

8 May 2018

The Executive Director  
Australian Law Reform Commission  
Email: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)

## **QCOSS Submission to the Australian Law Reform Commission Review of the Family Law System**

### **Introduction**

Queensland Council of Social Service (QCOSS) is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector. For more almost 60 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all people and communities in the state.

Thank you for the opportunity to provide a submission in response to the Australian Law Reform Commission Review of the Family Law System Issues Paper. QCOSS has consulted with members of its Child and Family Policy and Advocacy Network in preparing this submission.

### **Summary**

QCOSS has found that Australia's Family Law System is not meeting the needs or expectations of couples that separate, families, parents, children or young people. Thousands of Queensland families come into contact with the Family Law System every year. Many people face barriers to access due to complexity and costs, the system exacerbates conflict, and a significant amount of people experience ongoing safety and wellbeing issues.

The **principles that should guide the redevelopment of the family law system:**

- safety and wellbeing of individuals, families, children and young people is paramount
- everyone in a family that is affected by a decision has a voice
- courts are used only to test an outcome, not to arrive at it.

The **role and objective of the modern family law system** should be to:

- create a platform for couples to separate and move forward with their lives
- provide people with trust and confidence that the system works, that it is fair, inclusive and designed around the wellbeing of individuals, families, children and young people impacted by separation and divorce
- where children are involved, to provide a safe environment where the child, children or young people can thrive and parents are supported to be the best parents they can be, whether the child, children or young people live with them or not
- help and educate people so they better understand the legal implications of being in a relationship and what happens if that relationship ends

- work with users to co-design online tools, or other services, that can be used to guide people through the process of separation and divorce, work out how property and finances should be dealt with, and to lodge applications with the court if necessary
- provide more intensive support and assistance to people who need it, provide case management to deal with all issues relevant to the separation, and link people to other service systems and supports.

## Context

In 2016 there were 1,221,148 families in Queensland. Of these families:

- 481,451 or 39.4 per cent were couples with no children
- 518,494 or 42.5 per cent were couples with children
- 201,308 or 16.5 per cent were one parent families.

Approximately 15 per cent of all couples living together were de facto couples, almost one per cent were same-sex couples and according to the 2011 Census, almost one per cent of all families were grandparent families.

There were 10,890 divorces granted in Queensland in 2016. The median length of a marriage to separation was 8.9 years, and marriage to divorce was 12.4 years. About half of all of the divorces in Queensland in 2016 involved children.<sup>1</sup> According to the Family Characteristics Survey (ABS 2012-13), following separation or divorce:

- 51 per cent of children lived solely with one parent (resident parent)
- 16 per cent of children spent fewer than 35 nights with their non-resident parent
- 11 per cent of children spent at least 110 nights with their non-resident parent.

## Issues

### Australia's family law system is complex and costly

Unlike many of Australia's social services that are delivered by government or community-based organisations, Australia's family law system generally requires individuals to engage directly with the legal system. Even separating couples who come to an informal agreement about the division of assets, debt and parenting responsibilities are encouraged to get legal advice and formalise their agreement through consent and parenting orders.

If people need help to come to an agreement they can access family dispute resolution services. However, family dispute resolution cannot work unless each person involved agrees. If one person refuses to go, they may need the court to sort out the dispute. Most information and guidance about separation and divorce encourages people to get legal advice. You can only apply for a divorce at the family law courts after you have been separated for at least 12 months. It will usually take several months for the divorce to become final.

Legal advice and advocacy in relation to family law matters ranges in cost from about \$200 to \$550 per hour. Legal Aid Queensland charges a maximum fee of \$959 for an

---

<sup>1</sup> Table 11 Selected divorce indicators, States and Territories of registration(a), 2016, 3310.0 - Marriages and divorces in Australia, 2016, Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3310.0>

initial family dispute resolution conference which includes the preparation and filing of consent orders.

The recurrent government expenditure per finalisation of cases in the family courts and the Federal Circuit Court of Australia in 2016-17 ranged from about \$1,700 in the Federal Circuit Court to \$2,700 in the Family Court of Australia. Ultimately much of this cost is recovered through court fees. For example, it costs \$865 to file an application for divorce in the Federal Circuit Court of Australia.

The time taken to resolve matters in court is one indicator of just how complex the system is. As at June 2017, almost 40 per cent of civil cases in the Queensland Magistrates' and Children's Courts, were more than six months old, and approximately 20 per cent were more than 12 months old. In 2016-17, almost 50 per cent of all civil cases in the Queensland Supreme Court, and almost 60 per cent of all civil cases in the Queensland District Court, took longer than 12 months to finalise.<sup>2</sup> For most people, it takes 3.5 years to get divorced.<sup>3</sup>

In its narrowest sense, Australia's family law system provides a legal framework to determine what happens when a relationship ends and a couple decide to separate.

In its broadest sense, it is a complex maze of services, supports and legal processes that attempt to provide separating couples and parents with a way to come to an agreement about matters relevant to their separation. If they cannot agree, it also provides a mechanism for the court to make a decision about what should happen for them. The family law system creates complexity and uncertainty by not providing simple advice and guidance, pushing people to get independent legal advice. The family law system also intersects with a range of other legal and service systems including domestic and family violence, mental health, child protection, child support, income support, housing, and drug, alcohol and gambling supports.

This complexity causes lengthy drawn out processes and high costs, and in turn can add to emotional and financial stress. More work should be done to ensure that people understand the legal implications of being in a relationship and what happens if that relationship ends. People have very little understanding of what a good and fair outcome looks like. More work needs to be done to share case studies to be used as guidance in forming a post separation agreement. Online tools and calculators could also help resolve matters without exacerbating conflict. The system needs to make more pragmatic decisions, be timely, and be individual, family and child centered.

**Recommendation 1: The family law system should be simplified.**

More self-help options are needed to provide clarity and certainty for families without the need to go to court or engage lawyers – recognising the spectrum of post-separation couples from those that want to and can work it out themselves and those who cannot.

**It exacerbates conflict**

The family law system is not people centered. It creates enforceable rights and obligations following the end of a relationship and provides very little practical support for people to reach an agreement without legal assistance.

---

<sup>2</sup> Chapter 7 Courts, *Report on Government Services 2018*, website [www.pc.gov.au/rogs/2018](http://www.pc.gov.au/rogs/2018)

<sup>3</sup> Chapter 7 Courts, *Report on Government Services 2018*, website [www.pc.gov.au/rogs/2018](http://www.pc.gov.au/rogs/2018)

Most legal disputes outside of the family law system are based on an agreement of some sort, set out in a contract or evidenced by a financial transaction. Most times, people work it out between themselves. They can look to the agreement for guidance, or rely on their general understanding of the law to resolve the dispute without having to go to court.

Unlike other legal disputes, a couple rarely has a clear and shared understanding of what should happen if they decide to end the relationship. Family relationships are not clear on their terms and the law does little to help resolve this. When the rules aren't clear, people are more likely to feel that they are not getting a fair go, they may not understand what needs to be decided, how decisions should be made, or raise issues that are not relevant or material, and as a result, disputes are more likely to arise.

A survey of separated parents in 2016 revealed that parents who demonstrate some degree of parental cooperation, and who focused on the interests and preferences of their children, were generally able to avoid disputes.<sup>4</sup> Common sources of conflict between parents included different parenting values and styles, drug and alcohol misuse, domestic and family violence, relocation and re-partnering, the link between child support and contact, and unresolved relationship issues. Having a child focused approach and bringing a child's voice into the decision-making process was found to be one of the most effective ways for resolving parenting disputes.<sup>5</sup>

The system should be redesigned around the people that use it instead of a system designed around the application of the law.

**Recommendation: The family law system should be about people.**

The family law system should be reformed to take the fight out of the system.

### **Safety and wellbeing**

In 2016-17, there were 32,300 cases involving an application for a domestic or family violence related protection order finalised in the Queensland Magistrates' courts.<sup>6</sup> These cases make up more than half of all finalised cases involving an application for a domestic or family violence related protection order in Queensland. A survey of separated parents in 2016 found that issues relating to violence and child safety were apparent in 14 per cent of responses.<sup>7</sup> Women are more likely to report issues involving domestic and family violence.

The Family Law System in and of itself creates safety and wellbeing risks including the time taken to resolve family law matters, the inability of the system to adequately value children's views and experiences, the imbalance of power that results from domestic and family violence, or financial capacity. Sustained engagement with a violent partner in a situation that exacerbates conflict and stress could put people at risk of post-separation violence. It could also lead to instability and uncertainty for children.

---

<sup>4</sup> <https://aifs.gov.au/publications/understanding-parenting-disputes-after-separation/2-analysis-caring-children-after-parental-separation-study>

<sup>5</sup> <https://aifs.gov.au/publications/understanding-parenting-disputes-after-separation/3-practitioners-experiences-parenting-disputes>

<sup>6</sup> Table 7.4, Chapter 7 Courts, *Report on Government Services 2018*, website [www.pc.gov.au/rogs/2018](http://www.pc.gov.au/rogs/2018)

<sup>7</sup> <https://aifs.gov.au/publications/understanding-parenting-disputes-after-separation/2-analysis-caring-children-after-parental-separation-study>

The system should not require people to tell their story repeatedly, in family dispute resolution processes, their lawyer, the courts, family services and other government agencies. There should be other, less confronting ways to ensure a decision maker has the information they need to make an assessment.

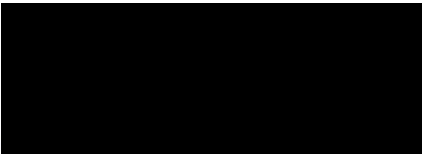
**Recommendation: Services should be holistic and trauma informed.**

Decisions should be informed by the past but be future focused, centered on the future wellbeing of individuals, children, young people and families. Trauma informed practice should form the basis of the family law system. The family law system should also be viewed in a broader context of services for individuals, families and children.

## Conclusion

There is a clear case for reforming Australia's family law system. It is too complex, costly, drawn-out, it exacerbates conflict and creates safety and wellbeing risks for all involved. The system needs to focus on the wellbeing of individuals, families, children and young people that are impacted by separation and divorce. This cannot be achieved within the current adversarial and fractured support system. Holistic reform is needed looking at the end to end needs of families going through change, not just the application of the family law act, but also the supports and services.

Yours sincerely



Mark Henley  
Chief Executive Officer