



June 2019

Tell Us Your Story

Family Law: “a bowl of spaghetti with no mince”¹

As part of the Family Law Inquiry, the ALRC established the *Tell Us Your Story* project — an online submission portal where individuals were encouraged to anonymously share personal stories of their experiences with the family law system. This note provides aggregated data regarding the number and nature of individual stories that included complaints against actors in the family law system and about the system in general. This note is intended to supplement the ALRC’s final report, which provides, at Chapter 3, a high level summary of the data collected from the *Tell Us Your Story* project.

Background to the project

While the ALRC’s inquiry process relies on public consultation and openly published submissions, the ALRC decided to establish the confidential *Tell Us Your Story* project for two reasons that were unique to the family law inquiry.

First, s 121(1) of the *Family Law Act 1975* (Cth) prohibits the publication of details of family law proceedings under the Act. The ALRC anticipated that some individuals with personal experience of the system may be discouraged from making a public submission out of fear of breaching the provision.

Second, given the extremely intimate, complex, and sadly often traumatic nature of many experiences of family disputes, we considered that some of those individuals with the most challenging personal

¹ A description of the family law system by one contributor to *Tell Us Your Story*.

experiences of the system may be unwilling to make a public submission for various reasons, not least including privacy and safety concerns.

The contributions

For these reasons, the online portal encouraged participants to confidentially ‘Tell Us Your Story’, with the added option of complete anonymity, which many indeed chose. We received 732 substantive individual contributions via this portal, covering a broad and confronting range of personal experiences with the family law system. While the contributions are held in confidence by the ALRC and will not be published, these stories helped to inform our understanding of the real world impacts and consequences of the existing family law and the activities of associated institutions. The issues raised in the stories directed our investigation in terms of understanding the behavior of various actors in the family law system, the interactions between different institutions, and the complex or unhelpful incentives or constraints that may have influenced outcomes for families. The stories guided our recommendations for reform, which ultimately centered on protecting the most vulnerable participants from harm.

Summary of complaints and issues

A number of these stories relayed dissatisfaction with particular actors within the family law system, and expressed frustration that their complaints about these actors had not been heard or acted upon. In an effort to ensure that these voices are heard and experiences acknowledged, while also respecting the privacy and safety of the contributors, we have produced a high-level, de-identified summary of the number of complaints made against categories of actors in the family law system, and the typical nature of those complaints.

In some cases, these complaints were directed at an individual and related to the personal experience of the contributor. In other cases, the complaints were framed more generally and related to the role of a particular type of actor within the family law system (e.g. lawyers). Many complaints related to the failings of the family court system and procedures as a whole.

It is important to note that, as these complaints were confidential and largely anonymous, they cannot be investigated or verified. However, the high number of submissions and the regularity of several common themes gives rise to serious concerns regarding the conduct of various actors in the family law system and the protection of vulnerable participants.

Subject of complaint	No. of complaints
Court system and procedures	504
Lawyers	239
Judges	236
Substantive law	193
Family report writers/family consultants	106
Independent children's lawyers	84
Child Support Agency	64
Police	48
Psychologists/psychiatric professionals	38
Child protection	37
Family dispute resolution practitioners	33
Registrars	21
Other court staff	14
Child contact services	12
Medical professional	4
Accountant	1

Complaints against...	Nature of complaints
<p>Court systems and procedures</p>	<ul style="list-style-type: none"> • Engagement with the family law system is emotionally and financially taxing. Many report that their engagement with the family law system ‘ruined their life’, leaving them financially destitute and alienated from their children. • One comment that having terminal cancer is less “distressing” than going through the family court • The system is biased: strong views on both sides that the system reflects gender bias — favouring mothers, according to some, or favouring fathers, according to others <p><i>Exacerbating conflict:</i></p> <ul style="list-style-type: none"> • Perception that the court system exacerbates conflicts and hostility between parents, that relationships and agreements would be more amicable if resolved out of court —e.g. “The system encourages parents to lie and creates conflict where none previously existed” • Inadequate focus on best interests of children • Expensive and slow; significant delays and multiple court dates affect welfare of children and their carers <p><i>Family violence:</i></p> <ul style="list-style-type: none"> • Very common: lack of safeguards to prevent litigants using the system to harass and abuse former partner • Very common: children, victims being placed at risk because family violence orders etc are not admissible evidence in parenting cases • Very common: General lack of awareness by judges, lawyers, court staff of family violence, trauma and mental health issues • Perception by persons who have experienced family violence that they must cooperate with perpetrators, agree to contact with children, make efforts to be friendly and speak positively about parenting capacity of perpetrator, or risk losing custody of children • Traumatizing questioning of persons who have experienced family violence in court, including by self-represented perpetrators

	<ul style="list-style-type: none"> • Failure to create safe spaces for persons who have experienced family violence, lack of sympathy by court staff <p><i>Enforcement and complaints</i></p> <ul style="list-style-type: none"> • Very common: lack of enforcement — orders, parenting plans not adhered to etc. Inadequate or no penalties for breaching orders. Police and child protection services not able to get involved in enforcement of parenting orders. • No penalties for perjury; No control over false allegations, proceedings influenced by accusations that are not proven; Perception that orders are made based on accusations of one party (with respect to violence, parenting capacity etc) without requirement to show evidence • No independent complaints system <p><i>Inadequate support services:</i></p> <ul style="list-style-type: none"> • Lack of support, information and feedback for parties, especially when self-represented • Lack of support for those who are excluded from legal aid but still cannot afford ongoing legal representation • Not equipped to deal appropriately with indigenous families, families with diverse cultural backgrounds, and families with complex needs (including mental illness, disability, substance addiction)
<p>Lawyers</p>	<p><i>Conduct:</i></p> <ul style="list-style-type: none"> • Too adversarial, aggressive, attacking other party, particularly when self-represented • Not acting in interests of clients; but rather self-interest • Incentivised to escalate or create disputes and animosity between parties, overly adversarial • Run up unnecessary costs • Act in breach of professional and ethical obligations • No independent complaints system; Complaints about members of the legal profession are not dealt with adequately <p><i>Competence:</i></p> <ul style="list-style-type: none"> • No competence or sensitivity to family violence, child abuse, trauma, mental health issues

	<ul style="list-style-type: none"> • Advise clients who have experienced family violence not to raise this during court proceedings, suggesting this will work against their interests; others suggest lawyers coach clients to raise unsubstantiated family violence claims • Do not adequately explain substantive legal issues and court procedures to their clients <p><i>Costs:</i></p> <ul style="list-style-type: none"> • Fees are excessive. Financing protracted proceedings in the family courts is leaving people destitute, limiting their ability to provide for their children.
Judges	<ul style="list-style-type: none"> • Unsympathetic, particularly to unrepresented litigants • Accused of “berating” parties • Display an inappropriate “mateship” and favouritism towards counsel • No time to read documents, affidavits etc • Lack of training, competence in family law and especially family violence matters; inappropriate handling and comments to clients • Bias with respect to: gender, race or self-representation • Failure to address or acknowledge non-compliance with orders • Not accountable. Complaints about judges are not appropriately investigated. • Do not impose consequences for perjury • Make orders that put children at risk of harm, or are otherwise not in the best interests of children • Allegations of child abuse and family violence are not dealt with appropriately. Some report evidence of abuse and violence being ignored or dismissed, putting children and persons who have experienced violence at risk of harm. Others report unsubstantiated allegations being accepted without appropriate investigation.
Substantive law	<ul style="list-style-type: none"> • Law on property division is overly complicated and does not facilitate fair results • Law governing the making of parenting orders is unfair and facilitates parental alienation • Too much discretion in the system leads to prolonged and adversarial disputes

	<ul style="list-style-type: none"> • Lack of guidelines, model parenting orders etc waste a lot of time, money, escalate conflicts that should be easier with guides
Family report writers/family consultants	<ul style="list-style-type: none"> • Biased or prejudiced towards one party • Not spending enough time with each party and the children • Do not provide accurate or complete picture of family's circumstances • Not taking views of children into account • Complaints that they would not share reports with parties • Inadequate training, competence with respect to mental health, family violence, child abuse etc; generally ill-equipped for their role • Inappropriate behaviour in interviews, bullying and harassing interview tactics, no awareness or sensitivity of trauma and triggers • Not acting in best interests of children • Repeated interviews with family report writers or other professionals can be harmful for children
Independent children's lawyers	<ul style="list-style-type: none"> • Biased • Do not spend enough time with parties/children; do not listen to parents • Lack of understanding of family violence, mental health, disabilities • Inappropriately adversarial • Not acting in best interests of children
Child Support Agency	<ul style="list-style-type: none"> • Harassment of party required to pay support • No independent or merits review of decisions • Not cooperating with police where warrant for arrest of one parent • Unfair/unexplained fees and charges • Inadequate data protection policy and processes • Perception that CSA incentivises parents to violate parenting orders in order to receive more money from CSA; Enforcement of child support obligations in respect of abducted children is unfair. • Child support amounts are not calculated fairly

	<ul style="list-style-type: none"> • CSA does not have sufficient powers to verify the finances of relevant persons, which results in inaccurate child support assessments.
Police	<ul style="list-style-type: none"> • Lack of competence or sensitivity to family violence, trauma, mental health issues
Psychologists/psychiatric professionals	<ul style="list-style-type: none"> • Court-appointed psychologists/counsellors – lack training, biased, do not spend enough time with parties before making assessments, complaints that they would not share reports with parties • Conflicts of interest
Child protection	<ul style="list-style-type: none"> • Perceived to punish parents for reporting family violence by removing children • Adding pressure to women to stay in abusive relationships to avoid losing children, becoming homeless
Family dispute resolution practitioners	<ul style="list-style-type: none"> • Biased • Mediators are ineffective in facilitating agreement • Vulnerable parties are not adequately protected in mediation
Registrars	<ul style="list-style-type: none"> • Biased • Unsympathetic to unrepresented litigants • Did not read material presented by parties • Made inappropriate comments to parties
Other court staff	<ul style="list-style-type: none"> • Lack of awareness/sensitivity/competence in relation to family violence
Children’s contact services	<ul style="list-style-type: none"> • Charge high fees for supervised visits, which can be prohibitive for some parents • Staff behaved unprofessionally and unethically • Inadequate avenues for complaints in respect of private operators