, a presidential pardon followed! Statistics speak for themselves.

In general, HPMHC is not satisfied with these proposals and calls for the administration to engage a more variety of proposals to ensure that such proposals are in the interest of real reform and not the preservation of the current lawyers' work in the separation practice. **The guiding principle should be that lawyers and the role of the police should be kept as minimal as possible:** lawyers only when litigation is necessary and the police only when, unfortunately, real domestic violence kicks in.

2. Commentary on individual main proposals

a) Family court established with consolidated family law

HPMHC notes that this proposal is rather vague and difficult to comment on. In Malta consolidation of laws is almost non-existent. For example, one gets married through the Marriage Act, Chapter 255 of the Laws of Malta, but one gets

divorced or separated through the Civil Code, Chapter 16. While consolidation may be a good thing in itself, in substance, it remains an academic exercise and will make no difference to the man in the street. Hence, HPMHC sees no reason to comment further on this proposal unless more clear explanations about its intentions are made public.

b). The Establishment of the Board and the Mediation Process.

HPMHC considers this the most important proposal and is a step in the right direction. It has been among one of its main proposals. However, the way the proposal is drafted mixes up some basic issues that may render the practicality of the proposal ineffective.

The idea of the Board was born from the need to have the decision-makers make informed decisions rather than automated decisions, especially *pendente lite* made on just scarce information on a piece of paper. The Board's main role is to study a separation case at the start where children are involved and make recommendations to both the parties and the court. The Board needs to be composed of family experts. Lawyers need not be on the Board as such; their role should be minimal if they are. Medical experts mainly staff Medical Boards, while architects mainly staff planning boards. The same goes for Family Boards. The primary objective of the Board should be to study what will be the ideal and practical outcome for the children. Through law-backed shared parenting, 50% and 50% should be the point of departure. However, if the likely point of arrival differs from the point of departure, then a careful study should make suggestions, as cases are never identical. Parents do not cease to be full-time parents when separated, and the children's best interest should be to have both parents when possible. Fiscal maintenance is NOT a must but may be necessary on most occasions, as some parents may prefer it, or it is necessary on a case-by-case basis. If it is necessary, including the possibility that some jobs may make 50-50 arrangements impossible, then the Board should have standard guidelines about what to offer. Needing to present payslips should not be the rule but rather an exception, and the Board, with national guidelines, can easily suggest maintenance. Maintenance should be a need in many cases. However, it should not be a compulsory obsession as, at present, lawyers are eager to use information to go after the other side. If necessary, the legal profession should be consigned to litigation and have no value added to determine maintenance and child excess.

Child Advocates are completely unnecessary. Children need professionals who understand their needs, jobs that family experts can do, NOT lawyers. Lawyers do not draft architectural designs or conduct medical surgeries.

Not all planning permits need lawyers. It defeats the purpose for children to have legal representation at this stage in particular.

Another flaw in the proposal is mediation. While mediation is useful if used properly, it SHOULD NOT BE MANDATORY. Family disputes are not there to provide jobs for mediators; rather, mediators may help in some circumstances. The Board studying the case should not be confused with mediation.

HPMHC believes that any legislative reform should provide the framework and give proper professionals enough room to do their work and make proper recommendations. Mediation should only be used when the parties want, or the court / board believes they can bridge the difference. The role of mediation should be to help the parties and not to impose or otherwise. Again, lawyers, while not excluded from mediation, should be kept at a distance as often lawyers may have negative contributions to make, especially if they lack ethics in family law. A good criminal or commercial lawyer may make a very poor family lawyer. In Malta, lawyers who work in the family field need to apply different ethics should they work in other fields of litigation. The adversarial nature of the family proceeding should be diluted as much as possible.

Hence cases involving children, HPMHC is making the following counter-proposals regarding this proposal:

1. The Board should have no lawyers working in litigation and, ideally no lawyers at all.
2. The Board staffed with family experts should study the possibilities of shared parenting and make recommendations to both the parties and the court. The parties should have the option of making counter-proposals to the Board.
3. The parties should contact the Board at the start of the separation process.
4. If the parties agree and draft a separation contract by a notary, then the current procedure of consensual separation may continue. The judge should ratify the public deed to ensure fairness for all parties and that it is voluntary. Much weight should be given to the parties' wishes if the Board endorses them. Obsession with access and maintenance should be laid to rest.
5. If the parties disagree with the Board, they should see a judge.
6. The judge in a family-friendly setting should see whether the difference between the parties is bridgeable.

7. If bridgeable, the parties should be referred to an improved mediation session.

8. If not bridgeable and/or mediation fails, then litigation should start, and the lawyers' role should become essential.

9. If necessary, the Board, with other independent experts, should help the court investigate the case and make recommendations on whether there is parental alienation, whether maintenance claims are or whether shared parenting is not possible. In that case, reasonable contact hours should be established, etc

10. Child lawyers can be called in to protect the experts and the Board's work if necessary but not to end up being the megaphone of one parent against the other. The Child lawyer should work in tandem with the experts and the Board and not independently.

11. A case involving children should NEVER be closed until the children reach the age of 18. Family is dynamic, and changes are necessary. The Board should be the first point of call at any moment in time. Its decision after judgment should be binding unless the parties want to contest in court, which, in this case, the court's process remains open, and there is no need to file new cases. Like building permits, most changes needed do not end up in court, so practical changes to shared parenting, child contact or maintenance need not go the court unless necessary.

Finally, the law should not dictate maintenance guidelines but rather provide a framework and let the experts do their work. Maintenance should NOT be used as a way for lawyers to charge fees or to blackmail other parties. There need to be guidelines, but not mandatory ones. Maintenance is necessary and can take different forms, including property, education, and lump sums.

c) Timeframes regarding mediation

Indicative time frames are essential at all stages, but flexibility is essential. In practice, time frames already exist but are seldom adhered to because of a lack of resources on all fronts. As regards mediation, this has been tackled above. Mediation should not be one size fits all and should ONLY be used when necessary and beneficial. The current system should be scrapped. Let us call a spade a spade. While the current mediation may involve good mediators, it is a joke in practice and has failed. Even the current premises and set up ridicule the whole system. Mediation, if it is needed, should never take place near the court building and should be in a family-friendly environment and not with false security, as if assuming separating parties are all criminals. False security and

unnecessary police presence at mediations defeat the whole purpose. Most separating parents are not tugs, yet if an unfortunate case involves a real tug, the security in place is inadequate. More common sense needs to be employed.

d) Co-parenting

HPMHC welcomes this proposal, considered among the best of the proposals presented. Legislative reform may be needed to help change local mentality. While ideally, the children should not have separated parents, in case of separation, the separation is not between the parent and the children but rather between the parents. Separation should not stop children from having two parents. Legislative reform is needed because the current system is too much geared toward so-called 'access', a term degrading for both parents and children and maintenance. HPMHC can vouch from the experience of its members that these two buzz words are an obsession and have had members being refused voluntary agreements of shared parenting just because the word 'access' or maintenance was missing. Legislative reform in the form of a framework law is necessary. However, as no case is identical, leeway is necessary for both courts and experts. While shared parenting and two homes have been proven to be the best option in principle, in several countries, one needs to be practical. (see various conference proceedings available at <https://www.twohomes.org/>) In many cases, it may not work; hence, it should become a target but not necessarily the final destination.

Co-parenting and two homes bring better stability than one parent, one home and an absent or vanished parent. The law and the professionals should strive to let the children have two parents, but much flexibility is needed on a case-by-case basis and one size fits all is the worst legislative outcome.

HPMHC regrets to note that professionals from Malta and the social services have repetitively failed to represent Malta at several international conferences about co-parenting. Academic papers and conference proceedings from Malta on the subject are negligible. HPMHC appeals to the authorities to invest in training and research before letting uninformed professionals voice their position on stereotypes rather than real research. Unfortunately, some local experts are heavily biased due to insufficient research and training. HPMHC had sometimes experienced how scientists felt during Galileo's time when they said that the Earth is not flat but a globe!

e) Maintenance and Access

This has already been addressed above. HPMHC, at the very least, considers the term 'access' in the law as an insult to both parents and children. Access should only be reserved for a kid whose parent is serving a long prison term or is somehow incapacitated. SAVs should be a temporary arrangement, ideally not more than a few weeks and not a long-term arrangement. A big flaw in this proposal, which gives away that its author is a legal professional obsessed with maintenance, is that financial considerations appear to be paramount considerations. Parenting starts at childbirth and even since conception and does not stop at separation. Maintenance should ONLY be resorted to if necessary. It should not be criminalised, and we note a complete absence of a proposal removing Article 338 z of the criminal code.

5a, 5b and 5c show no change of mentality here, and this proposal should be removed and redrafted. Police should have no role in this whatsoever. The state should stop letting itself be used by disgruntled parents against the other. If a parent fails repetitively to honour obligations, this should remain a civil dispute, and the family court, with the Board's help, should enforce obligations if necessary. The state can also step in and help the victim while seeking damages from the defaulting parent through administrative and not criminal proceedings. Maltese law, especially the criminal code, discriminates based on marital status for unseparated parents are not subjective to these blackmails. Also, maintenance must be flexible, hence constant access to the Board and Court. People have ended up in prison just because the Family Court misunderstood the objective facts of the case, was slow and decided based on impressions. The Police should be left in peace to do proper police work and not serve as tools for disgruntled parents to hit the other parents. Police should not be involved in these cases because they are not trained and equipped to fulfil this function.

HPMHC believes this proposal should be rethought from scratch as its philosophy is outrageous and outdated and could sometimes result in breaches of the European Convention on Human Rights.

f) Experts

HPMHC welcomes this proposal. Experts can complement the Board. We believe this is positive and should be implemented through legislative and infrastructural setup.

g) Domestic violence

HPMHC welcomes this proposal. One should not mix family reform with domestic violence. They are two important but separate issues. Regarding DV, one should be careful to balance real threats and false allegations. DV should not be used as a weapon by one parent against another, and parenthood should never be stopped because of a DV allegation. HPMHC notes that false allegations of DV are too common, and more should be done to avoid this. It also highlights that human nature is what it is, and no system is foolproof. Legislative amendments should be done objectively and not as a reaction to unfortunate incidents.

h. Strengthening of experts

HPMHC welcomes this proposal in general

However, HPMHC disagrees with the Child advocate obsession. First of all, the law is not clear what a child advocate does. A child advocate is certainly not an expert on kids. A planning lawyer is not an architect and should never perform an architect's work. A child advocate should never be used for image's sake to cover the court's or the party's back. Legal representation may be necessary only in isolated cases. HPMHC appeals to the administration to follow the ECtHR judgment about these issues, including cases against Malta. Children should never be given Vetos, and small children below 14 need not even be heard in many cases as they will offer no added value to the case. Rather, children may be weaponised by one parent against the other and Child advocates may end up serving as megaphones rather than protecting the real Child's interest.

HPMHC believes the child advocate should be scrapped from these proposals. Practice shows that sometimes, they made matters worse. Perhaps there should be a separate proposal on reforming the role of Child advocates from scratch. The Government should focus on children's needs and not on a few lawyers' interests. Lawyers, in general, are not trained to determine whether there is parental alienation or whether the Child deserves more contact with the parent or not! The question in Proposal 8 is flawed in itself and should be ignored.

i) Community of acquests

HPMHC welcomes this proposal in general. In principle, children and property issues should be separated and not held hostage to one another.

3. Conclusion and proposals

HPMHC feels no need to comment from pages 25 onwards and would like to express its regret that some good points mentioned here are not included in the proposals. Some issues have been tackled above.

Finally, HPMHC would like to express its regrets that no action has been taken on immediate things such as:

Introduction of Digital Notifications

Goal: To enhance communication efficiency and transparency in family law proceedings through modern technology.

Proposal: We call for mandatory digital notification systems to enable more efficient and secure communication between all parties. This could include notifications via email, secure online portals, and SMS. Notification through lawyers in an existing case is useful.

Reason: Modern technology allows for immediate and transparent communication, ensuring that all parties are informed promptly while reducing resource waste and the possibility of human errors that could have serious consequences.

Why is this only mentioned at the end and not before? Also, why is an uncontroversial subject to consultation rather than action? Why can't the parties notify the other party through the lawyer once a case is opened if it can save time, as lawyers are more reachable?

Finally, HPMHC would like to stress the importance of these absent proposals.

1. Establishment of a Specialized Agency for Family Cases

Goal: To create a dedicated entity that provides immediate and effective support for family cases, reducing reliance on the courts and ensuring a humane approach to conflict resolution.

Proposal: We propose the creation of a specialised entity to handle all aspects of family cases, comprising professionals such as psychologists, social workers, and legal consultants. This agency should be the first line of intervention where parents can seek assistance, thus reducing the need for court involvement in matters that can be resolved more effectively outside the formal legal context.

Reason: Families often find themselves under extreme stress when dealing with legal issues, which can be further aggravated by court bureaucracy and procedures. This entity will provide immediate and effective support, focusing on conflict resolution sensitively and humanely.

Process: The first step is the most important to create a long-lasting solid future for the children, once parents decide to separate and they have children, is for the agency to conduct an intensive assessment of both parents.

This assessment is not legal but a psychological evaluation to determine if both parents are fit for parenting. If both parents are found to be fit, co-parenting should be the standard way forward, with equal time division between the parents. This approach ensures that both parents remain actively involved in their children's lives and have clarity on their roles without the doubts and uncertainties plaguing the system, causing harm to both parents and children. This is the most important change, and it is truly in the best interest of the Child.

2. Decriminalisation of Access and Maintenance

Goal: To shift the handling of access and maintenance issues from a punitive approach to a more compassionate and balanced civil process.

Proposal: We advocate for the immediate decriminalisation of access and maintenance issues so that they are treated civilly, not criminally. The law should be amended to prioritise the interests of the children while reducing the burden on the involved parents.

Reason: The criminal approach to these issues often has negative consequences for parents and children, especially as it increases conflict and legal costs. A civil approach allows for more compassionate and balanced solutions.

3. Effective and Non-Mandatory Mediation

Goal: To provide a fair, transparent, and voluntary mediation process that facilitates amicable resolutions while allowing judicial oversight when necessary.

Proposal: Mediation should be an effective and non-mandatory tool led by mediators trained according to high and uniform standards. The first step should be a meeting with the judge and the family board, which decides whether the case should proceed to mediation. In case of need, the mediator should be able to consult directly with the judge to ensure justice and effectiveness in the process. The Family Court requires adequate premises and should be removed from the law courts. The current premises are not fit for purpose.

Reason: Transparent and professionally managed mediation can lead to fairer and more sustainable resolutions. Making it non-mandatory allows parties to enter the process more voluntarily, increasing the chances of success. The building should respect families and not be mixed up with any building where criminal proceedings are held.

4. Supervised Access Visits (SAV)

Goal: To protect the safety and well-being of children by ensuring supervised visits are implemented only when necessary, with experts oversight.

Proposal: Supervised Access Visits should only be ordered in cases where a parent is proven unsafe to be alone with the children. This should be done in collaboration with experts to ensure the safety and well-being of children during visits. Day to day changes in SAVs need not get Court approval but should be decided by the professionals involved.

Reason: The safety of children should be the highest priority in any court or agency decision involving family cases. Supervised Access Visits should be applied cautiously and with professional knowledge to avoid emotional harm to children.

5. Promotion of Equally Shared Parenting and Early Detection

Goal: To promote gender equality in parenting responsibilities and provide adequate support systems for fathers as much as mothers, ensuring a balanced and nurturing environment for children.

Proposal: We propose the active promotion of Equally Shared Parenting so that parents have equal responsibilities regarding the upbringing of their children. Additionally, there should be specialised shelters for fathers / mothers with children, where residential assessments for an early detection to identify cases of parental alienation, neglect or abuse; early intervention and court-ordered reunification therapy can take place.

Reason: Equal responsibility in parenting is essential for children's well-being and family stability. Shelters for fathers / mothers provide a safe space where they can receive the necessary support and evaluation to reconnect with their families positively.

6. Flexible and Continuous Court Access in Family Cases

Goal: To maintain ongoing support for families post-case closure, ensuring they have access to the court or specialised agencies whenever family dynamics change without complications and wasting precious time.

Proposal: Court or specialised agency access should be continuous in cases involving children, even after a case is closed, so families can return if changes in dynamics require review or intervention. This should be done without the need for new and complicated procedures.

Reason: Family dynamics can change unexpectedly, and the need for legal intervention or other assistance can arise at any moment. The process should be flexible and accessible to ensure that bureaucratic delays do not compromise the well-being of children and parents.

7. Tailored and Personalised Reunification Therapy in cases of severe Parental Alienation

Goal: To provide effective reunification therapy specifically designed to address the unique needs of each family, facilitating healthy and sustainable relationships.

Proposal: Reunification therapy should be provided specifically and tailored to the individual needs of each case, in close collaboration with the involved professionals, such as psychotherapists and social workers.

Reason: Reuniting a family after separation is a complex and delicate process. Tailored reunification therapy that is personalised and managed with knowledge of all parties' emotional and psychological needs can lead to more positive and sustainable outcomes.

8. Extensive Training for Professionals and Youth Education

Goal: To equip professionals with the necessary skills and knowledge to handle family matters effectively and to educate youth on responsible family planning and parenting.

Proposal: All professionals working in the family field, including psychotherapists, social workers, police, doctors, and educators, should receive extensive and continuous training always to be prepared to address situations effectively, empathetically, and professionally. Additionally, youth should be educated and trained on the importance of choosing the future mother or father of their children, focusing on the future of their own families and the responsibilities that come with them.

Reason: Well-trained professionals are crucial to the effective functioning of the legal and social system. At the same time, early education for young people on choosing and sharing responsibilities in the family contributes to a healthy and just society.

9. Parenting Mastering and Parenting Skills Courses

Goal: To prepare parents for the challenges of raising children through structured education and certification, ensuring they possess the necessary skills and knowledge.

Proposal: We suggest recommendations to parents to attend, when necessary, a specialised course on Parenting Skills, covering different stages of children's lives, including before birth, during early childhood, before pre-adolescence, and during adolescence. Parenting Skills courses should be promoted for those expecting or having young children and should be available continuously to cover different needs throughout the parenting period.

Reason: Parents should be given the tools and knowledge to be better prepared to face parenting challenges. Parenting Skills courses provide the necessary tools to address situations positively and effectively, and a certificate can be proof of their commitment to responsible parenting.

10. Other Tangible Proposals

Goal: To implement specialised and comprehensive approaches to complex family cases, ensuring justice and fairness for all parties involved.

Specialised Judges: We propose that judges specialise in social, psychological, and legal matters related to the family and children. This ensures that court decisions are based on a deep understanding of the complexities of families and are made with full consideration of the interests of children and parents.

Board of Specialists for Complex Cases: We propose the creation of a board of specialists, including psychologists, social workers, and legal experts, to handle complex cases or cases where there is suspicion of alienation. These cases should be heard before this Board rather than in court to avoid delays and time-wasting in the judicial process. Complex cases often arise due to a lack of understanding or specialised knowledge by judges who are not experts in these areas. Creating a specialised board ensures that these cases are handled efficiently and competently.

11. DNA and Unknown Father

Proposal: When a mother is not sure of her child's father or pretending to do so, a mother or hospital should be obliged to make a DNA test of the child, at birth when still in hospital and the hospital will be responsible to register the DNA and attach it with the Public Registry documents concerned.

Reason: To stop alienation from birth and such child abuse

A genuine father who wants to be involved in the child's life should produce his DNA to match the one the hospital presented to the public registry without the need of going via court proceedings before DNA testing, then the legal process can be done after the DNA result is matched.

HPMHC

26/10/2024