

Australian Law Reform Commission

Review of the Family Law System

Submission by Relationships Australia Northern Territory

Thank you for providing this opportunity to present a submission on behalf of Relationships Australia Northern Territory (RANT). The federation of Relationships Australia has also made a submission on behalf of all its member organisations in the States and Territories, and represented our organisation's views therein. The point of this RANT submission is to reiterate the particular needs of remote and regional Australia as represented by the Northern Territory. It is our hope that any systemic family law changes will recognise the unique needs found in remote Australia as opposed to those in more populated regions.

While the least populated of all the states and territories, the Northern Territory covers a vast area which is comprised of only four main town centres. According to the 2016 census 77% of the population live in these four urban centres and 23% live in the vast area comprising the rest of the Territory. It is important to note that 60 per cent of Aboriginal persons in multi-family households live in non-urban areas.

The NT is a culturally rich community, both in terms of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities. The 2016 census identified the Aboriginal and Torres Strait Islander population as being 25.5% of the total population. It is considered that many Aboriginal people in remote NT are not adequately represented in a national census - isolation, lack of literacy and suspicion of government agencies all contribute to this widely held view. Those born in countries other than Australia make up 31.2% of the NT population and there are only 58% of households where only English is spoken (ABS, 2016).

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Question 5 – Access by Aboriginal and Torres Strait Islander Clients

Relationships Australia Northern Territory is funded to run the Family Relationship Centres in the Northern Territory. We see particular issues in Aboriginal and Torres Strait Islander people accessing family law services. At a systemic level there are impediments – historical massacres, previous government policies leading to stolen generations and destruction of families and culture, and the more recent NT National Emergency Response, known as ‘The Intervention’, have all contributed to a widely held distrust of government and legal systems by the Aboriginal and Torres Strait Islander population.

In addition there are paradigm differences between western law systems and Aboriginal and Torres Strait Islander systems – for example Australia’s western legal system focuses on individual rights, separation of the interests and rights of the ‘victim’ and ‘offender’, representation by external legal advocates, ‘arms-length’ judgement and punishment by courts. By contrast Aboriginal and Torres Strait Islander systems focus on recognising collective rights & interests, restoring social relationships, restoring a sense of cohesive collective identity, and reaffirming systems of religious law and authority (Australian Indigenous Governance Institute).

At a personal level the impediments relate largely to the effects of people living with poverty and intergenerational trauma. Fear of problems being exposed resulting in having children taken away – problems such as the struggle to find work, substance abuse, having no fixed abode, being unable to provide for family, having kinship responsibilities. Very often, once separated, one party no longer has a home and stays with family members. These extended family members can become involved in disputes which can lead to a sense of tribal warfare. Where there has been family violence it is often difficult to leave small, remote communities. If the western legal system becomes involved will it cause more trouble and lead to jail or children being removed? Can individuals fulfil the requirements required of them? All these issues are the reality of people having to live in two very different world systems. There are additional burdens of language, literacy and navigating difficult bureaucratic systems which increase resistance to accessing family law services.

Relationships Australia Northern Territory recognise the need and value of Aboriginal and Torres Strait Islander clients having a face to face service and providing culturally appropriate support to guide them through the system. RANT employ a team of Aboriginal and Islander Cultural Advisors (AICAs) to assist clients navigate the Family Dispute Resolution (FDR) process, but these supports have ceased in the family court system. While our team of workers have cultural significance within their communities their work is mostly community capacity building. Aboriginal and Torres Strait Islander clients make up 32% of clients in the Family Relationship Centre programs which is largely made up of clients

attending an outreach Aboriginal Building Connections course highlighting the effects of children living with parental conflict and promotes the family dispute resolution service.

Many of our clients suffer from intergenerational and complex trauma and in some communities violence has been completely normalised. As a consequence our AICA team have had to include in their presentation information about the history of colonisation, lateral violence, and how trauma can impact behaviour/reactions in order to address this normalisation of violence before even beginning to discuss how ongoing conflict can impact children. Even with the good work our team are doing, there is still a lot of resistance to accessing family law services.

A challenge to some Aboriginal families is navigating the differences and intersections between Aboriginal law, the family law system and domestic violence law. Often these families are in all the systems and families may want to discuss the care of the children in a traditional way, but how can that then be recognised by the family law system? Recognition of kinship systems requires greater consideration be given to the role of Aboriginal grandparents in making decisions for children.

At least in the Northern Territory, cultural safety training and trauma informed practices should be mandatory for all those involved in the family law system. Recommendations from the Bringing them Home, Little Children are Sacred, and the Royal Commission into the Protection and Detention of Children in the Northern Territory all offer some valuable insights into working in a culturally appropriate manner that are relevant to the NT.

Question 6 – Access by Culturally and Linguistically Diverse Communities

For our CALD communities, language barriers, lack of awareness of FDR services, different cultural understandings about the acceptability of domestic violence, a shortage of bi-cultural mediators, and limited understanding of the cultural background, religions and differences between new, emerging and established cultural communities can be impediments to accessing the existing family law system (Armstrong, 2010).

The recent introduction of the Legally Assisted and Culturally Appropriate Family Dispute Resolution pilot goes some way towards addressing family law needs in Aboriginal and Torres Strait Islander and CALD communities, but is limited to clients who have experienced domestic violence (sometimes hard to acknowledge) and at this stage is a pilot programme with no guarantee of ongoing funding.

Question 9 – Access in regional and remote communities

The challenges and costs of servicing remote, isolated communities mean that family law services for people in remote communities remains a major unmet need. Our Aboriginal workers who visit remote communities have been reporting for many years the frustration about lack of access to services for those in the bush, with most funding only covering urban centres.

Many of the remote Aboriginal communities in the NT are impoverished with families living with up to 17 people in a home and struggling to provide basic food and shelter. There is no additional money to access family law services. In addition, remoteness, lack of transport or access to services and neutral interpreters means a lot of issues in remote communities are not addressed.

The idea that technology could assist with remoteness does not factor in issues of literacy, lack of reliable internet services (or even electricity) and safe and appropriate spaces and technology. While technology may provide solutions for urbanised people in cities, Aboriginal people in particular are suspicious about dealing with practitioners if not face to face. Can the family law system work with existing bush courts to provide FDR in remote Aboriginal Communities so families can access family law services?

While the further development of online FDR would be beneficial for some clients in remote areas where internet is reliable, there are additional factors which require consideration. There is great benefit in face to face contact with clients, especially when dealing with high emotions – connection with a person can be one way of getting through a difficult situation and moving away from the loneliness or isolation that can be felt and create a safeguard against trauma. How would courts ensure that people accessing online services can also access needed therapeutic services?

Question 20 – Costs of Family Law Disputes

There is no doubt the cost of access to legal services is an impediment to resolving family law disputes. Many of the clients at RANT are financially stressed, but have sufficient assets so as not to qualify for legal aid. They struggle to afford basic legal advice, let alone representation in court. When providing property mediations, very often the clients are mediating about debt.

Appropriate legal advice can be invaluable to clients who are resolving issues themselves through FDR as it provides the legal reality testing that Family Dispute Resolution Practitioners (FDRPs) are not permitted to give (an important aspect to preparing clients for mediation). Until recently funding was available for FDR clients at Family Relationship

Centres to have one hour of free legal advice, but this has recently been removed and our clients will struggle as a consequence.

Question 26 – Development of Dispute Resolution Services

RANT support the further development and funding of the FDR process. It is important to understand that getting parties to FDR is merely the end result of a lot of work that goes into ensuring parties are adequately equipped and ready. Increasingly FDRPs are managing multiple complexity cases with high levels of conflict, their clients requiring additional therapeutic support to navigate family law systems and equip parties to resolve family law disputes themselves.

As family law cases become more complex there needs to be a greater focus on early intervention, ie: more funding and services to provide counselling/ parent education sessions that are mandatory in going through FDR so parents get the information and learn skills to enable them to manage their emotions, see impact of conflict on their children, develop strategies to resolve conflict and work on their own issues that are impacting upon their ability to separate out the needs of their children versus their own needs. To be able to work with families in more of a case management model – to work with counsellors supporting parents, and then organise a joint mediation, would provide a basis to work from in mediation and also plant some seeds about the impact of conflict in the hope of not ending up going through the legal system for many years.

Could Australia adopt New Ways for Families (currently used in some USA jurisdictions)? Parents work with counsellors to learn the New Ways skills, teach their children and then go back to court to report on the skills they have learnt. RANT Alice Springs which has PSCP funding teaches these methods to parents as tools for managing high conflict (without the reporting to court component). It makes parents accountable to use flexible thinking, manage their emotions, and provides a way to shift entrenched high conflict cases.

Question 32 – Engaging with more than one court

We understand Singapore do family law, child protection, DV and youth all in one court. They include CIP and Judges can attend mediation sessions. This integrated model enables families to use one court system and all the information is there for a judge.

There is also talk of local court judges taking on family law matters where there is an intersection with DV. However, a local court judge or lawyer is usually trained in civil/criminal law (quite a different type of law) and will have little or no experience of family law. If local court judges were to take on this role they would need to be trained regarding the principles under the FLA and also the social science that influences this field. It's also

asking an already very busy court system to take on more work. Rather than separate courts perhaps there is a need for better information sharing between the different systems and ways of fast tracking matters between the different courts.

Questions 37 – Children’s Experiences and Perspectives

The notion of 50/50 is often not in a child’s best interests, yet many parents interpret the presumption of equal shared parental responsibility as relating to time. The concept of child support being calculated on the number of nights a child spends with each parent often becomes the hidden agenda in many parenting disputes where parents are in financial distress.

Clearer definition of best interests for a child would be helpful on a number of levels. Lawyers and judges in the family law system are expected to understand and advise clients about the best interests of the child, yet are not required to have training about the developmental needs of children, the rights of children or how to analyse a factual situation to understand whether the best interests of the child are being realised. When working with very young children, independent children’s lawyers rely more on observations than direct questions, which are difficult to interpret without clinical knowledge. Children’s lawyers working alongside clinicians should be standard practice.

The research on Child Inclusive Practice shows the benefit to parents of having feedback at mediation about how their children are coping, without placing children in the middle of the conflict by being burdened with questions the parents need to resolve (such as where the children will live). Currently most agencies are funding this service themselves. Many of the clients in the NT do not have the financial means of paying for more services in the post-separation space, so RANT is bearing this cost. For this work to be expanded to not just provide feedback from the children, but also therapeutic assistance to the parents about developmental information around their parenting plans would benefit greatly those parents who have little understanding of the needs of young children.

Question 41 – Core Competencies for Professionals in Family Law

The recent increase in practice hours to complete FDRP qualifications goes somewhat to improving competency for emerging FDRPs. Agencies working in family law should also regularly provide for staff - cultural safety training, trauma informed practice, vicarious trauma training, child safe accreditation, regular family violence and legislation information/training, LGBTIQ literacy, and disability competency, child inclusive practice and child informed training.

Additional areas of training for family law professionals - legal, FDRP's in child development, attachment theory, domestic violence (including technology facilitated abuse), parental alienation, signs symptoms of mental health issues (suicide ideation, depression etc), understanding of drug and alcohol addiction.

FDRPs should be recognised for the complex work that they do through increases in salary (ie more funding for FRC's to pay at a higher level), and consideration for how FDRPs have ongoing professional development. In regional areas it is difficult to recruit FDRPs particularly when NGOs are not able to match government salaries.

For FDRPs in regional areas, the Family Law Pathways Network (FLNP) often host professional development events. This is an important avenue for those working in the family law system in regional areas to have access to affordable training. The FLPN encourages organisations and legal professionals who assist families experiencing separation to network, share ideas and information and also to collaborate around training and common issues that our clients are experiencing. At a time where clients may be accessing multiple services this can prove invaluable.

Question 44 – Wellbeing of Family Law Professionals

It is important to acknowledge the high potential for burnout and vicarious trauma for those working in conflict situations every day. RANT provides staff with an annual Wellbeing Allowance to encourage healthy work/life balance. Vicarious Trauma training is also given to pertinent staff with recognition that Aboriginal staff may have additional benefit through techniques such as connecting to country.

References:

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Armstrong S, 2010. Culturally Responsive Family Dispute Resolution in Family Relationship Centres: Access and Practice. CatholicCare and Anglicare, Sydney.

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