**Valerie Sinclair**

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This submission is from an individual

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Question 1

To prioritise and work collaborately with non adversarial family dispute resolution processes to meet the objectives of: -Ensuring processes are non-inflammatory and don’t escalate conflict -To advance the safety and well-being of children -To protect the rights of adults and children to be safe -Support fair and equitable outcomes -Ensuring processes are time and cost effective

Question 2

Principles: -To protect the rights and needs of children and to promote their welfare -Ensure the protection from family violence -The means to ensure parties attend family dispute resolution before filing for parenting and property matters -Be child centred and trauma informed -Enforce ethical professional practices

Question 3

By ensuring websites are user friendly By ensuring all family law and family dispute resolution professionals are required to provide information to clients By providing all family practitioners easy access to an extensive list of family law and support services in their area

Question 4

Question 5

Question 6

Question 7

Question 8

Question 9

Question 10

Ensuring FDR is mandated for both palrenting and property matters and legislation is enforced.

Question 11

Ensuring FDR is mandated for both parenting and property matters and legislation is enforced.

Question 12

Question 13

Question 14

Changes to Sect 65DAA under equal time to include guidelines in regard to the what time is age and developmentally appropriate for children under 4 years old particularly in regard to the recommendations of no overnight time under 4 years old. What time is age and developmentally appropriate Is often not understood by legal practitioners or parents and can cause unnecessary parental conflict that significantly impacts on children’s wellbeing and safety. Change the wording in regard to how equal time is considered so that it is clearer and better understood in regard to the best interests of the child being paramount.

Question 15

Changes that include misuse of the process by a perpetrator to continue the abuse Changes that include psychological and emotional abuse Consistency in Family Violence legislation and definitions An understanding that the most extreme cases may not have evidence such as AVOS as a result of extreme fear of the perpetrator and threats that may have been made to the victim. Careful screening by DV professionals may need to be included.

Question 16

Question 17

Changes could be made to simplify the provisions so that property division is clear and less complicated. For example property is divided equally unless the following exceptions apply etc. Conflict over property settlement in adversarial processes escalates or causes parental conflict at a time when parents need to work together and focus on the needs of their children. Children can be caught in conflict over property and the impact of parental conflict on children can cause long term psychological damage. Simplifying provisions would assist parents settle property quickly and effectively in FDR processes and focus on their parenting relationship.

Question 18

Question 19

Question 20

-Changes to ensure that Family Dispute Resulution is manadated for property and financial matters as well parenting prior to filing. (This should have happened with 2006 reforms) -Currently the good work done in family dispute resolution to assist parents to work together and focus on the needs of their children can be undone by an adversarial property settlement. The escalation of parental conflict in adversarial processes is extremely damaging to children. -Currently legal practioners are finding ways around mandatory FDR for parenting matters. The legislation needs to be enforced with penalties for noncompliance. Judges and Registrars need to ensure that suitable cases are referred or court ordered to Family Dispute Reolution- Training could be provided to assist with effective court referral to FDR processes. - Courts need to have referral lists of accredited registered Family Dispute Resolution Practitioners. Currently referral lists are limited and include mediators who are not registered FDRPs and have not had family dispute resolution training which includes family violence training.

Question 21

Yes, currently this is not being done effectively. It is very important for courts to refer to and order parties to attend Family Dispute Resolution.

Question 22

Currently there are very effective dispute resolution processes for resolving all property matters. These processes may involve parties receiving legal advice or other assistance to prepare for dispute resolution, seeking assistance during the process or Include legal advisers being present in the process. The role of the FDRP remains the same as for parenting matters. The parties develop a financial statement and agree on values prior to tabling proposals for division that have been developed with the assistance of their legal advisers. These processes when done well are non adversarial and time and cost effective.

Question 23

Historically parties who have experienced family violence have been disadvantaged in an adversarial, evidence based court process. For example - victims have been retraumatised by being cross examined by perpetrators or their Barristers - The perpetrator may use the court process to continue to abuse the victim - The most extreme cases of family violence may not have evidence as a result of extreme fear of the perpetrator. - Parties may be better supported by being diverted to specially designed Dispute Resolition processes for family violence cases either in collaboration with the court or external to the court, -All professionals involved need to be trained in family violence and trauma informed practice. - A model that involves highly trained legal advisers and family dispute resolution practitioners would result in better outcomes. - Legal Aid uses a shuttle model facilitated by registered FDRPs with legal advisers present.

Question 24

Legally assisted FDR can play a greater role in family violence by: 1. Ensuring Family Lawyers are trained in FDR and Family Violence and Trauma informed practice. 2.By Courts referring or ordering DV cases to FDR processes designed to support clients in cases involving family violence.

Question 25

1 By effective screening to identify abuse by registered FDRPs who have been trained to screen. 2. By referrals by FDRPs, Legal Professionals and court ordering clients to FDR processes designed to support clients in cases with family violence.

Question 26

1. By ensuring that FDR is mandated for both parenting and property matters. 2. By ensuring that legislation is complied with and lawyers refer clients to FDR and the Attorney Generals Website 3. By Ensuring that the AGS website is user friendly. 4. By court ordering parties to attend FDR

Question 27

Family Dispute Resolution is a best first option and results in the best outcomes for parents and their children, Arbitration may be an option but would require specialist family law arbitration training and may be more expensive for the parties than a court process.

Question 28

Question 29

Currently Legal Aid NSW has an Family Dispute Resolution model that effectively manages family cases with complex needs.

Question 30

Question 31

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Question 33

Question 34

Ideally by referring to Family Dispute Resolution Processes first so that children do not need to participate in an adversarial process.

Question 35

Question 36

Mechanisms that protect the child such as a child specialist becoming the voice of the child in a way that protects them. For example: Child Inclusive Practice in Family Dispute Resolution was designed by Dr Jennifer McIntosh to give the child a voice and ensure their protection. This is a best first step before court proceedings.

Question 37

By using a Child Inclusive model of Family Dispute resolution that supports the child to have a voice in a way that protects them. The child consultant becomes the voice of the child in the FDR process facilitated by the FDR practitioner. The child consultant only shares the information that the child wishes to share with the parents.

Question 38

Yes, there are risks to children being involved in making a decision depending on family dynamics and parents capacity to hear feedback from the child. Information from children should only be used to inform parental decision making. The child inclusive family dispute resolution process described above is designed to protect children and involves screening for suitability by a trained FDRP.

Question 39

Screening for suitably by trained professionals and a process that is designed to protect their safety such as the CIP FDR process described above.

Question 40

Question 41

Training and competency in: Family Dispute Resolution Impact of Conflict on children Family Violence Trauma informed Practice Child Protection Family Law Legislation Legislation in regard to competencies and maintenance requirements Registration and continuing registration requirements

Question 42

Training and competency in: Family Law Legislation An understanding of Family Dispute Resolution Family Violence Trauma informed practice Impact of conflict on children Child Protection Legislation in regard to mandatory FDR and how to refer to FDR

Question 43

Enforcing mandatory FDR for parenting and property. Penalties for non-compliance by legal professionals Training for Lawyers in regard to how to engage and refer clients to FDR Training for Lawyers in FDR, Collaborative and non-adversarial practice Training for lawyers in regard to how adversarial processes escalate parental conflict and how conflct impacts on the wellbeing and safety of children. Court compliance with mandatory FDR by court ordering clients to FDR or to return to FDR Training for registrars to refer to FDR

Question 44

Regular CPD Regular Seminars Regular Mentoring/Supervision Workshops and Seminars that promote collaboration between all Family Law Professionals Workshops that promote collaboration between family law service providers

Question 45

Question 46

Question 47

Other comments?

The singularly most effective change that would immediately significantly improve the family law system for parties, families and most importantly for children is to mandate FDR for property and financial matters as well as for parenting prior to filing. This should have been done in the 2006 reforms and would only require a small change to the current legislation. As there has been a culture of finding ways around the current FDR legislation by some legal professionals it would need to be properly enforced. The court would then be free to effectively make decisions in the cases that require a legal decision without the current lengthy court delays.

File

The results of this submission may be viewed at:

<https://www.alrc.gov.au/node/8362/submission/7756>