



**ATTORNEY-GENERAL  
HON ROBERT McCLELLAND MP**

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**TRANSCRIPT**

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**INTERVIEW  
MELBOURNE TALK RADIO (MTR) WITH STEVE VIZARD  
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*Subject: Family Law*

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VIZARD: The family in crisis. When the social unit that underpins our society falls to pieces there is nothing worse. The family looks to our legal system, typically the Family Court for resolution. These are resolutions about things that often defy equitable resolution. How we're going to fairly deal with the family home, with children, with income, with jobs, with possessions, in fact with our lives.

In one of the most radical changes to the Family Law system, the Federal Attorney-General is proposing to introduce from next year a system that means that separating couples with children are going to be able to choose arbitration, that's where a mediator can decide on custody, rather than go through the traditional legal process.

I'm talking to the Attorney-General, Robert McClelland now. Robert, thanks for joining me.

McCLELLAND: That's my pleasure.

VIZARD: Robert, can you briefly explain what the proposed changes are.

McCLELLAND: Essentially it's about giving families options. You've got in Family Relationship Centres and Legal Aid Commissions, already quite a sophisticated mediation process. But they don't go that final step of actually making a decision that sets out how the arrangement should apply in the future. So we're giving people the option of saying, alright, we've come this far in the mediation. We still can't agree, we're going to agree to you the mediator making a decision that will apply to us. We think that's going to have time and cost savings but will also avoid the litigious approach which often isn't the best way of resolving matters concerning children.

VIZARD: You'll give the mediator, which currently isn't the case, the power to make the binding decision. Is that what's proposed?

McCLELLAND: That's right. The parties would agree to empower the mediator to do that and that would set the framework for the future arrangements in respect to their children.

VIZARD: Is it proposed that either party would be able to withdraw from that system if they didn't like the way the mediation was going? Because one of the complaints about the current mediation system - and it's often a perception, is that sometimes the mediator is said to favour one party or the other.

McCLELLAND: If they elected to go down this route, they make that decision and then it occurs. There would be a process of review, but that process in the model I favour, would be quite

limited. It would be along the lines of challenging a commercial arbitration outcome, for instance, where there is a presumption that the award of the arbitrator would stand, unless there was evidence of bias or lack of procedural fairness and so forth.

So that's the model I propose, but there is a discussion occurring today with interested stakeholders, as to the extent to which those appeal rights should be implemented. But it's my view that if parties elect to go down this route they should regard it as being a determination of the matter rather than having endless appeal rights.

VIZARD: Where would a lawyer fit into this? Because I think most people would favour the idea that there's a mediator who can perhaps deal with these things at a more personal, quicker, expedient and cost-effective way. But equally on the other side most people who are in the dispute are, you know, aren't thinking necessarily straight or in their best interests, or in their long term interests, or with a full knowledge of the law. So where would an individual, a parent who's talking about the future of his kids, or his house, or his entire life, be able to check what's happened in the mediation with independent legal advice on the way through?

McCLELLAND: Certainly we're quite happy for lawyers to be involved. But it would be at the discretion of the parties and the mediator. So, for instance, we wouldn't like to see an inequality of legal representation for instance. We wouldn't like to see one party represented and the other not. But if both parties agree to legal representation, the mediator agreed that was appropriate, certainly we see lawyers playing a constructive role in this process.

VIZARD: Robert, what take up of this mediation, arbitration process, would you expect? Do you expect that this is going to be a slow trickle, a slow variation? Or given the advantages of it, do you expect that's there's going to be a significant jump to people wanting to resolve their family disputes through mediation?

McCLELLAND: I think it will be more than a trickle but I don't think it will be an immediate jump. I think there'll be a change of culture over time as practitioners get more involved in the process. There will always be a need for the Family Court of course because there will always be complex cases involving violence and other complications.

But we think given the good faith of the legal profession which they have shown in this area, providing this means of resolving matters away from the courts will end up being in the interests of the parties because they won't have to spend so much money. But it will also be in the interest of the community because we won't have to pay so much for the court time and court resources.

VIZARD: This is going to put an increased pressure on finding properly trained mediators. Interestingly, it comes at a time when, in fact, there's been a cut in funding for free mediation on certain terms, down from three hours, I think, to one hour, for individuals who earn less than a certain amount of money. Slightly ironic, but how are you going to gear up the number of mediation centres and trained mediators to cope with this new potential workload?

McCLELLAND: In respect to that, we've introduced a means test. Essentially for someone earning over \$50,000, they get their first hour of mediation free then they have to pay a small fee of \$30 an hour after that. But certainly that small fee, even for those earning above \$50,000, is much, much better than paying \$20,000 for a knock down drag out dispute in the Family Court.

VIZARD: Finally, Robert, I guess a very simple question, but probably the most complex question. How will your new system aid those who are most at risk? I'm talking about the children, the interests of children. Property can be carved up, income can be re-earned, things that we can touch and feel, that we own, can be readjusted. But kids are most at stake here. How will your new mediation system advantage children?

McCLELLAND: We very much see this as being a hands-on function. Families will have more resources to bring up the kids because if you haven't got each side owing literally thousands and thousands of dollars, obviously the family has more resources available to apply to themselves and bringing up children. So that's essentially the philosophy.

VIZARD: Less for the lawyers, more for the kids. Attorney- General, Robert McClelland, really appreciate your time this morning and it's a very interesting suggested change. We look forward to following it closely.

McCLELLAND: That's my pleasure.

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