**“So, what can I do?**

***Western Sydney Community Legal Centre***

***Submission to the Australian Law Reform Commission – Family Law Review***

**Introduction**

Western Sydney Community Legal Centre (WSCLC) is a non-profit community organisation. We are funded by state and federal government bodies (for example the Attorney General’s Department), and by non-government bodies, such as Macquarie University and Western Sydney University. We provide free general legal advice in various areas of law including Family Law and Domestic Violence. WSCLC also plays an important advisory and referral role. WSCLC formed in mid-2016 with the merger of three existing Community Legal Centres: Hawkesbury Nepean Community Legal Centre, Macquarie Legal Centre, and Mt Druitt and Area Community Legal Centre. WSCLC now brings the combined experience and expertise of these three CLCs to our work serving the community.

We seek to deliver legal services and support to disadvantaged people in the community who may otherwise not have equitable access to the legal system. We are making this submission on the Family Law Review being conducted by the ALRC because of our experience and interactions with those accessing the Family Law from the most disadvantaged sectors of the community, and we hope that through this submission, we may assist the ALRC in making changes to the *Family Law Act 1975* (Cth) that are meaningful, significant and effective to those that need them the most.

As a legal centre, we have chosen to address the questions that accompanied the Issues Paper which we believe to be the most relevant to our areas of expertise and experience. We have chosen to address each question by expressing our points of agreement or difference with proposed solutions to each question, and by providing an accompanying de-identified real-life story that illustrates either the solution or the need for the solution as expressed. We hope that in doing this, the ALRC will better be able to take into account the experiences of those interacting with the family law system every day, the challenges they face as people, and the challenges we face as those trying to help them.

**Submissions**

*Objectives and Principles*

**Question 1** What should be the role and objectives of the modern family law system?

We agree that the objectives that best express the appropriate roles and functions of a contemporary family law system are found in the statement that, “*a modern family law system has a number of key functions, including advancing the safety, healthy development and economic support interests of children, protecting adult rights to physical safety and equitable distribution of resources, and regulating the processes for resolving post-separation problems to ensure they are affordable and cost-effective*.”

From this statement, such objectives may be:

* Advancing the rights of the child as enshrined in the Universal Declaration of the Rights of the Child;
* Advancing the safety, development and overall wellbeing of the child;
* Protecting adults from ongoing threats to their physical, emotional or psychological wellbeing as distinctly present from intimate relationships; and
* Regulating process for resolving post-separation problems.

**Question 2** What principles should guide any redevelopment of the family law system?

We would agree with the addition of the principles set out at paragraph 44 of the Issues Paper to s.43 of the *Family Law Act* as being principles that should be applied by the courts in the exercise of their jurisdiction. We would suggest that two further principles should be considered due to their importance, that the family law system should:

* Afford dignity to those accessing its processes, and
* Foster public awareness of the ways in which decisions can and will be made.

*Access and Engagement*

**Question 3** In what ways could access to information about family law and family law related services, including family violence services, be improved?

We would suggest that the court websites as they currently are, are an invaluable source of information for clients, though they are ‘clunky’ to navigate through. We would suggest that as every set of proceedings is different, it is understandable that there is limited information regarding proceedings and processes of the courts. However, a centralised source of information would make information about such matters more accessible.

In our experience, we have developed information sheets regarding likely timelines for court proceedings and the processes accessed within these, but only to be used in conjunction with legal advice in recognition of the difference in proceedings for each family. The Legal Aid website, Best For Kids, is in our experience very helpful and useful in addressing these issues for both parents and children. Victorian Legal Aid have also developed some very helpful resources that are readily accessible for both clients and professionals. It would be our submission that access to such information could be improved by a strengthening of the training given to lawyers about their obligations to disseminate and provide such information.

**Question 4** How might people with family law related needs be assisted to navigate the family law system?

We would welcome the introduction of ‘navigators’ to the family law system, as such a service would enable the triaging and linking with needed services for families from the very beginning of their engagement with the family law system. We have found the FASS to be highly effective for clients in this regard. We would suggest that the appropriate venues for such ‘navigators’ would be in both Family Relationship Centres and the family law courts.

**Question 5** How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

We agree with the recommendation made by the SPLA Committee that the Australian Government should, as a matter of urgency, implement the Family Law Council’s recommendations from its 2012 report, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, as well as the Council’s additional recommendations in its 2016 report on families with complex needs as they relate to Aboriginal and Torres Strait Islander families.

We also agree that the family law system needs to better understand and respond to the family violence experienced by Aboriginal and Torres Strait Islander families and suggest it may be able to do so by following the abovementioned recommendations. We would also promote the expansion of the Indigenous List offerings to at least the Parramatta registry, as this list goes a long way to supporting Aboriginal and Torres Strait Islander peoples.

**Case study:** An Aboriginal father and mother came to the centre regarding the fact that their 2 month old daughter had been permanently removed from their care by a maternal uncle without their consent. Complicating factors were also that the father is the mother’s registered carer as the mother has an intellectual disability. They had engaged in a mediation with the uncle, but that process was undermined by the fact that the uncle refused to proceed with the mediation with both the father and the mother present. The mediation proceeded with just the mother, who made agreements to things that were manifestly unreasonable. When they first engaged with our centre for legal advice, they had no idea that they were able to request the court make orders about their family. Our centre is now helping them to access the court system through the Indigenous List, but it is complex needs such as these that demonstrate why accessibility for Aboriginal and Torres Strait Islander people needs to be improved.

**Question 6** How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?

We recognise greatly the acute need for the family law system to be made more accessible for those from culturally and linguistically diverse communities in our work. We support the recommendations made by the Family Law Council in 2012 to address this issue. We also welcome the CALA pilots being funded and run across the country and look forward to seeing this become a norm in the way that family dispute resolution is approached for those from culturally and linguistically diverse communities.

**Question 7** How can the accessibility of the family law system be improved for people with disability?

We agree that there is a lack of understanding in the family law system, and amongst those who professionally work within it, about disability and the impact this has on those accessing the family law system. We would support the suggestions made at paragraph 83 of the Issues Paper, as recommendations that have potential to ameliorate this situation.

**Case study**: A deaf client recently accessed our centre’s services in relation to obtaining passports for children without both parents’ signatures. This client had a complex situation regarding her and the children’s citizenship which required engaging with both the Passports Office and the Department of Home Affairs to understand what was required before even getting to the family law aspects of her situation. The lawyer assisting her was able to have conversations with these different agencies, but did not know sign language, and so had to conduct meetings with the client writing down conversations on a note pad. While the lawyer was able to advise on the correct pathway for the client to take in relation to her matter, the process to deliver this advice was protracted and frustrating for the client, who related her frustrations at having tried to engage with all these agencies by herself before coming to the centre for advice.

**Question 8** How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

The ALRC *Issues Paper* raises the problem of a lack of knowledge by family law professionals regarding LGBTQI experiences, and the barriers to justice they face in the family law system (paragraph 281, pg. 82-83). One way the accessibility of the family law system could be improved for LGBTQI+ people is through better recognizing gender and sex diversity in administrative systems. One way of doing this would be to ensure that there are alternatives to ‘male’ and ‘female’ options wherever the sex or gender of individuals is requested on forms and in databases.  This could occur through providing a blank space for people to communicate their sex or gender, rather than providing them with limited (for example, only male or female) options to pick from. Asking individuals for their preferred pronouns (for example, ‘he’, ‘she’ or the gender- neutral pronoun ‘they’) when collecting and noting demographic data, would also ensure that gender diverse clients can feel safe and respected when interacting with the family law system (including in courts and with family law solicitors). There is a notable section of the LGBTQI+ community who identify as gender non-binary (meaning they do not identify as purely either male or female). Changes to administrative systems as outlined above would better accommodate these individuals.

We support the recommendation made in the *SPLA Family Violence Report* (referenced in paragraph 92, page 32, of the ALRC *Issues Paper*) that family law professionals should attend LGBTQI awareness training. We would strongly support this idea, so that family law professionals have a good working knowledge of the identities that make up the LGBTQI+ acronym, and the kinds of issues faced by this community. It would also be beneficial for family law professionals to be encouraged by managerial staff to attend conferences and presentations on LGBTQI+ rights and the law, so they have a better understanding of this community and the concerns it still faces.

**Question 10** What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

It is simply unacceptable that families should expect costs of upwards of $100,000 to bring their family law matters to the court, particularly with the data supplied by the Australian Institute of Family Studies regarding the median personal income of separated parents. In the work our centre does, we are constantly aware of the financial stress and burden caused by these proceedings, particularly in cases affected by family violence and an inability to qualify for Legal Aid due to owned but inaccessible assets such as a family home.

We would support suggestions to expand the availability of low-cost services such as FDR, but stress that for some families, especially those with a history of family violence, the certainty of court orders is paramount, and therefore it is not enough to simply expand access to FDR, or ‘unbundle’ services, but the ALRC should be looking to reduce actual court costs where they are prohibitive to those that need the court’s assistance the most accessing those services at all.

**Question 11** What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?

We agree that the changes proposed at paragraph 117 would go a long way to improving accessibility to court procedures for self-represented litigants. Further to this, moving towards more inquisitorial features such as Counsel Assisting is also a change our centre would support as necessary to improve accessibility. Court procedure may also be able to incorporate information or education sessions as mandated at the outset for those the court’s registry understand to be self-represented to help such self-represented litigants understand what to expect. This could possibly look like a tender process to various community legal centres to run CLE seminars at the court at various times addressing specific stages of the court procedure.

**Question 12** What other changes are needed to support people who do not have legal representation to resolve their family law problems?

We would recommend the instigation of compulsory legal information seminars regarding accessing the family law court system to endeavour to support people who do not have legal representation to understand the structures and procedures in which they are engaged. We would also suggest the expansion of the service model our centre uses whereby clients are assisted in the creation and filing of documents, and from filing, are supported to represent themselves in court through conferences with a solicitor both before and after court and other critical dates.

**Question 13** What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

We agree with the concerns raised about the court environment, as set out at paragraph 119, and also agree with the recommendations made by the Victorian Royal Commission into Family Violence to resolve these concerns. We further support the concept of ‘dynamic security’ but suggest that security systems and safe areas need to be approached with the gravity of the reason they are there; to keep victims of domestic and family violence safe.

*Legal Principles in relation to parenting and property*

**Question 15** What changes could be made to the definition of family violence, or other provisions regarding family violence, in the *Family Law Act*to better support decision making about the safety of children and their families?

We agree that changes to the definition of family violence within the Act could better support decision making about the safety of children and their families. However, we would stress that removing the presumption of equal shared parental responsibility would not in and of itself make families safer and would cause actual detriment to the families that benefit from the existence of that presumption. We would further highlight that creating a separate dedicated pathway for those families experiencing family violence would also not make families safer, as this is the experience of the majority of families accessing the family courts. We would suggest that this issue would be better addressed by training and awareness of the professionals and judicial staff involved in the family law system, as discussed at questions 41 to 44.

*Resolution and Adjudication Processes*

**Question 20** What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

We wholeheartedly agree with the concerns raised within the Issues Paper regarding the time delays and costs associated with them. We would also emphasise the point made about the safety risks to parties that are created by this delay and would suggest that this makes this question more pressing.

While we agree with the suggestions made about ways to resolve this issue, we would further suggest that the funding and appointment of additional judges and staff would go a long way to addressing the time delays which are the root of many complaints we receive about the system.

**Question 25** How should the family law system address misuse of process as a form of abuse in family law matters?

We wholeheartedly agree with the issues raised under paragraph 190 of the Issues Paper in relation to the ways that the family law system and its processes are misused, and further agree with the characterisation of such misuse as a form of abuse.

We would support the amendment of the definition of family violence within the Family Law Act to include such misuse of process as a form of abuse, and the strengthening of the ability of the courts to order penalties where this form of abuse is identified. We would also encourage the further use of the court’s ability to summarily dismiss proceedings that are found to be frivolous, vexatious or an abuse of process, and the restriction of appeals where such an abuse of process is found.

However, we would point out that all these processes require the instigation and engagement of the court process in the first place, and that this is what traumatises people to begin with. We would suggest that a preliminary informal process be instigated to test merits in family law proceedings, to further assist those who are victims of such abuse to not have to fully engage with a process that only later may be found to be to their detriment.

**Question 28** Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?

We agree that there are accessibility issues for clients who are simply seeking to sort through their family law matters themselves through family dispute resolution. We would support further inquiries into the making of such services more accessible through different means, but would stress that the reality for many of our clients is that access to a computer, reliable internet and/or a telephone is not the norm, and therefore would encourage the ALRC to consider that were such services as the Justice42 tool to be implemented in Australia, they should not be seen as particularly able to make such services more accessible to those who are already disadvantaged within the community.

We would therefore encourage the ALRC to consider that, as part of the possible expansion of FDR services, centres such as family relationship centres should be equipped with accessible computers, internet and telephone lines in private rooms to allow those who otherwise could not access these tools to do so.

*Integration and Collaboration*

**Question 31** How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

As a centre, we have found that we are continuously looking to work with those in the sector around us to ensure the best outcomes for our clients, as while we may only work in one area that is relevant to a client, client families often present with multiple needs that aren’t experienced in isolation from each other. Supporting the work of family relationship centres and seeking to enhance their ability to respond to such complex needs is vital in this area of law. Also supporting the work of Health Justice Partnerships and encouraging the integration of services through funding incentives would improve the availability of such services, and therefore the ability to better assist client families with complex needs.

**Question 32** What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

We agree with the problems that the Family Law Council identified as set out in paragraph 242 of the Issues Paper. We would support the creation of a national family and child protection system, and the development of digital hearing processes to reduce the need to families to physically attend different court locations.

We would further suggest that perhaps the role of a ‘navigator’ should not be considered as only appropriate to the family court and should perhaps begin at the point of origin for many of these families, which is the local courts. Therefore, families would be getting the support they need from the beginning.

**Question 33** How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

We agree with and have experienced ourselves, both professionally and through our client’s experiences, the frustration of the limited extent that these systems are able to work together and information share.

We wholeheartedly agree with the list of recommendations made by the Family Law Council and as set out at paragraph 249 of the Issues Paper. We would suggest that the benefits of such a system would outweigh any perceived negatives, such as privacy and conflicts, which are already managed by those of us with shared systems.

*Professional skills and wellbeing*

**Question 41** What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

We would suggest that the core competencies that should be expected of professionals who work in the family law system include those set out at paragraph 281 of the Issues Paper;

* understanding the nature and dynamics of family violence and child sexual abuse and their impact on children, including knowledge of the ways in which perpetrators of family violence can use the family law system to continue abuse;
* understanding the impacts of trauma on clients and an ability to practice in a trauma-informed way;
* the capacity to identify risk, including the risk of family violence and risk of suicide;
* cultural competency, including an understanding of Aboriginal and Torres Strait Islander kinship systems and child rearing practices and the particular experiences of family violence of Aboriginal and Torres Strait Islander peoples, and an understanding of the experiences and access to justice barriers affecting clients from culturally and linguistically diverse backgrounds, parents and children with disability, and LGBTIQ clients and families; and
* knowledge of the intersections of the family law, child protection and family violence systems.

These competencies are essential to be able to adequately and properly respond to the experiences and concerns of clients in the family law context. We would suggest that measures needed to ensure that family law professionals have and maintain these competencies, in the context of legal practitioners, should be mainly focused in continuing professional development requirements and training opportunities, to ensure that all practitioners are qualified and trained in these areas, not only accredited specialists.

**Question 43** How should concerns about professional practices that exacerbate conflict be addressed?

With regards to concerns about legal practitioners that exacerbate conflict within the family law context, perhaps specific complaints avenues relating to family law matters could be set up through state’s Legal Service Commissioners, giving clients a specific forum in which to be heard about these matters, but also enabling better data collection on areas in which professional skills are lacking, which would enable targeted training moving forward.

**Question 44** What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?

We support the use of organisational well-being programs and agree with and recognise the toll of vicarious trauma in the work carried out by family law system professionals and judicial officers. As a centre, we agree with the approaches to ensuring staff wellbeing as set out at paragraph 293 of the Issues Paper, and welcome the example of programs such as “Well at Work” as guides of how to promote the wellbeing of professionals and judicial officers who work in the family law system.