



ALS

Aboriginal Legal Service (NSW/ACT) Limited

1 June 2018

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

By email: familylaw@alrc.gov.au

Dear Ms Wynn,

Review of the Family Law System

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**). The ALS thanks the Australian Law Reform Commission (**ALRC**) for the opportunity to provide a submission in relation to the review into the Family Law System (**FLS**).

The ALS is the peak legal services provider to Aboriginal and Torres Strait Islander men, women and children in NSW and the ACT. We write broadly in response to the following items in the Terms of Reference:

Access and engagement

Question 5 How can the accessibility of the FLS be improved for Aboriginal and Torres Strait Islander people?

Question 9 How can the accessibility of the FLS be improved for people living in rural, regional and remote areas of Australia?

Resolution and adjudication processes

Question 21 Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

Question 26 In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?

Question 30 Should family inclusive decision-making processes be incorporated into the FLS? How could this be done?

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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?

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

Professional skills and wellbeing

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

Question 42 What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

This submission is made in relation to NSW/ACT only and is informed by community feedback gathered via a survey on the FLS which was circulated through ALS networks and online, as well as the views of ALS staff working in the family law system.¹ The ALS received 241 responses to its survey. The vast majority (86%) of survey respondents identified as Aboriginal or Torres Strait Islander. A majority of survey respondents identified as female (79%). The majority of respondents live in a large city in NSW/ACT (45%), with 30% of respondents living in a medium size city/town and 24% living in a rural or remote towns/community. The survey included a combination of Yes/No and short answer responses relating to the questions in the Terms of Reference. The survey was online and in circulation from 2 – 21 May 2018.

64% of the survey respondents indicated that they or their family had experience with the FLS. This submission is based on an analysis of the content acquired through the survey and other direct feedback and is complemented throughout with direct quotes from the short answer responses in the survey.

The number of survey responses demonstrates the high level of engagement Aboriginal people wish to have with this review and provided the ALS with important feedback on the barriers faced by Aboriginal people in accessing the FLS and potential ways to overcome those barriers when dealing with issues of family law and children's issues. The survey responses also indicate the community's extremely strong desire for Aboriginal-specific strategies to encourage Aboriginal people to use the FLS, using culturally appropriate court processes such as the Indigenous List, mediation, conciliation, education and cultural competency training.

We strongly encourage Government at all levels to partner with Aboriginal people and Aboriginal community-controlled organisations in order to lead efforts to address and overcome the obstacles and barriers that many Aboriginal people face in accessing the FLS, and access to justice generally. Our communities need culturally safe solutions, which, if properly implemented, could lead to better future outcomes for Aboriginal families and their children.

We note the resounding call from our communities for:

1. An expansion of the Indigenous List, which the ALS advocated for in 2013, both in terms of resourcing and location, because it is working well and is so highly regarded by clients and practitioners alike.

¹ A copy of the survey questions is attached to our submission.

2. Therapeutic jurisprudence and problem solving courts, so that families are not forced to navigate the legal and administrative complexities of differing State and Federal bureaucracies, repeating their stories time and again (often re-traumatising people in the process) in order to obtain decisions (legal or otherwise) and wrap-around services that families need to heal and prosper.
3. An Aboriginal mediation service as part of FLS early intervention strategies in order to help our communities reach agreement (in appropriate cases) about family and children's matters without having to resort to litigation.
4. Greater community and information and resource sharing by Government agencies working in mutual respect and partnership with Aboriginal community-controlled organisations to understand and access the FLS.

In particular the ALS seeks that the Australian Government work with FLS service providers and Aboriginal and Torres Strait Islander organisations to develop a range of family law strategies for Aboriginal people relating to:

1. Providing quarantined funding for family law service provision to NATSILS
2. Expansion of the Indigenous List across all of NSW, and nationally
3. Implementation of a national Aboriginal mediation service
4. Greater Community Legal Education
5. Promoting Cultural Competency
6. Build Collaboration and Enhancing Service Integration
7. Early Assistance and Outreach to assist Aboriginal and Torres Strait Islander families experiencing relationship difficulties and parenting disputes
8. Building an Aboriginal and Torres Strait Islander Workforce in the FLS
9. Funding further Aboriginal Family Consultants and Aboriginal Liaison Officers (identified positions) to assist the family law courts to improve outcomes for Aboriginal and Torres Strait Islander families
10. Enhancing Access to Court, Legal and Family Dispute Resolution Services for Aboriginal and Torres Strait Islander peoples, including in regional and remote areas throughout Australia.
11. Appropriate culturally secure family assessment reports and cultural plans based on based on the Aboriginal and Torres Strait Islander Child Placement Principles to assist child-focused decision-making in courts and to clarify the cultural obligations of family members in growing up an Aboriginal or Torres Strait Islander child and their importance to maintaining the child's ongoing connection with kinship networks and country

We look forward to working with you and thank you for the opportunity to contribute to this review. Should you require any further information about this submission, please contact our Senior Law Reform and Policy Officer Julia Grix via [REDACTED]

Yours sincerely,

[REDACTED]
Lesley Turner
Chief Executive Officer
Aboriginal Legal Service (NSW/ACT) Limited

Background

The vast majority of the work carried out by the ALS is in the criminal justice system.² However, it is a sad reality that many of our broader clients have complex family and children's legal issues.

In addition, the ALS performs significant work in the areas of care and protection and family law, despite considerable resourcing and operational constraints. There is clearly an identified need to increase these services and the ALS is committed to enhancing our service delivery to Aboriginal communities in NSW and the ACT.

Approximately 1.5-2% of the people who use the FLS are Aboriginal people. As a percentage of overall users this figure is disturbingly low.³ Given that Aboriginal and Torres Strait Islander peoples make up 2.4% of Australia's population, this figure shows that Aboriginal people are significantly under-represented in the FLS.⁴ Why might this be? It is unlikely that Aboriginal people have relationships that are immune from the same sorts of breakdowns as other groups in Australian society. If anything, based on current statistics, Aboriginal men, women and children are over-represented in the justice system, the Out of Home Care (OOHC) system, and family violence. It would therefore not be unreasonable to expect to find that Aboriginal people are (if anything) over-represented in the FLS given the multi-faceted issues that stem from family and relationship breakdown. These include costs associated with mental health, human and welfare services, loss of productive output, as well as indirect and more hidden costs involving education, family violence and abuse, wellbeing, and marginalisation. In the view of the ALS, the fact that the numbers of Aboriginal people using the FLS is so low is symbolic of stymied or hidden need, and not lack of demand.

Disturbingly, Aboriginal women now represent 34% of Australia's female prison population, and is the fastest growing prison cohort. The vast majority of these Aboriginal women are mothers or primary caregivers of children. This ties in with a spiralling and alarming over-representation of Aboriginal children in OOHC – which is 10.8 times the rate of non-Aboriginal children.⁵

² In the 2016-2017 reporting year the ALS appeared in 1,260 legal cases and court representations in the Care and Protection/Family Law jurisdiction, with 370 provisions of legal advice and minor assistance.

³ Ralph, Stephen, *Indigenous Australians & Family Law Litigation: Indigenous perspectives on access to justice*, 2012 pp9-10

⁴ <https://www.australia.gov.au/about-australia/our-country/our-people> accessed 28 May 2018

⁵ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples*, ALRC report 133, available at https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf accessed 30 May 2018, pp161-163. In 2016:

- around 20 in every 1,000 Aboriginal and Torres Strait Islander people were being jailed;
 - Aboriginal men are 14.7 times more likely to be jailed than non-Aboriginal men;
 - Aboriginal women are 21.2 times more likely to be imprisoned than non-Aboriginal women;
 - Total costs of Aboriginal incarceration in 2016 were \$3.9 billion, with associated costs increasing it to \$7.9 billion.
- The Redfern Alliance Statement (a statement published in 2016 by a coalition of Aboriginal and non-government organisations available at <https://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-Final.pdf>) notes pointedly that when the *Bringing Them Home* report into the Stolen Generations was released in 1997, Aboriginal and Torres Strait Islander children represented one in every five children living in out-of-home care. In 2016, they were one in every three. Despite numerous legal and policy frameworks protecting the rights of Indigenous children, the rate of Aboriginal and Torres Strait Islander children in out-of-home care is almost ten times that of other children, and continues to grow. The rate of overrepresentation has escalated by 65 per cent since the 2008 Apology, with Aboriginal and Torres Strait Islander children then representing over 35 per cent of all children in out-of-home care in Australia. The Redfern Alliance Statement attributes this reality to the widely recognised failure of culturally appropriate early intervention and child protection systems to embrace evidence-based holistic strategies, attuned to the needs of our families.

Yet despite these statistics, Aboriginal people's formal engagement with the FLS does not statistically reflect the Aboriginal population as a percentage of the broader Australian population as a whole.

Cuneen and Schwartz make the observation that it is important to recognise that the legal needs of Aboriginal clients are often more complex than those of other clients and that many Aboriginal clients are a particularly disadvantaged group to work with, due to issues including numeracy and literacy, disability, self-harm, the effects of childhood removal and drug and alcohol issues. Thus the legal needs of Aboriginal clients are complex, not only often involving several areas of law, but also a range of social and cultural issues.⁶

Professor Stephen Ralph notes that Aboriginal families probably have *greater* need for assistance in dealing with family law matters.⁷ His study found that:

- Aboriginal people have a perception of inherent bias and unfairness embedded in the FLS (and all legal and government systems), which is fundamentally problematic as the principle of fair and impartial decision making is critical to maintaining community confidence in the judicial system.
- Aboriginal people have no confidence in Court's consideration of Indigenous cultural issues and the assessment of cultural issues in family reports.
- Aboriginal people do not believe the cultural needs of the children have been properly considered by the Court or that the Court had enough information to make a proper decision about cultural issues.
- A large number of Aboriginal people did not believe Court displayed respect or understanding in response to their concerns about culture and the importance for children of cultural needs.
- Aboriginal people felt the importance of cultural needs was ignored or viewed as a ploy.
- Family report writers do not have a reasonable understanding of cultural issues relevant to the children, and did not display a reasonable level of cultural sensitivity in their contact with the family - therefore they could not provide a reliable evaluation of cultural issues bearing on the best interests of the child.⁸

The Family Law Pathways Advisory Group states in its report *Out of the Maze: Pathways to the future for families experiencing separation* that historically, indigenous families have responded to the cultural inappropriateness of Australian family law by avoiding the court and dealing with family disputes informally, or under traditional lore. This observation, and those made by Stephen Ralph in 2012, are borne out in the ALS survey results. These views are very understandable given historical and current experience of Aboriginal people in dealing with the Australian judicial system.⁹

⁶ Chris Cuneen and Melanie Schwartz, *The family and civil law needs of Aboriginal people in New South Wales*, 2008, available at https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0016/5515/Family-and-Civil-Law-Needs-of-Aboriginal-People-in-New-South-Wales-report.pdf accessed 30 May 2018, p15. Cuneen and Schwartz state at pp10-11 that there were 3385 applications by Aboriginal people and 40721 for legal aid in family law matters in 2007. Aboriginal applications accounted for 7.7 per cent of the total number of applications. Aboriginal people have a rate of applications for family law aid at 2284.4 per 100,000 of their respective population, compared to a non-Indigenous rate of 610.6 per 100,000. The vast majority of Aboriginal applications were for matters involving children (50.3 per cent) and care and protection issues (41.0 per cent). These represented 91.3 per cent of all Aboriginal applications – slightly higher than applications in these areas by non-Aboriginal clients (89.7 per cent). It is also noteworthy that although care protection matters were the second largest group for both Aboriginal and non-Aboriginal applications, Aboriginal applications were 13.1 percentage points higher than non-Aboriginal applications.

⁷ Op cit 3 pp10-11.

⁸ Op cit 3 p46-47 and 51-52.

⁹ *Out of the Maze: Pathways to the future for families experiencing separation* - Report of the Family Law Pathways Advisory Group July 2001, available at <https://www.ag.gov.au/Publications/Documents/FamilylawsystemOutoftheMazeAugust2001/FLPReport.pdf> accessed 30 May 2018, p20.

Our mob don't trust the legal system anyway it rarely works for us

There is absolutely no way that this process was culturally safe or physically safe

The time taken to sort things out was difficult on the kids. I was worried about mentioning me and therefore the kids were Aboriginal

My Aboriginal culture meant nothing to the person I was talking to

There have been various reviews of the FLS and in particular ways in which it could be modified to facilitate access and engagement by Aboriginal people.¹⁰ A copy of those recommendations are attached in Appendices 2 and 3 to this submission. Some recommendations, such as the piloting of the Indigenous List in the Federal Circuit Court, which the ALS advocated for in 2013, have been implemented with great success. However, many of the recommendations made in those reports have still not been followed. However, this is not to say that the recommendations are not still valid. Our review of the recent literature together with the community feedback we received from the survey have served largely to reinforce that the time has come to revisit and implement the recommendations, in order to achieve equity of access to justice in the FLS for Aboriginal people.

One of the key objectives of any re-design to the FLS to encourage Aboriginal people to access the FLS would be to see a decrease in the number of Aboriginal children in OOHC as a result of the removal of children by Family and Community Services (**FACS**), as hopefully more opportunities arise for children to stay within their familial and kinship systems because those family members are able to navigate the FLS. The survey respondents also share the view that by making culturally specific and appropriate changes to the FLS, less Aboriginal children will be separated from their families and placed in OOHC.

¹⁰ Ibid. Also the Family Law Council reports *Improving the Family Law System for Aboriginal and Torres Strait Islander clients* of 2012, available at <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Aboriginal%20and%20Torres%20Strait%20Islander%20Clients.pdf> accessed 30 May 2018 and the *Families with Complex Needs and the Intersection of the Family Law and Child Protection systems – Final Report June 2016* available at <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF> accessed 30 May 2018.

Response to Terms of Reference

This response to the TOR largely echoes the recommendations of previous reports with respect to how the FLS can be improved for Aboriginal clients.¹¹

This submission is made in relation to NSW/ACT only. It is informed by community feedback gathered via a survey on the FLS which was circulated through ALS networks and online, as well as the views of ALS staff working in the family law system.¹² The ALS received 241 responses to its survey. The vast majority (86%) of survey respondents identified as Aboriginal or Torres Strait Islander. A majority of survey respondents identified as female (79%). The majority of respondents live in a large city in NSW/ACT (45%), with 30% of respondents living in a medium size city/town and 24% living in a rural or remote towns/community. The survey included a combination of Yes/No and short answer responses relating to the questions in the Terms of Reference. The survey was online and in circulation from 2 – 21 May 2018.

64% of the survey respondents indicated that they or their family had experience with the FLS. This submission is based on an analysis of the content acquired through the survey and other direct feedback and is complemented throughout with direct boxed quotes from the short answer responses in the survey.

Interestingly, whilst there does seem to be a definite need for more community education about the FLS and the benefits that can be derived by Aboriginal people in using the FLS, 73% of respondents said that they were aware that the FLS and the Care and Protection system were two different systems and jurisdictions. It is therefore possible that while people are aware that the different systems exist, they are not aware of the underlying drivers and objectives of each system, why proceedings in one jurisdiction might be different or more beneficial to the other, and the benefits for Aboriginal people to gain final orders with respect to the care of children.¹³

Access and Engagement

Of the 241 people that completed the ALS survey:

- 43% said that the FLS was not easy to access
- 60% said the FLS was not easy to understand
- 46% said it was expensive to be involved in the FLS
- 44% said the FLS was not culturally safe
- 64% said the FLS was a process that took too long

¹¹ Ibid.

¹² A copy of the survey questions is attached at Appendix 1 to this submission.

¹³ Titterton, Adelaide --- "Indigenous Access to Family Law in Australia and Caring for Indigenous Children" [2017] UNSWLawJl 7; (2017) 40(1) *University of New South Wales Law Journal* 146: "Family law parenting orders can provide for a child to be placed with a safe family member, or other interested party, for a short, long or indefinite period. Parenting orders can be reviewed for appropriateness and varied with changed circumstances. Such action may abate risks to the child that may otherwise require action by child protection authorities, resulting in intervention and the possible removal of the child. Parenting orders made by family courts may pre-empt and mitigate the need for child protection intervention; family law can be engaged as an early intervention strategy", part IV, Conclusion.

Mob need to know about getting into Family Court ASAP

It is not set up for Aboriginal families

I have considered going to family court but it seems to overwhelming

it was intimidating. I was asked what it meant be an aboriginal but the father was not asked what it meant to be his nationality. and I was scared of losing my children because I was aboriginal and he was white australian. Domestic violence was not debated.

when parents are from mixed cultures the non Aboriginal person usually gets preferences over the Aboriginal parent

They spoke big words and i didnt quite understand even though they tried but they really didnt tell me how long and what or how many times we had to go to court or not too long and expensive...Always felt like i was looked down on. there was no safe place for me

Of the 241 people that answered the survey, 60% responded that they had used Legal Aid NSW for legal representation, 40% had used the ALS, 38% had engaged solicitors privately, 15% had used a community legal centre and 15% were self-represented. It is important to note that even though the Care and Protection/Family Law practice is not the primary work of the ALS, almost half of the survey participants had used the ALS for representation.

When asked how likely they would be to use the FLS if their relationship broke down, the survey respondents answered that:

- 31% might use the FLS
- 13% would very likely use the FLS
- 19% would definitely use the FLS
- 24% would not use the FLS
- 13% said it would not cross their mind to use the FLS

Integrated services make services more accessible – have a lawyer at the Aboriginal Medical Service to provide high level advice re family law issues

When asked their opinion about why they thought that such a small percentage of Aboriginal people currently use the FLS, the survey respondents advised as follows:

- 67% said Court processes are intimidating
- 67% mistrust Government
- 44% had problems accessing the court in terms of transport/delays/getting to the Court
- 73% had lack of confidence in the legal system
- 58% were scared they would lose their children
- 59% found the system confusing
- 42% said they thought the system was adversarial and perpetuated conflict
- 36% said they did not understand the FLS
- 47% had prior negative experiences with courts
- 53% said that they could not afford it
- 56% were worried using the FLS might make their situation worse
- 59% said the FLS takes too long

Aboriginal Kinship doesn't seem to be of importance. ...Auntys etc have not got any importance in family law or [for] FACS.

Caused further trauma

I felt belittled & shame with a lot of sadness

Had to wait as nearest place was 150km away and even though they spoke on the phone. Trouble understanding what they were talking about

The people in power were almost entirely male and were not particularly sympathetic to women

No support for kooris

Family Law takes way too long to finalise

As a working Aboriginal man trying to access the Family law court i was unable to gain any financial emotional or service support

It is not culturally safe a young Aboriginal mother in court with white judge white solicitor for the white father white solicitor for the child ordered to mediation by white mediator and assessment by a white psychologist and the process is still ongoing

From my experience there are not enough culturally aware judges who understand kinship and how important Aunties and Uncles often as important as mum and dad

Its white man's court white mans law...its intimidating and scary for most n that's understandable

the mediators are white with no cultural training

Last time I went to family law court, I felt patronised. My ex partner who is not Aboriginal, questioned my Aboriginality in court. Even though I was represented by ALS and produced Confirmation of Aboriginality, I was still asked to give verbal evidence of my Aboriginality to prove who I am. You wouldn't do that to a Spaniard, or a Greek. It was racially discriminative

even though I thought I was articulate I struggled

Resolution and adjudication processes

85% of survey respondents said that they thought it was very important to have Aboriginal-specific and culturally safe mediation and dispute resolution services for when families break down, confirming the view that Aboriginal people need to be afforded the opportunity within the family law framework to undertake mediation that is conducted by culturally appropriate or Aboriginal mediators.

68% survey respondents confirmed that in their perception, the FLS is about 'fighting the other side in court'. Unfortunately, this is not viewed as a constructive way to resolve matters in dispute, be they about children or property. 83% of respondents said that they did not know of any good government mediation or dispute resolution services for family law matters in their region. Survey comments indicated that many current mediation and dispute resolution services

that are available are viewed as somewhat 'toothless', unenforceable and confusing because they are still anchored in a Eurocentric system which does not take account of Aboriginal culture, and consequently they are not highly regarded.

The ALS notes that one suggestion that has been put forward in the past, and which the ALS endorses (subject to currency given the proposal dates from 2010) was for the establishment of a national Aboriginal mediation service.¹⁴ This would seem to meet the cultural requirements of many community members and might go a long way, not just to encouraging Aboriginal people to use the FLS, but also towards providing a holistic and empowering process for people to exercise self-determination about their family and children's matters in a culturally safe and appropriate manner.

69% of respondents said that they thought Aboriginal people would be likely or very likely to use mediation and dispute resolution services to deal with children's issues after separation if there was a culturally safe service as part of the FLS.

74% of respondents said that they would prefer to use an Aboriginal mediator for Family Law matters. A further 23% said they *might* prefer to use an Aboriginal mediator for Family Law matters.

People need to feel safe and understood so having specific services for Aboriginal mediation is very important

It would have to be cultural mediation with facilitators who are Aboriginal

I believe if there were suitably trained Aboriginal mediators people may be more likely to use it

Very important for an aboriginal service to run this program for aboriginal families

All disputes involving Indigenous childrens should be culturally safe and include Indigenous peoples as mediators in particular when you have Indigenous verses non Indigenous parents/guardians train the mediators on what a aboriginal family looks like and not to judge importance of training key Aboriginal community members to become family mediators

68% of survey respondents said that they thought if there were more culturally safe dispute resolution services for Aboriginal people then this would encourage respected family members and Elders such as grandparents to participate in resolving issues in a way that is not seen as adversarial. A further 31% said they thought if there were more culturally safe dispute resolution services for Aboriginal people then this *might* encourage respected family members and Elders such as grandparents to participate in resolving issues in a way that is not seen as adversarial.

¹⁴ Joint ATSILS Proposal to the Commonwealth Attorney - General for the Establishment of a National Aboriginal and Torres Strait Islander Dispute Management Service
<http://www.natsils.org.au/portals/natsils/Joint%20ATSILS%20National%20Aboriginal%20and%20Torres%20Strait%20Islander%20Dispute%20Management%20Service%20Proposal%20Nov%202010.pdf>

*I believed that the system was now fairer towards the father and especially in regards to culture. This was not true. The mediation was not culturally appropriate as in they had no idea what we were saying. What we meant and what they understood were two very different things. It was very weighted towards the Non-Aboriginal mother. On the third session we had a Koori Mediator because one was away, he was amazing. The one who was transcribing would write something down and he would say that is not what was said. I could of cried. I was supporting my son. We both felt like we shouldn't be there and we were an inconvenience. If we hadn't of paid for a lawyer we wouldn't of got very far with access. ██████████
██████████ Thankfully, access was negotiated after awhile and before we had to be in court*

69% of respondents said that they thought that if there were more culturally safe dispute resolution services for Aboriginal families to resolve children's issues up front, then this would reduce the number of children in OOHC or foster care. A further 23% said they thought this *might* reduce the number of children in OOHC or foster care.

If families had support and understanding of the system before they went to care circle/court they may be able to resolve some or all issues before they get to "out of home care/foster care"

Professional skills and wellbeing

Critically, 83% of respondents said that they thought having more Aboriginal staff in key positions and frontline roles would encourage more Aboriginal people to use or consider using the FLS. A further 14% of respondents said that they thought having more Aboriginal staff in key positions and frontline roles *might* encourage more Aboriginal people to use or consider using the FLS.¹⁵

I'd be more likely to use it having another black face in the room might be nice for a change

Having Aboriginal people in key executive roles that can influence how a Service treats its clients is a better idea. You can start to possibly move away from the thinking that Services don't listen to the needs of Aboriginal people

Hire Aboriginal staff so our Aboriginal people feel more comfortable to ask for help

Non tokenistic positions and specifically Indigenous Identified positions

Aboriginal people understand Aboriginal people

There needs more assistance from a aboriginal person that can communicate for the people needing assistance

It's difficult for an Aboriginal person to attend family law courts, there is a perception that non Aboriginal people get preferential treatment in a system that doesn't acknowledge differences in child rearing practices and responsibilities. More needs to be done to understand inter generational trauma and the supports needed

¹⁵ We note that the Family Court of Australia *Annual Report* states that as at 30 June 2017, the Court had one employee who identified as Aboriginal or Torres Strait Islander – available at <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/2016-17/2016-17-annual-report-toc> see p 97.

A resounding 97% of respondents said that all staff and lawyers including judges should undergo cultural awareness and cultural competency training.

85% of respondents said that undergoing cultural awareness and cultural competency training would assist staff and lawyers including judges to provide better services to Aboriginal people in the FLS. A further 14% of respondents said that undergoing cultural awareness and cultural competency training *might* assist staff and lawyers including judges to provide better services to Aboriginal people in the FLS.

I think some lawyers think I'm telling stories yarns when i don't give them direct eye contact. i've had a family report done and the doctor lady that did it gave me a few negative comments in the report and this was parts where i wouldn't give direct eye contact. spoke to my lawyer about its disrespectful to give direct eye contact to black fellas and the lawyer said i should have explain this

The FLS the lawyers Court staff do not have appropriate knowledge or skills to deal with Aboriginal people

Regardless of working in the FLS they all should be doing cross cultural training. Especially given the over representation of Aboriginal people involved at all levels of the justice system

Cultural competency should be included in all areas of the legal system ... This should be mandatory without question

Need someone that understands not judges doesn't look at my culture and way of bringing my children up in an enriched cultural environment as a negative thing or misinterpretation my extended family involvement as neglect or a demonstration that I'm not caring for my children. They need to understand cultural norms and be able to communicate with me and my family. It's not just about mum and dad in my culture it's about the whole mob

Need to have a cultural lens need to understand the impact of colonisation and the impact of trauma on us

More culturally competent services / workers in regional and remote areas

Professional Comments on access and engagement

When asked, ALS staff working in the FLS identified the top 3 barriers that, in their professional experience (both first-hand and through direct client feedback), discourage Aboriginal people from using the FLS:

- a) lack of awareness of the FLS and the benefit of obtaining Family Law orders
- b) delays in the Court process
- c) cultural barriers

Our staff said in particular that:

- Many clients do not want to go to court because of negative associations with the legal system, and this is a large barrier to Aboriginal people engaging with the FLS

- The under-resourcing of the Family Court is impacting on clients as there are less judges, longer lists and delays which act as a disincentive and discourages clients from continuing with matters
- The Federal Circuit Court is set up to deal with simpler matters and is supposed to be a faster system than the Family Court which deals with more complex matters, but unfortunately the reverse is the case and family matters actually take longer in the Federal Circuit Court than the Family Court. The delays are such in the Federal Circuit Court (which on estimate take 3-4 years to finalisation) that some Family Law practitioners (outside of the ALS) commence matters in the Family Court (which is reserved for complex matters), in order to try and get a faster result by suggesting their matters are complex, when in fact they are not.
- Geography is a real barrier to Aboriginal clients using the FLS successfully – Federal Circuit Courts do not run circuits to every Court registry and some Family Law matters are dealt with by Local Court Magistrates with little expertise in Family Law or cultural awareness or competency. Often, when matters are complex and hearings are run, families travel long distances to attend Federal Circuit Court sittings.

Professional Comments on resolution and adjudication processes

- The concept of using Aboriginal mediators was strongly supported by staff and clients,¹⁶ and it was also proposed that mediations should involve respected community Elders, as has been piloted in the Children’s Court Care Circles program. In the experience of staff, having community members involved can ‘reality check/test’ matters. Clients tend to have great respect for Elders and their opinions, so they are more ‘open’ to listening because they do not see it as a personal ‘attack’ by a lawyer or the FLS.

<i>Appoint an Aboriginal advisor to every case that deals with Aboriginal people</i>
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- The monthly Indigenous List in the Sydney Federal Circuit Court registry receives high praise from practitioners and clients alike as it is a transformative way to enhance access to justice for Aboriginal people in the FLS. The Indigenous List is a specialist list that provides clients with access to services that are present for the specialised Indigenous List but not generally accessible as part of the regular court lists. Some elements that make it popular are that it is very informal (compared to courts usually), judges sit with lawyers and their clients at the bar table rather than talking ‘down’ to them (literally) or ‘at’ them from the bench, it is a closed court that is not open to the public and thus clients have the confidence to speak openly, respect is paid to country, and there is a greater sense of agency and self determination. Staff commented that the court feels more personal to clients, clients feel respected and part of the solution rather than just a number, and clients are more at ease and more productive. ALS clients have also commented that they feel “heard” and feel they are achieving more.
- ALS clients have also given very positive feedback about the ability to ‘link-up’ with various services at court whilst the Indigenous List is on that they would otherwise have to contact outside of court. These support services in court are on hand to assist parents involved in proceedings while the list is running as a ‘one-stop-shop’, and can continue to assist clients with other matters (including criminal) and not just Family proceedings.

¹⁶ Noting at present there are only 1-2 Aboriginal mediators known to mediate in Family Law matters (FDR).

- There is strong support for expanding the Indigenous List to Parramatta and Dubbo. Some regional circuits are also informally introducing such lists to ensure that Aboriginal participants in the system feel comfortable and engaged in the process – ultimately ensuring better outcomes for children, family and community.

Having the Indigenous listing within the Family Law Court is a step forward

Koori Court is working well...The empathy that some Family Court Judges have shown

Koori court because it involves Koori people therefore better outcomes and understanding of the situation at hand

I think it would be great if there was more Koori services that can help us with our kids

While it is acknowledged that the Indigenous list is a 'step forward', it does not remain the only solution available.

- Staff suggested that there would be great value in imposing a continued obligation and encouragement on parties to mediate throughout the duration of the proceedings. At present, because of the lengthy delays in the FLS, mediation may only happen once or twice. As is to be expected, there is often a lot of change in families in a short time, especially regarding children, and consequently there should be a requirement to mediate more often at each stage of the proceedings. However, this will require resourcing because at present a client needs to have a grant of Legal Aid NSW for each mediation (consequently the manner in which grant funding is assessed and allocated may also have to be reviewed).
- There was general agreement that mediation by telephone (which normally takes 2-3 hours) is not ideal, as it is hard to gauge what a client feels or is thinking about the matter, or whether they understand what is happening, in contrast to when the mediation is in a face-to-face environment. However, it is recognised that using technology to carry out mediations is a more effective use of limited resources, and also saves clients the need to travel long distances (particularly where opposing parties are geographically distant from one another).
- There was also general agreement that:
 - the level of community knowledge about the FLS needs to be improved and that greater resourcing of community legal education (such as joint education seminars with Legal Aid NSW, leaflets, word of mouth, and education of community-based leaders) might lead to a deeper understanding of the FLS and hopefully minimise Aboriginal children going into care
 - it would be useful to have more quasi-judicial routes available for clients to pursue if they wish to obtain final legally binding decisions
 - it is very important to give proper meaningful consideration to cultural contact and cultural plans.
- All these factors strengthen the need for family law reform and in particular, the need for significant expansion of the Indigenous List.
- The expansion of the Indigenous List could prove vital to Aboriginal people in more remote and regional areas being able to have access to justice because, should they need to attend

court and commit to significant travel across state, those culturally appropriate services are on hand (as a 'one-stop-shop').

- The outcome of this review, if it follows former recommendations and the recommendations are implemented in a sound way, provides a significant opportunity to reduce the numbers of Aboriginal children in OOHC especially if more Aboriginal people and Aboriginal controlled services become involved at an earlier stage in the FLS and more Aboriginal specific services and more pathways are linked in to engage with therapeutic services.

Conclusion

The ALS echoes the need for tailored culturally safe family law services for Aboriginal families as set out in the recommendations of the Family Law Council report *Improving the Family Law System for Aboriginal and Torres Strait Islander clients*¹⁷ and the *Families with Complex Needs and the Intersection of the Family Law and Child Protection systems – Final Report*.¹⁸

As noted in the 2016 report, Aboriginal and Torres Strait Islander family law clients are more likely than non-Aboriginal clients to have complex needs, including family violence and child safety related needs exacerbated by the experience of inter-generational trauma.

We strongly encourage Government at all levels to partner with Aboriginal people and Aboriginal community-controlled organisations in order to lead efforts to address and overcome the barriers that many Aboriginal people face in accessing the FLS and access to justice generally. Our communities need culturally safe solutions within the FLS, which, if properly implemented, will hopefully lead to better future outcomes for Aboriginal families and their children.

We note the resounding call from our communities for:

1. An expansion of the Indigenous List, which the ALS advocated for in 2013, both in terms of resourcing and location because it is working well and is highly regarded by clients and practitioners alike;
2. Therapeutic jurisprudence and problem solving courts, so that families are not forced to navigate the legal and administrative complexities of differing State and Federal bureaucracies, repeating their stories time and again (often re-traumatising people in the process) in order to obtain decisions (legal or otherwise) and wraparound services that families need to heal and prosper.
3. An Aboriginal mediation service as part of FLS early intervention strategies in order to help our communities reach agreement (in appropriate cases) about family and children's matters without having to resort to litigation.
4. Greater community and information and resource sharing by Government agencies working in mutual respect and partnership with Aboriginal community controlled organisations to understand and access the FLS.

In particular the ALS seeks that the Australian Government works with FLS service providers and Aboriginal and Torres Strait Islander organisations to develop a range of family law strategies for Aboriginal and Torres Strait Islander peoples relating to:

1. Providing quarantined funding for family law service provision to NATSILS
2. Expansion of the Indigenous List across all of NSW, and nationally
3. Implementation of a national Aboriginal mediation service
4. Greater Community Legal Education
5. Promoting Cultural Competency
6. Build Collaboration and Enhancing Service Integration
7. Early Assistance and Outreach to assist Aboriginal and Torres Strait Islander families experiencing relationship difficulties and parenting disputes
8. Building an Aboriginal and Torres Strait Islander Workforce in the FLS

¹⁷ Op cit 12.

¹⁸ Op cit 12.

9. Funding further Aboriginal Family Consultants and Aboriginal Liaison Officers (identified positions) to assist the family law courts to improve outcomes for Aboriginal and Torres Strait Islander families
10. Reviewing Access to Court, Legal and Family Dispute Resolution Services for Aboriginal and Torres Strait Islander peoples, including in regional and remote areas throughout Australia.
11. Appropriate culturally secure family assessment reports and cultural plans based on based on the Aboriginal and Torres Strait Islander Child Placement Principles to assist child-focused decision-making in courts and to clarify the cultural obligations of family members in growing up an Aboriginal or Torres Strait Islander child and their importance to maintaining the child's ongoing connection with kinship networks and country

Appendix 1

On-line Survey of Family Law System carried out by ALS between 2 and 21 May 2018

Appendix 2

Recommendations of Family Law Council Report Improving the Family Law System for Aboriginal and Torres Strait Islander clients - 2012

Recommendation 1: Community Education

The Australian Government works with family law system service providers and Aboriginal and Torres Strait Islander organisations to develop a range of family law legal literacy and education strategies for Aboriginal and Torres Strait Islander peoples.

The strategies should:

- aim to inform Aboriginal and Torres Strait Islander peoples about: the formal justice system, legal responses to family violence and the rights and obligations of separated parents
- allow for education and information to be delivered in Indigenous languages, plain English and in formats that are appropriate to particular communities and age groups, and
- ensure that the information is continuously accessible and delivered in a culturally appropriate manner to Aboriginal and Torres Strait Islander peoples.

Recommendation 2: Promoting Cultural Competency

2.1 The Australian Government develops, in partnership with relevant stakeholders, a cultural competency framework for the family law system. The framework should cover issues of culturally responsive practice in relation to people from Aboriginal and Torres Strait Islander backgrounds. This development should take account of existing frameworks in other service sectors.

2.2 Cultural competency among family law system personnel be improved by:

2.2.1 Investing in the development of a flexible learning package (similar to the *AVERT Family Violence Training Package*) that can be adapted across settings and professional disciplines providing both minimum competencies and options for more in-depth development of skills and knowledge and encouraging its use across the sector by making it low cost and flexible in its delivery.

2.2.2 Commissioning the development of 'good practice guides' across settings to encourage Aboriginal and Torres Strait Islander culturally responsive service delivery for dissemination to individual practitioners through conferences, clearinghouses and national networks. Examples might include the development of resources to support effective approaches to meeting the needs of Aboriginal and Torres Strait Islander clients in family dispute resolution, children's contact centres and family reports.

2.2.3 Building Aboriginal and Torres Strait Islander cultural competency, and understanding of the application of relevant laws and policies (such as the *Family Law Act*) for Aboriginal and Torres Strait Islander clients, into professional development frameworks, Vocational Education and Training and tertiary programs of study across disciplines relevant to the family law system.

Recommendation 3: Building Collaboration and Enhancing Service Integration

3.1 The Australian Government, in consultation with stakeholders, develop strategies to build collaboration between Aboriginal and Torres Strait Islander-specific service providers and organisations and the mainstream family law system (courts, legal assistance and family relationship services). This should include support for Aboriginal and Torres Strait Islander organisations to provide advisory and other support for family law system services.

3.2 The Australian Government provides funding for:

3.2.1 The creation of a 'roadmap' of services (including relevant support services) for Aboriginal and Torres Strait Islander families in the family law system

3.2.2 Integration of the 'roadmap' into current government resources and initiatives which include the Family Relationship Advice Line and Family Relationships Online, and

3.2.3 Promoting a greater awareness of these resources and initiatives for Aboriginal and Torres Strait Islander families and relevant organisations.

Recommendation 4: Early Assistance and Outreach

The Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs work with stakeholders, including mainstream and Aboriginal and Torres Strait Islander-specific service providers, to develop strategies that assist, as early as is possible, Aboriginal and Torres Strait Islander families experiencing relationship difficulties and parenting disputes. Such strategies should include the development of outreach programs by mainstream services within the family law system.

Recommendation 5: Building an Aboriginal and Torres Strait Islander Workforce in the Family Law System

The Australian Government works with stakeholders to ensure a range of workforce development strategies are implemented across the family law system to increase the number of Aboriginal and Torres Strait Islander professionals working within family law system services. These strategies should include:

- scholarships, cadetships and support for education and training opportunities for Aboriginal and Torres Strait Islander professionals to work in the family law system
- consideration of the cultural and social experiences of potential Aboriginal and Torres Strait Islander professionals as professional attributes of significance in developing selection criteria for relevant positions
- funding for family law system services (courts, legal assistance and family relationship services) to proactively recruit, train and retain Aboriginal and Torres Strait Islander peoples, and
- resourcing and supporting service providers to develop mechanisms for continuing professional supervision, support and networking opportunities for Aboriginal and Torres Strait Islander professionals.

Recommendation 6: Family Consultants and Liaison Officers

The Australian Government provides funding for further positions for Indigenous Family Consultants and Indigenous Family Liaison Officers (identified positions) to assist the family law courts to improve outcomes for Aboriginal and Torres Strait Islander families, including by:

- increasing the information available to the courts about Aboriginal and Torres Strait Islander cultural practices and children's needs to courts through family reports (with reference to specific communities and cultures in specific cases)
- enhancing the ability of courts to meet the needs of Aboriginal and Torres Strait Islander clients in court processes, and
- providing information to courts, and support and liaison to parties, in matters that may require urgent action.

The role of Indigenous Family Consultants and Indigenous Family Liaison Officers may be part of the job description of a person who is ordinarily placed in a Family Relationship Centre or an Aboriginal and Torres Strait Islander-specific service. An inter-agency agreement should require a Family Relationship Centre or Aboriginal and Torres Strait Islander service to provide the family law courts with access to the Indigenous Family Consultant and/ or Indigenous Family Liaison Officer on a clearly defined basis.

Recommendation 7: Access to Court, Legal and Family Dispute Resolution Services

To particularly address the difficulties in providing services to remote locations and gaps in service provision in other locations, the Australian Government instigates a review of the accessibility and appropriateness of court, legal and family dispute resolution services for Aboriginal and Torres Strait Islander peoples, including in regional and remote areas throughout Australia.

Recommendation 8: Interpreter services

8.1 The Australian Government develops a strategy for improving access to interpreter services in Aboriginal and Torres Strait Islander languages. This should be informed by a needs analysis addressing:

- the prevalent language groups
- the pool of available interpreters for particular language groups
- an assessment of which language groups require interpreters
- initiatives to increase the pool in required areas, and
- developing regional lists of pools of interpreters with knowledge and understanding of family law derived either from training provided by local agencies or specialist legal interpreter accreditation developed or approved by National Accreditation Authority for Translators and Interpreters.

8.2 Training in family law should form a specialist component of accreditation for legal interpreters.

8.3 The Australian Government works with stakeholders to develop a national protocol on the use of interpreters in the family law system. This should include:

8.3.1 Protocols to ensure that Aboriginal and Torres Strait Islander clients with language issues are made aware of their right to an interpreter, are asked whether they need an interpreter, and are provided with an interpreter if they are identified as in need of one, and

8.3.2 Protocols to guide the sourcing and selecting of interpreters.

Recommendation 9: Torres Strait Islander Customary Adoption (Kupai Omasker)

Action in relation to this issue should be deferred until the outcome of the Queensland Government inquiry into the practice of Kupai Omasker is known. If this inquiry does not lead to a resolution of the difficulties in this area, the Attorney-General may request that Council consider whether amendment to the *Family Law Act* is required to address this issue. If the inquiry recommends recognition of the practice of Kupai Omasker, and if the Queensland Government does not legislate to implement that recommendation, Council would welcome a reference from the Attorney-General on this issue.

Appendix 3

Recommendations of Family Law Council Report *Families with Complex Needs and the Intersection of the Family Law and Child Protection systems – Final Report - June 2016*

Recommendation 1: Family safety services

The Australian Government consider ways of incorporating the expertise of specialist family violence services into the family law system to improve responses to families where there are issues of family violence or other safety concerns for children. This may include a combination of:

- 1) funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- 2) embedding workers from specialist family violence services in the family courts and Family Relationship Centres;
- 3) creating a dedicated family safety service within the family law system.

Recommendation 2: Early whole-of-family risk assessments

Having regard to the issues of abuse, neglect and family violence and the need for such evidence to be broadly available to protect children, the Australian Government should incorporate a whole-of-family risk assessment process into the family law system that is non-confidential and admissible.

Recommendation 3: Family lawyers and risk identification

The Australian Government consult with the Family Law Section of the Law Council of Australia, legal practitioner regulation bodies, including National Legal Aid, and family law practitioners more broadly, to support the development of:

- 1) a simplified risk identification mechanism for parents and children for use by the legal profession
- 2) protocols and guidelines to assist practitioners to utilise strategies to ensure that risk is identified and managed effectively, including through warm referrals to specialised family violence services
- 3) the development of a strategy to support the implementation of these measures among legal practitioners who practice family law in the context of their professional obligations to their clients, their ethical responsibilities as legal practitioners and the professional indemnity issues that responses to risk raise.

Recommendation 4: Family dispute resolution practitioners and risk management strategies

The Australian Government consult with key stakeholders, including Family & Relationships Services Australia, to identify how best to support a systematic approach to meeting client needs once an assessment that family dispute resolution should not proceed is made or risk is identified. The following options should be considered:

- 1) an amendment to Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* to extend the obligations of family dispute resolution practitioners to their clients to encompass the following steps as required:
 - (a) preparation of a safety plan and referral to a specialised family violence support service;
 - (b) referral for legal advice on personal protection orders and options for addressing parenting arrangements;
 - (c) referral for therapeutic support for affected parents and children;
 - (d) referral to a men's behaviour change program and other referrals in relation to other support needs, such as housing, mental health or substance misuse needs.
- 2) amendments to relevant funding agreements to support this extension of obligations.

Recommendation 5: Judicial risk assessments and court ordered programs

The *Family Law Act 1975* be amended to facilitate the making of court orders for observational assessment reports where the court orders a party to attend a post-separation parenting program or a men's behaviour change program.

Recommendation 6: A court-based integrated services model

1) To provide evidence and a better structured system in a more child-focused way, the Australian Government should consider establishing a client-centred integrated service model to trial collaborative case management approaches to families with complex needs, to be piloted initially in one court registry and evaluated pending further roll out. Part of that trial should include the development of effective information sharing protocols.

2) In order to support the development of effective information sharing protocols, Council recommends the government clarify the confidentiality status of family dispute resolution intake assessments.

Recommendation 7: Case managed integrated services in the family relationships sector

To better address the complex nature of children's disputes, the Australian Government consult with Family & Relationship Services Australia with a view to further developing a case managed integrated services approach attached to family dispute resolution and men's behaviour change programs across the whole family relationship services sector.

Recommendation 8: Self-represented litigants with complex needs

The Australian Government explore the viability of piloting a Counsel Assisting model in cases with self-represented litigants and allegations of family violence or other safety concerns for children.

Recommendation 9: Support services for families in rural and regional areas

Given the needs in regional areas for access to courts and court services;

1) The Australian Government provide funding to the family courts and family relationship services for improved technology to enable more video appearances and conferencing.

2) The Australian Government provide increased funding to the Federal Circuit Court and state and territory magistrates courts to enable the Federal Circuit Court to expand its regional circuits.

Recommendation 10: Collaboration between family law and state and territory courts

The Australian Government explore through COAG or LCCSC the possibilities for increasing circuiting of Federal Circuit Court judicial officers and registry staff in state and territory magistrates courts, including specialist family violence courts and community justice centres.

Recommendation 11: Family violence competency

The ability of professionals working in the family law system to understand family violence dynamics be strengthened by training programs and, more specifically:

1) The Australian Government develop, in partnership with other stakeholders, a learning package for professionals working in the family law system that provides both minimum competencies and in-depth and technical content designed for a range of roles, including family dispute resolution practitioners, family report writers and family lawyers (including Independent Children's Lawyers).

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2) There should be a specific family violence and child sexual abuse module in the National Family Law Specialist accreditation scheme at the examination phase, professional development phase and re-accreditation phase as a compulsory requirement of being accredited.

3) That Legal Aid Commissions across Australia should consider requiring their in-house lawyers as well all legal practitioners on their family law practitioner panels to demonstrate a

sound awareness of family violence, trauma informed practice and an ability to work with victims of family violence.

Recommendation 12: Joint professional development

1) To ensure there is consistent and national training, the National Judicial College of Australia develop a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence to strengthen understanding of family law and family violence and the impact of trauma.

2) The Australian Government engage with relevant professional bodies within the child protection, family law and family violence systems with a view to encouraging collaboration in designing and delivering joint training opportunities aimed at strengthening cross-professional understanding.

Recommendation 13: Children’s views and experiences

1) The Australian Government establish a young person advisory panel to assist in the design of child-focused family law services that build on an understanding of children’s and young people’s views and experiences of the family law system’s services.

2) The Australian Government consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings.

Recommendation 14: Family dispute resolution and confidentiality

1) The Australian Government consider ways to improve understanding among family dispute resolution practitioners of the nature of their confidentiality and admissibility obligations in order to reduce any perceived barriers to information sharing.

2) The word ‘imminent’ be removed from s 10H(4)(b) of the *Family Law Act 1975*.

3) The Australian Government clarify the admissibility status of family dispute resolution intake assessments.

Recommendation 15: State and territory courts exercising family law jurisdiction

1) The National Judicial College of Australia develop a continuing joint professional development program in family law for judicial officers from the family courts and state and territory children’s courts and magistrates courts.

2) If the Australian Government accepts Rec 15.1, then Council recommends amendment of the *Family Law Act 1975* to increase the monetary limit for property division by courts of summary jurisdiction.

3) Council recommends an increase in Commonwealth funding to state and territory courts of summary jurisdiction to enable them to take on more family law work.

Recommendation 16: Aboriginal and Torres Strait Islander families

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*.

2) Part VII of the *Family Law Act 1975* be amended to provide for the preparation of Cultural Reports, which may be included in Family Reports for Aboriginal and Torres Strait Islander children where a cultural issue is relevant, and for the Family Report to include a cultural plan which sets out how the child’s ongoing connection with kinship networks and country may be maintained.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for Aboriginal and Torres Strait Islander families in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow them to be cared for within their own families and communities wherever possible, based on the Aboriginal and Torres Strait Islander Child Placement Principles.

4) The Australian Government consider a pilot of a specialised court hearing process in family law cases that involve an Aboriginal or Torres Strait Islander child to enhance cultural safety for Aboriginal and Torres Strait Islander families, including through the participation of Elders or Respected Persons who can provide cultural advice to the court in relation to the child or young person and a specially reconfigured courtroom design.

5) The Australian Government consult with Aboriginal and Torres Strait Islander representative institutions in the development of any reforms arising from Council's work that affects Aboriginal and Torres Strait Islander children.

Recommendation 17: Culturally and linguistically diverse families

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.

2) The Australian Government ensure that workers from Culturally and Linguistically Diverse-specific services are incorporated into the development of any court-based and family relationship sector-based integrated services model as recommended by Council in Recommendations 6 and 7.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for families from culturally and linguistically diverse backgrounds in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow children to be cared for within their own families and communities wherever possible.

Recommendation 18: Court support workers

The Australian Government increase funding and resources to provide family violence trained court support workers, including workers from, or who have been appropriately trained to work with, Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse clients.

Recommendation 19: Self-represented litigants and misuse of process

1) The Australian Government commission research that would support an understanding of how and to what extent the intentional and unintentional misuse of legal processes, such as the request for subpoenas, and other agencies and services relevant to family breakdown (family law services and courts, the child support system, child protection systems and civil family violence protection order systems) occurs and how this may be prevented.

2) The Australian Government commission research that would support an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.

Recommendation 20: Crossover cases

The Australian Government commission research to examine the extent to which the client bases of state and territory police and justice systems overlap those of the family courts to support the development of strategies to respond to these cases more effectively.

Recommendation 21: Consent parenting orders

The Australian Government commission research to examine the dynamics of matters that resolve by consent, including the extent to which the arrangements consented to respond to any matters of risk that have been raised prior to the consent orders being made, and the extent to which orders made by consent are followed by further litigation.

Recommendation 22: Legislative reform

The Australian Government instigate a review of Part VII of the *Family Law Act 1975* with a view to supporting expeditious decision-making in matters involving risk to the child or other complex characteristics.