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Question 1

As the Issues Paper sets out, there have been many changes since the FLA commenced operation in Jan 1976, but many of the principles and objectives underlying the Act then and in reforms since (as set out inter alia in s 43 and s 60B) remain the same: removing fault from divorce; education; enabling families post-separation to access fair and equitable decision-making procedures in parenting and financial matters; reaching outcomes with dignity; providing adr platforms; protecting children's right; protecting victims of family violence; ensuring compliance. The family law system cannot be one size fits all - some parties can resolve disputes through fdr; other parties have high conflict and/or family violence histories and need a forum for an independent adjudicator to make a decision.

Question 2

- access to justice
- cheaper court processes
- better resources inc more judges, fewer court events and step; simpler forms; lower fees
- cheaper legal representation; more legal aid
- recognizing wide range of families eg same-sex; blended; single parent/guardian; de factos; children conceived through assisted reproductive treatments; complex needs
- one legislative scheme covering child protection and welfare instead of 8 co-existing schemes
- one universal national family violence legislative scheme instead of 8 state and territory and one federal scheme
- depoliticizing the system

Question 3

- better access for parties who do no have access/cannot access on-line services ie not everyone is computer literate
- better access and information for CALD/NESB communities
- more information about fdr providers

- simplifying court websites
- getting rid of national enquiries centre and having several locations/contacts in each State for local enquiries because the nationalised system is takes time and is arduous
- there needs to be more direct access to information about court events
- better resources for self-represented parties but with caveats as to the pitfalls/dangers and risks of self-representation eg costs; harm to children involved by dragging out proceedings
- information about services for specific issues eg mental health, substance abuse, child protection, family violence eg the website about intervention orders in Magistrates' Courts in Victoria is now very informative, accessible and user friendly

Question 4

- the relatively new FASS system is helpful for directing prties to appropriate help and services but they are very directive and inflexible and will not provide explanations for refusal using generic categories like 'conflict'
- there must be more than one service available eg legal aid duty lawyers, CLC services, panels with private lawyer rosters (like in the Children's Court of Vic) where high volune registries like Melb and Sydney wii encounter genuine conflict
- access for people without computers/without acess to computers and the court portal
- access for CALD users

Question 5

- increased education and training about our Indigenous history and occupation by foreign powers (dating back to the 1500s when Chinese first came to Australia) but especially about Captain Cook and the invasion
- 2006 amendments to s 60CC(3) and the definitions have been an improvement
- Indigenous support personnel in all registries
- Indigenous education/information services to judges, Registrars, all staff
- having an accessible conduit for suggestions, complaints and compliments

Question 6

- recognition that not all CALD/NESB communities are the same and one size does not fit all CALD communities
- education and training about differences eg knowledge of legal system; fear or respect for legal system eg for those coming from totalitarian or corrupt regimes
- imprinting CALD communities with the sense that we are all Australians and our legal system is independent of government and not corrupt (for the most part)
- educating and training key players (lawyers, FDRPs, judicial officers) in our family law system about accepting different family structures and roles within families eg patriarchal systems; where grandparents do primary child-rearing; gender stereotypes
- recognising literacy and communication difficulties
- avoiding use of jargon and using simple accessible communication methods eg audios, translated information on screen and information pamphlets
- for eg, the divorce form just has the generic 'if you need an interpreter, then contact TIS' in several languages on the back page but why cannot the divorce form itself be available in other officially-translated languages?

- for eg, in a matter where I appeared as counsel, the court engaged a Thai interpreter for a woman from the Philippines as court staff did not understand (and did not ask) that it was a totally different language and culture and should have made inquiries. That meant that the trial was postponed for weeks and a Tagalog interpreter booked eventually

Question 7

- similar response to Q 6 and Q 7 above with an understanding that not all disabilities have the same level/type/constraints/capabilities
- modifying access to family law services as required
- having an accessible conduit for complaints and compliments and suggestions for improvement

Question 8

- simiar to the response to Q's 6 and 7 above
- educating and training court personnel and judges and the legal profession and other service providers about what the very broad descriptor LGBTIQA+ entails having specific advisors on hand for admin staf and decision makers
- having an accessible conduit for complaints and compliments

Question 9

- in the past, there were far more registries for the FCA and FCCA and now, there are only two one in the Melbourne CBD and one suburban for the whole state of Victoria
- circuits are really packed and should be longer and better resourced (admin staff, family consultants, judges) and more frequent * train State magistrates about family law as they have powers but are loath to use them and if they do, some do not understand family law
- circuits are overloaded, over-subscribed and under-resourced plus there are lower safety measures
- conducting callovers by video or in local state courts is problematic - state courts do not like to share!
- reintroduce Registrar circuits eg for Conciliation Conferences
- there needs to be a loosening of the 'monopolising' of circuits by a few barristers which is more an issue for Vic Bar and NSW Bar but is supported by FCCA judges who conduct circuits

Question 10

- lower filing fees eg consent orders used to attract no filing fee 'rewarding' parties for reaching an agreement and avoiding litigation but now these too have a filing fee
- exemptions based on hardship under the 'poverty test' are hard to successfully obtain
- the poverty test is too stringent and there should be more flexibility and the income and assets tests should be relaxed
- legal aid should be more available
- more duty lawyers
- the cost of private family consultants is prohibitive and inaccessible to most parties

- there are too few in-house consultants - for eg in the Melbourne registry, there are now half the number of consultants than there were in the 1980s but filing rates have skyrocketed
- waiting lists; stringent compliance requirements; fewer court events

Question 11

- because of the high cost of legal representation and litigation in general, up to 40% of family law cases have one or both self-represented parties
- for the most part, self-represented parties prolong proceedings, burden court resources inc judges and increase the cost of other parties who are paying for lawyers
- this imbalance is often not recognised and it is difficult to get costs under s 117
- govt funding of legal aid is a national disgrace
- funding is politicised to such an extent that the federal govt will only fund what will attract votes - for eg recent budget

Question 12

- Parts of the FLA (eg Part VII) need to be simplified and reconciled
- without fettering judicial discretion, there need to be uniformity in how FCA and FCCA judges conduct hearings at interim and final stages - for eg, some judges insist on orders and directions; some judges will hear matters on the first return date by way of submissions; some judges demand parties/lawyers to prepare written submissions for interim hearings which just increases expense and is unfair to self-represented litigants

Question 13

- some regional and rural State courts hearing family law cases have far more lax security measures and need to be tightened up and improved
- perhaps separate queues for entry by 'card-carrying' lawyers - for eg, the Royal Commission into Financial Services and Banking in Melbourne means the queues to the FCA and the FCCA in the Cth Law Courts Building snake out onto William Street and cause extra delays (and frustration by all)
- perhaps separate entrances/exits for vulnerable clients especially with children if attending counselling sessions

Question 14

- Part VII in particular is very difficult to navigate if one goes through the legislative pathway set out in Goode 2006 and in the Act itself - see Chisholm 2015; Riethmuller 2015
- the legislative pathway needs to be simplified and renumbered - see articles by R Chisholm 2015, S Strickland and K Murray 2012 and R Alexander 2010 and 2015
- the FLA needs to be amended to repeal the statutory presumption of equal shared parental responsibility (ESPR) as users do not understand that ESPR does not mean equal time s 60CC(2A) is rarely mentioned in decisions and so seems the Bench only takes notice of family violence in extreme cases and still prioritises contact over protecting children - see analysis of cases in 2015 article in Int J of Law, Policy and Family by R Alexander

- more recognition on impact of children of: conflict; exposure to family violence; economic consequences post-separation on their primary care givers; long term effects of child abuse; systems abuse and over-exposure to 'experts'
- scope of power under s 67ZC is not clear and there is inconsistent case law
- need greater recognition of children with special needs; intersex children; children with disabilities

Question 15

- the 2011 reforms were good but the defintion of family violence is problematic as there is a threshhold requirement of coercive or controlling behaviour and some types of family violence eg emotional abuse may not fit that definition
- judges overrely on categorisation of different types of family violence
- amend Best Practice Principles to remove four 'recognised categories' of family violence
- see also Q 14 above
- consider adding some guidelines into s 60LA about removal of ICLs (only case law at the moment and different judges take different approaches)

Question 16

- objectives and principles underlying Part VII are spread out in different sections eg s 43; Div 12A, s 60CA, s 60B and need to be consolidated and shortened
- greater recognition (and with it education an training) of different family types and structures
- see Q 15

Question 17

- apart from the reference of powers about de facto property, Part VIII has undergone very little reform so it is 'stuck' in the 1970s
- there needs to be reform to introduce more factors relevant to both s 79(4) on past contributions and s 75(2) future needs (and corresponding de facto sections) for property division and spousal maintenance i). family violence as Kennon is far too narrow - as ALRC recommended in its 2010 paper ii). effect of economic consequences of separation iii). feminisation of poverty iv). lost opportunities and forgone opportunities (eg superannuation, promotion, advancement, sacrificing careers for the other spouse usually the husband) and income
- clarify whether Stanford is another 'step' (added onto the 4 steps in Hickey) or effectively same as s 79(2) and s 90SM(3)
- Notice of Risk should also be mandatory in financial cases too

Question 18

- all changes as recommended in Q 17

Question 19

- BFAs are problematic and subject to exercise of judicial discretion- eg what the High Court interpreted s 90K and duress in Thorne and and Kennedy

- BFAs are not scrutinised and usually favour the richer party (usually the male partner) compared with processes under s 79 that ensure (at least by statute) that the alteration and division of property interests is 'just and equitable'

Question 20

- the FCCA hears 80% of all family law cases; the FCA hears more complex cases
- the FCCA is overloaded and the waiting lists are way too long and the number of court events increases costs and delays and frustration but those involved and by the community at large
- there are two sets of forms, procedures, filing fees, court events, lists, staff which seems to duplicate too many resources rather than be integrated into one cohesive court system and structure
- I do not support the introduction of a Small Claims List - family breakdown would be commodified ; we are dealing with people and not products

Question 21

- although adr is helpful for some cases, others need a third party adjudicator and decision-maker * adr and litigation are not mutually exclusve alternatives
- adr shoulsd not be compulsory but one available pathway
- fdr is too often takes place even where there are contra-indicators like family violence, high conflict, substance abuse, mental illness and there need to be strcter guidelines and compliance as to exemptions fron fdr

Question 22

- Magistrates have power to hear small property disputes (up to $20,000) and that is being changed now to increase the monetary limit
- Magistrates do not use that power and in many cases, that is a good thing as they have little knowledge or desire to do family law cases and also have so many other case to determine; their workload need not be made more onerous
- we need o somehow simplify and shorten the process in the FCCA for matters involving modest property pools for eg perhaps trial a special list for cases where the equity including superannuation does not exceed $300,000 - there was a trial of a special list for overseas relocations for a while in the Melbourne registry of the FCCA and that worked to determine those cases more expeditiously

Question 23

- separate exits at court
- more secure rooms especially in regional courts
- see also Qs 13, 14, 15 and 17

Question 24

- no - the adversarial system may be the best option for families affected by family violence as soft options like adr do not necessarily address the behaviour, recognise the effect on victims (usually women and children), send the message to the perpetrators and community that family violence is unacceptable

- see Q 21

Question 25

- courts need to be more 'punitive' with those who delay proceedings - both lawyers and especially self-represented litigants
- greater use of s 102Q (abuse of process), s 117 (costs) and s 118 (vexatious litigants)
- different judges have different approaches and there needs to be greater to consistency to avoid 'judge shopping'

Question 26

- see Qs 21 and 24

Question 27

- arbitration is a legitimate alternative pathway that saves time and cost but there need to be safeguards and proper processes in place
- arbitrators should not just be retired judges or senior counsel

Question 28

- there need to be safeguards so that family disputes are not commodified and relegated to the status of disputes about utiluty bills or computers breaking down
- technology and on-line services should not replace face-to-face or personal attention and responses
- there are still many people without access to on-line services especially if in lower socio-economic classes, NESB backgrounds, with disabilities, elderly, with mental heath issues
- not every is tech-savvy and computer literate and not everyone wants to be

Question 29

- each family is different and arguably each one has 'complex needs' and some may have other issues like high conflict or disability or mental health
- separating out families with 'complex needs' just creates another class of family and may lead to separate screening, separate processes and separate lists and that is not ideal
- we need to address the problems in the current system and not create more problems with special types of families

Question 30

- a family-inc;usive model may work fpor some families but there has to be careful screening and cannot be mandatory
- this can be another tool in the adr tool kit
- there need to be safeguards and the risk is that those with a vested interest may relax standards (as already happens with some fdr providers) as expressed in Q 21, there are many contra-indicators and so many families will not be suited to this form of adr

Question 31

- see Q 29 - why create a separate class of families?
- there need to be far better resources across the board - more registrars, more family consultants, more judges
- there needs to be better access to legal aid and pro bono services

Question 32

- child protection is fragmented between federal and state legislation and courts
- there has been a lot of reserach about this 'gap' and all agree that there needs to be a more cohesive one-stop shop than 9 federal and state and territory competing jurisdictions - for eg, AIFS, FLC
- there needs to be greater comity and co-operation and information-sharing - for eg. a shared data base as we now have for family violence protection orders around Australia
- there needs to be greater involvement by state departments in FLA proceedings pursuant to Notices of Risk or s 91B orders for in most cases, the relevant department eg DHHS in Victoria, will not intervene
- no doubt state departments do good work, but as family lawyers we only see the cases where these departments refuse to intervene and take action or be involved in FLA proceedings

Question 33

- see Q 32 for an eg of a shared data base
- the Family Court of WA is a good eg of an integrated 'one stop shop' court that deals with state and federal jurisdictions
- there needs to be more streamlined information-sharing channels between state courts including Children's Court and the federal family law courts eg information about family violence protection orders, orders placing children under the care of state departments (noting s 69ZK of the FLA), migration status of parties, Centrelink status - but only if very strictly and demonstrably relevant to proceedings and not on a fishing expedition

Question 34

- I do not support children particpating in court proceedings as in Children's Court proceedings
- the current ways of hildren particpating thorugh family reports or an ICL are adequate
- there need to be safeguards to protect chidlren form too many people asking questions and so an ICL is a good eg of a 'case manager' for the child
- on-going training of ICLs in listening to children; working with children with different needs, different cultural backgrounds, fron diverse range of families
- perhaps allocate a family consultant with an ICL to act as a multidisciplinary team for each case and avoid expert-shopping
- there are vast differences bewteen ICLs - some are very active; soame are very passive bordering on lazy

- need legal aid to cover more costs incurred by ICLs for expert reports, for instructors ar trials (not covered at present) increase costs payable to child psychologists and child psychiatrists for non-therapeutic reports as cost is prohibitive
- develop guidelines as to the removal or change of ICLs rather than rely purely on case law, much like s 68LA that sets out the role of ICLs

Question 35

- sometimes judges make orders for ICLs or family consultants to advise children of outcomes when that ICL or consultant has had involvement with the child and there is familiarity
- it is difficult to control how a parent (or an ICL or consultant) advises a child of outcomes and there is no mechanism for follow-up of court orders anyhow unless there are further proceedngs perhaps it could be a multidisciplinary team (as described in Q 34 above)

Question 36

- see Q 34

Question 37

- although not a mandatory requirement, most court-ordered s 11F and other counselling is child-inclusive
- most fdr s 60I purposes is not child-inclusive
- it should not be made mandatory through legislation that children have to go through some sort of fdr as there are too many foreseeable exceptions such as where the child has already had too much exposure to disruption or intervention or conflict
- KidsTalk operated by VLA works for some very agreeable and willing parents but there need to be safeguards such as whether there is 'real' mutual parental consent and whether the child's views (depending on their age and maturity) have been ascertained

Question 38

- children may be overexposed to questioning and probing and that can have long term effects not only on their relationships with their parents and extended families but also with their academic, behavioural, psychological and social development as they get older and mature
- there needs to be a case manager (preferably a multidisciplinary team) to follow what is happening for each child

Question 39

- better national training and selection of ICLs
- multidisciplinary teams to be involved in each case with the same ICL and family consultant
- recognition and appropriate education and training by all key players including judges as to children's needs, experiences, different cultural backgrounds, different family structures

Question 40

- see Q 37 and Q 39

Question 41

- each professional needs professional competencies
- for lawyers, training should start in their undergraduate law degrees on family law, practical skills eg interviewing, advocacy, and other skill sets eg how to talk to people, how to empathise, how to build up resilience; different types of family violence nd effects of family violence and child abuse; cultural competency and recognition of different cultural backgrounds inclusing ATSI communities

Question 42

- undertanding the same issues as above in Q 41
- sensitivity; training in how to minimise effect of their own personal upbringing and schooling to cases being determined
- psychological supports for debriefing and resilience training
- access to court-approved experts to advise on certain issues eg Aboriginality; special needs; special illnesses; effects of family violence; child abuse; different types of counselling; cultural issues; mental illness
- compulsory CPD about these issues

Question 43

- Best Practice Guidelines for Family Lawyers are helpful
- need more information and training especially about family violence psychological support for professionals, debriefing, strategies to build up resilience; maintaining physical and mental wellbeing
- compulsory CPD about these issues

Question 44

- see Q 43
- need ongoing supports
- recognise stressors like work load difficult clients, vicarious trauma , coping with own personal issues for lawyers and balancing work/life

Question 45
no - anonymity protects children and adults and acts as a disincentive for grandstanding and theatrics and publicity seeking - usually by those with more funds and resources ie usually men * if there are personal stories to tell for eg surviving family violence, then other outlets should be encouraged but not through publication of family law proceedings * the penalties for breaching s 121 (and s 102Q) should be used and enforced
Question 46

- there needs to be more plain-English and plain explanations about what goes on in the family law system and dispelling of myths and misperceptions

Question 47

- see Q 46
- federal government needs to allocate more resources and person power to federal family courts
- more legal aid
- simplifications of processes and reducing the number of court events
- ensure the Family Law Council is much more widely representative than its current format and better resoucred
- ensure that AIFS is well resourced

Other comments?
This ALRC should be gathering and integrating work and research already undertaken by Family Law Council, ALRC, Family Law Section of the Law Council, professional organisations, commissioned reports and the work and scholarship of individual family lawyers and academics. The wide range of the Terms of Reference and Issues Paper and the short time period attracts cynical views about whether this review can really explore issues in depth and have ant really impact on policies and reforms. Hopefully individual and organisations will be invited to give oral submissions and to participate in consultations and roundtable discussions I am a family law barrister and academic and I wish to be involved in such fora.
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