AnglicareSA

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Name of organisation AnglicareSA

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Question 1

AnglicareSA is supportive of the proposed functions identified within the Issues Paper (pg. 19), however, believes that “advancing the safety, healthy development and economic support interests of children” should be strengthened to “advancing the best interests of children”. To achieve this, adoption of child-centred principles and practice is needed (see Q2), as well as cultural reform which cultivates: ● Relational versus adversarial approaches: Families and children would benefit from a more relational and non-adversarial approach to transition and resolution. Doing so requires recognition that the current legal system has limited emphasis on or scope to address or build capacity in ‘relational issues’, and would be aided by increased family support and mediation. ● Process versus final outcome: increased emphasis on separation as a process, rather than a ‘final answer’, with language, processes, interventions and expectations adjusted accordingly. This could help calibrate individual’s expectations and commitment to a longer term, ongoing process, with the legal component being only one aspect of this. ● Culture: Transition from the current ‘win or lose’ culture which is often built on the assumption that the legal profession ‘owns the issue’, rather than the system supporting and guiding involvement in suitable processes. To achieve, there is a need to adopt change practice and dynamics, such as recognising that affidavits are usually counter-productive The findings of multiple reviews (pg. 18, Issues Paper) showing the growing presentations of families with complex needs and safety concerns, including risk of harm to a child, with intersecting issues such as family violence, mental ill-health and substance misuse reinforces the need for more integrated and joined up service delivery across different service systems, including health, justice, education, child protection etc. To optimize outcomes in the Family Law System, both the social and legal aspects of a family’s situation need to be addressed throughout the transition and separation process. High level Federal and State government commitment to operate within an eco-system of service systems is needed to improve collaboration, integrated service responses and ongoing family functioning. This could be supported by a triage approach which prioritises those with more complex needs or high risk ratings to more intensive supports.

Question 2

AnglicareSA believes principles are essential to guiding how legislation and reform is implemented. They should reflect best practice and be prescriptive to support cultivation in daily practice; suggestions include: - Child centred: To ensure children are treated as individuals in their own right and capacity within the family structure. Formal mechanisms are in place for ensuring the voice of the child is represented, with consideration given to who is representing the child, who is their advocate and what it is that gives strength to the voice of the child. Frameworks such as the model of social citizenship (Neale 2002, Dialogues with children) – empowering children by giving them knowledge of their rights of participation and protection and knowledge of how to exercise these rights could be explored. - Best interests of the Child and Cooperative Parenting: Striving towards cooperative parenting, emphasising future needs of the children within the relationship. This requires recalibrating expectations of parents towards a more functional parenting approach that prioritises the wellbeing of the child; an AnglicareSA staff commented: “Many clients come to us thinking shared parental responsibility means 50/50 time, and we spend so much time encouraging and facilitating a shift of focus from what is best for the parent, to what is best for the child. If the family law act could be simplified so parents/lawyers don’t miss the ‘best interests of the child’ clauses of the act, then perhaps some of this confusion/entitlement could be addressed earlier and prevent establishing early expectations that are hard to shift later.” - Supporting “transition” instead of an “end result”: Stakeholder experience and client outcomes would benefit from increasing the emphasis on separation as a process, rather than a ‘final answer’, with the language, processes, interventions and expectations adjusted accordingly. This could also help calibrate client’s expectations and commitment to a longer term, ongoing process, recognising that the legal component is only one aspect of this. Achieving this shift requires acknowledgement that the responsibility of the court does not and should not end with final orders. - Relational versus adversarial culture: (as per Q1)

Question 3

Research from AnglicareSA’s KidsAreFirst service shows that parents access information from a range of sources during separation, with 71% initially approaching friends/family for information; 44% then sought legal services and 15% Family Law court information. A strategic commitment to invest in early intervention efforts is needed to shift the mainstream understanding of and culture around separation, including viewing lawyers as the first point of contact, and providing accessible information regarding the stages of separation process and co-parenting options. This could be achieved by building the capability of first to know agencies, and working closely with mainstream services across education, health, childcare, parenting services etc, to build awareness of and connect families to information earlier, in community and online. Building capability in community to access information is also critical, as illustrated by AnglicareSA Family Law Service clients who commented for the need for there to “be better information about the steps to gain resolution - lawyer gave misguided information”, and to reduce barriers to information: “it would have helped having a centralised, one stop location for information and advice - information was hard to find”. This could be achieved by working more closely with community hubs and family services to increase the range and type of soft entry points for families to access information. AnglicareSA’s research also demonstrates the need to build capability of specialist expertise in relation to Family Violence, with one participant noting; “I sought various help but often it was conflicting, dismissive, isolating - at [family violence service] I felt understood and supported - it would help if community understood domestic violence and that it is not the same as two people in conflict”. Doing so requires efforts to build capacity and skills across a range of legal and non-legal services, which are often the first point of contact for families in unsafe situations. For example, AnglicareSA’s generic inner and outer northern homeless service supports approximately 2,500 individuals experiencing homelessness every year – 38% are fleeing domestic and family violence. Building trust and rapport, and providing quality legal advice or referrals in this intervention is, therefore, essential to the family’s immediate and ongoing safety and wellbeing. For families experiencing family violence during court proceedings, specialist social workers should be available at all times at the Family Court together with Legal officers to ensure a full range of supports and services are available to support the family’s safety and experience during the legal process. AnglicareSA also believes that all promotional materials should be developed with input from a range of legal and non-legal stakeholders to ensure it is reflective of and responsive to community need and diversity.

Question 4

AnglicareSA believes the proposed ‘Navigator’ role has merit, and can vouch directly for the effectiveness of similar facilitator/navigator roles in improving participant outcomes within complex systems (see National Disability Insurance Scheme Consumer Advocate (NCA) case study, below). NDIS Consumer Advocate (NCA) Case Study: AnglicareSA invests in an NDIS Consumer Advocate team to help people navigate the complexities of the NDIS. With overlaps between complex systems such as the Family Law System and NDIS, there is a need to invest in ‘mechanisms’ to ensure all people have equitable representation and access. AnglicareSA’s ongoing concerns regarding the ability for people with complex needs to access NDIS has been validated through the formal evaluation of the NDIS, undertaken by Flinders University’ National Institute of Labour Studies, which found that those experiencing poorer outcomes, were (in particular) “people with disability who were unable to effectively advocate for services on their own behalf, including some people with psychosocial disability and/or those people who struggled to manage the new and sometimes complex NDIS processes”. AnglicareSA’s NCA team is providing advocacy and advice for people who struggle to understand and navigate the challenges of NDIS, and are achieving excellent results for those who would otherwise potentially ‘fall through the gaps’. To optimize participant outcomes, the Navigator role should emphasise relationship building and advocacy, rather than performing a solely legal function. Community based services such as Parenting Orders Program are well placed in community to provide these roles. Investing earlier and within community will help build capacity outside the legal system, reduce the demand on tertiary services and improve client readiness to engage. Family Law Advice Line: Families are currently required to attempt mediation before applying for court orders. Consideration could also be given to mandate that families contact a family law advice line prior to engaging with a lawyer for the purpose of family court matters, and link clients with family lawyers as needed. Accessible information for children: information also needs to be easily accessible particularly for children, who should be consulted on site content and availability via mediums such as apps and social media. Information packs should also be made available for self-represented litigants with clear information regarding time lines, how to fill out forms, requirements of affidavits etc.

Question 5

There is a recognised need for the development of diversity and inclusion models in the family law system for Aboriginal individuals and families in particular. Fear and stigma of ‘white’ authority in a persecutory context is common, and whole of family based approaches are particularly needed in Aboriginal communities, where family-centred practice is often more culturally appropriate and effective. Building bridges between the Family Law System and Aboriginal communities can help enable members of these communities to access and engage with the Family Law System. Promotion of supports and services across Aboriginal specific community soft entry points can help reduce barriers to access. There is also a need to build on culturally appropriate, strengths based approaches to achieve greater engagement and outcomes. For example, traditional methods such as cognitive behavioural therapy with trauma informed practice are often less effective for Aboriginal clients with options such as narrative therapy often achieving greater engagement and change.

Question 6

There is a recognised need for the development of diversity and inclusion models in the family law system for CALD individiuals and families in particular. Fear and stigma of ‘white’ authority in a persecutory context is common, and whole of family based approaches are particularly needed in CALD communities, where family-centred practice is often more culturally appropriate and effective. Building bridges between the Family Law System and CALD communities can help enable members of these communities to access and engage with the Family Law System. Promotion of supports and services across CALD specific community soft entry points can help reduce barriers to access. There is also a need to build on culturally appropriate, strengths based approaches to achieve greater engagement and outcomes. For example, traditional methods such as cognitive behavioural therapy with trauma informed practice are often less effective for CALD clients with options such as narrative therapy often achieving greater engagement and change.

Question 7

Investing in specialist supports such as Disability Advocates, whose primary role is ensuring the person with disability is fully heard, understands their rights and is supported throughout the legal process.

Question 8

Question 9

Distance can be a significant barrier for people to access justice. There is a clear need for Federal court circuits to travel into rural areas to ensure equitable access for all individuals and families regardless of where they live.

Question 10

Question 11

Measures are needed to respond to the growing trend of self represented litigants, including: ● Cultural shift: the current adversarial nature of the family law court system embeds a systemic disadvantage against self-litigants. ● Plain English: Lawyers should be encouraged to advance their cases in ‘plain English’. ● Restricting cross examination: Particularly of vulnerable witnesses, which should only be permitted through writing or separate courts via video link ● Barrister parameters: the professional imbalance could be reduced by restricting how barristers can engage against self represented litigants.

Question 12

● Workshops for self-represented litigants, where family law practitioners can advise and coach participants on court processes, rights and responsibilities, cross examination etc. ● Information packs should be made accessible for self represented litigants with time lines, information about how to fill out forms, requirements of affidavits etc.

Question 13

Reflecting client voice and experience ● Engage and consult with representatives from cohorts who identify as having safety issues and have been through legal processes, regarding their experience and developments which could improve this such as court design, children's waiting rooms, family consultant rooms etc. ● Safety: Where safety issues are present, clients need to have a clear understanding and knowledge of the security arrangements, specific rooms available and their location prior to attending the court.

Question 14

Significant effort is needed to better integrate the child’s voice into the Family Law system, through more specific child-safe and child-friendly training for all stakeholders, including Independent Children’s Lawyers. AnglicareSA recommends that ‘Child’s voice’ should be adopted as a quality domain and service priority across all components of the Family Law system. Practically speaking, this requires an increase of supervised contact services to provide more flexible service provision and support ongoing monitoring. Joint decision making is often a source and arena of ongoing conflict, when lots of the ‘core’ issues are by nature win/lose questions such as schools, vaccination, medical treatment, religion are raise and challenged. Addressing this requires a cultural shift from the current legal process of ‘locking’ parents into an ‘end-game’ position that often remains for years, into something that allows for more ongoing engagement and monitoring of a child’s voice. There is also a need to build the capacity of the courts to improve outcomes for Processes also need to be developed and strengthened to allow the voice of the child to be better represented in safe ways by: ● Working with judges to improve engagement and case management from the courts, ● Reducing waiting times for Children’s Contact Service through additional resources, ● Ensuring mandatory mediation is not bypassed without due cause, possibly ordering more clients back to mediation; and, ● Promoting community mediation after court has commenced. Community mediation, through the likes of not-for-profit providers like AnglicareSA has a place in the wider Family Court assemblage to support families through the court process. Communication could also be improved by establishing a common language used in court orders, as different terminology such as co-parenting counselling, mediation, reunification therapy etc can be confusing for clients as well as service stakeholders. An ongoing conversation that focuses on trends and language will help create clarity for clients and services.

Question 15

Provisions should be included to: ● Increase funding for longer and more frequent access to Children’s Contact Services, from "staggered' supervision moving to independence/self management. ● Provide specialist counselling and support services for both parents and children who have experienced domestic violence

Question 16

Question 17

● ‘Whole ‘ family focused practice: Cultivating a culture that recognises the fluid nature of modern families and involves a child’s ‘whole’ formal and informal circle of support in the decision making process (Family-Led Decision Making). ● ‘Genograms’ could be used to map a child’s circle of support, generated by the child with developmentally appropriate methods used with younger children. From this circle, the child’s best interest can be identified, with time arrangements being a consequence, rather than a focus (integrated in a model that allows for frequent review and monitoring). An example of a similar process is ‘Restorative Circles, developed in Favela in Brazil. This approach acknowledges the notion of ‘it takes a village to raise a child’ and widens the focus from the short-term interest of parents to the best interests and wellbeing of children. ● Re-define and recognise “family” to allow for variations including same sex, extended family, surrogates etc.

Question 18

Question 19

Question 20

“Getting off the train is really an important objective that everyone should strive for. After four years and $125,000 wasted, I would like to say just one thing, children don’t thrive in a zero sum game” (Participant from AnglicareSA’s Kids Are First service) Suggestions for improving cost effective resolution of family law disputes include: ● Non-legal case management, shifting primary support and involvement away from the legal profession to social work/therapy supports. ● Remove the word ‘final’ or ‘resolution’ from all processes: Language can be important and there needs to be a shift towards an understanding that separation is a transition process which can be supported by professionals, of which the legal profession is one, not the main one. ● Triage model in court, and co-location of a social worker to support the navigation and ongoing support process.

Question 21

Mediation and Education early and throughout court process ● AnglicareSA believes additional funding should be made available to adequately remunerate community based Family Dispute Resolution Practitioners – there are currently long waiting lists and a lack of suitably trained practitioners. ● Funding for training for Family Dispute Resolution Practitioners, particularly around property settlement practices. ● More regulation and clear legal expectations from lawyers, ensuring parents make every effort to engage in mediation before having conversations with lawyers and an expectation that the matter will go to court. ● Community mediation to be regarded as appropriate to start/continue even when the matter is before the court (i.e. parallel process). ● Arbitration only to be undertaken when Family Dispute Resolution has not been successful - this should be a transparent and linear process. ● Less focus on mediation in writing parenting plans/orders by consent with more focus on encouraging a multi session process - focusing on making small steps towards contact arrangements - step by step by step. ● More education for parents regarding conflict and children and post separation arrangements/relationships. “I realise that I am now on the right path but had to find my way blindly before actually having family court make this happen. I encourage this course to be offered to all separated parents, and as stated, truly believe it should come first in the court process. the education the course provides may lead to better and earlier outcomes for the children.” (AnglicareSA Post Separation, Kids Are First Participant)

Question 22

Question 23

Question 24

Question 25

Safety and Consequence ● System abuse needs to be recognized, with legal consequences in place. ● Self litigants should only be able to cross examine victims via written examination or using video link. ● Revision of what and who can be subpoenaed is warranted, as many people are concerned about engaging support services, as notes/therapists/counsellors can potentially be subpoenaed and used against them. ● Active and consistent follow up on orders and consequences for non-compliance e.g. re non-attendance at post separation parenting programs/behaviour management etc. ● AnglicareSA agrees with suggestions #194 and #196.

Question 26

Culture change: supporting ongoing transition ● As indicated in Q1 and Q2, efforts should be made to improve the culture of the family law system and acknowledge the process of separation as one of transition instead of ‘end results’. ● Emphasis on processes that acknowledge transitional character, rather than forcing parents to lock into a position that they then invest so much in, they can neither see beyond their immediate interests or accommodate a shift to improve outcomes for the children involved.

Question 27

Question 28

Question 29

Multidisciplinary Panel: A multidisciplinary panel could be established with child development, family systems counsellors, Family Dispute Resolution Practitioners, legal advisors and children’s advocates to provide more effective supports for children in families with complex needs. Such a panel would be well placed to function within a community based family relationships agency or a Parenting Orders Program and liaise with the courts as needed.

Question 30

Question 31

Question 32

Question 33

Question 34

• Fund reference and feedback groups like the Young People Family Law Advisory Group (YPFLAG) which AnglicareSA helps coordinate. Such groups are essential to providing a conduit to the judiciary and professionals within the Family Court System, and ensure there is an ongoing feedback loop from children and young people who have been through and experienced the system. These projects would ideally be coordinated by specialist professionals who sit outside the legal system, with legal professionals invited as ‘observers’. Comments from AnglicareSA;s Young People Family Law Advisory Group include: - Involve the kids more. They are already involved so you can’t protect them anyway. They are living it. Give them the chance to talk to judges. - Kids know more than the adults think they do - Kids are always trying to please parents – let them have a say in what happens to them. - Possible use of an expert “panel” to decide whether parents should go to court. • Build capacity to make children’s advocates available to all families. • Increase training for Independent Children’s Lawyers to facilitate meeting children aged 5+ and engaging with them, as well as providing funding for Independent Children’s Lawyers to follow-up with children post orders

Question 35

● Judicial training so judges can potentially talk to children (when children request this) ● Lived experience: seek feedback and listen to children who have been through the process, to improve the experience for others. ● Specialist Children’s Support Services: Programs like Banana Splitz are important to normalise certain aspects around separation, including the reality of conflict during such time. ● Investing in reference and feedback groups such as the Young People Family law Advisory Group so family assessments have scope to reflect the children’s voice and position.

Question 36

It is positive to learn that changes are being made to the issues and concerns from Independent Children’s Lawyers regarding talking with children; not all children have an ICL appointed.

Question 37

● Multiple meetings with child consultant - not only before but after FDR sessions with parents to obtain feedback on the effect of arrangements on children. ● Supporting parents to be able to “hear” the voices of their children

Question 38

Question 39

Investing in a children’s advocate is essential to supporting children, and communicating with them and the courts on their behalf.

Question 40

Young Persons Family Law Advisory Group (YPFLAG) AnglicareSA participates in the coordination of the Young Persons Family Law Advisory Group (YPFLAG), which supports young people to be heard and share their lived experience of the legal system. Such panels should be valued as part of a continual improvement and quality process of the family law system. Reflections from YPFLAG participants – BEING A MEMBER ● “I feel different now – feel like others actually understands what it (being a child of separation) feels like” ● “Felt more comfortable as time went on – grew in confidence. Felt like doing something and making a difference.” ● “Always felt heard in YPFLAG – able to give honest feedback” ● “Felt good to know people able to share – comforting, less isolating, less lonely” Peer groups such as YPFLG provide a forum for two way communication where young people can receive and contribute information. They provide excellent insights into the most effective ways to reach young people, such as using easy and quick mobile applications such as facebook and snapchat, and ensuring they have professional networks to connect with and be supported through. Charter of Rights of children 1. Right to have voice heard and considered 2. Right to talk to ICL directly if want to 3. Right to find information

Question 41

Culture shift - a system of care ● Evidence and outcomes repeatedly demonstrate that the legal profession is not qualified to be the primary support mechanism for families and children in the context of complex separations. The system needs to shift from attempting to ‘educate’ lawyers through short, add-on subjects, to create valued functions and roles in the sector designed specifically to support families. ● An accreditation process should be adopted for Court Assessors ● Regulation and accreditation of the Children Contract Services. Provide funding to ACCSA (accsa.org.au) to regulate and approve private Children’s Contact Services.

Question 42

Question 43

Question 44

Question 45

Question 46

Post Order Reviews (e.g. Coronial like review): Coronial like processes should be available to review a family’s journey and outcome through their legal/mediation proceedings

Question 47

Other comments?

File

The results of this submission may be viewed at:

<https://www.alrc.gov.au/node/8362/submission/7675>