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T (08) 8952 4055
F (08) 8952 4033

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001
Email: familylaw@alrc.gov.au

enquiries@cawls.org.au
www.cawls.org.au

Dear Sir/Madam

ALRC – Review of the Family Law System

The Central Australian Women's Legal Service (CAWLS) is a trauma informed community legal service for all women in Central Australia and Barkly regions. CAWLS provides advice, information, casework and community legal education to all women with a strong focus on family law and family violence matters, and, related or stand-alone civil law issues that include sexual assault, child protection, housing and tenancy, debt and compensation for victims. Under the Women's Safety Package, CAWLS has established a Specialised Domestic Violence Unit to provide specialised support services for those women at risk of or experiencing domestic and family violence.

For many court users the family law system is both challenging and complex. These challenges are exacerbated for CAWLS' clients due to issues of remoteness, lack of social and support services and language and cultural barriers. Many clients present with pre-existing trauma including a history of family violence and exposure to substance abuse in particular alcohol.

CAWLS appreciates the opportunity to provide the following feedback to the Issues Paper on Review of the Family Law System. This is in addition to the contributions made by the Women's Legal Services Australia.

2. What principles should guide any redevelopment of the family law system?

It is CAWLS position that there should be a greater focus on the following principles to guide the redevelopment of the family law system:

- Ensuring that all parties, including children are protected from family violence and abuse;
- Provision of therapeutic and other support services to families during the course of family law proceedings/disputes in order to assist families in resolving and managing family disputes; and
- Ensuring the family law system accommodates Aboriginal and Torres Strait Island families and culturally and linguistically diverse families.

3. In what ways could access to information about family law and family law related services, be improved? AND; How might people with family law related needs be assisted to navigate the family law system?

CAWLS supports the proposals in the Issues Paper at paragraphs 51 to 58 for caseworkers or navigators to assist parties during the family law process. CAWLS would also recommend that in matters involving family violence, that there are case workers or navigators who are trained family violence practitioners.

5. How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

CAWLS assists a large portion of Aboriginal clients in relation to family law and domestic violence matters. In CAWLS experience the family law system is not appropriately adapted to Aboriginal families and communities. CAWLS endorses the proposals set out in paragraphs 61 and 62 of the Issues Paper. CAWLS also supports building greater cultural competency among all areas of the family law system, including judicial officers, family report writers, family lawyers and family consultants. CAWLS also recommends that materials such as websites, papers and brochures are translated into various languages.

9. How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

CAWLS assists a large proportion of Aboriginal clients who often live remotely and with no internet or phone coverage. This creates significant barriers to engagement in the family law system. There are limited services available in remote communities, including family relationship centres, contact centres for changeover, counselling, safe houses for women effected by family violence, police stations and interpreters where English is not the main language in the community. Transport to the closest town can be limited and prohibitively expensive.

There are also significant challenges in reaching a shared care arrangement for children where separated parents live in different remote communities given the expense of travel in the Northern Territory and the limited transport options in order to affect changeover. This can be an additional barrier for people living in a remote area to engage in the family law system and resolve family law disputes.

CAWLS supports the following initiatives:

- Increased knowledge and understanding among all areas of the family law system in relation to the remote context, including judicial officers, family report writers, family lawyers and family consultants;
- Increased funding to provide services to remote communities in a culturally safe and appropriate way, including family law, family dispute resolution, contact centres, counselling and family violence prevention/crisis services;
- Working with Aboriginal communities to develop culturally appropriate family dispute resolution practices which are designed and developed by that community in order to ensure that it is in line with the particular cultural context and takes into account community dynamics;
- Increased collaboration with existing services in remote communities, including Aboriginal services, (where appropriate). This may involve building the capacity of these services;
- Increased training for Aboriginal interpreters in communities in relation to family disputes and family law;
- Increased flexibility by the Family Court and Federal Circuit Court for parties who live in remote communities, including in relation to attendance in person at Court and Court deadlines;

- Funding to facilitate parties who are experiencing financial hardship and live in a remote community to participate in family law proceedings (e.g. grants to cover transport and accommodation costs in order to attend Court); and
- Additional support and funding for parties who experience financial hardship and live in remote communities in order to facilitate changeover of children (eg, assistance with provision of transport of the children between the parties). This may involve funding existing community organisations to take on this role.

CAWLS recognises that the provision of family relationship/dispute services to remote communities in some circumstances may require external services rather than reliance on existing services in the community, particularly in small communities where existing services may have an actual or perceived conflict (eg. an employee may be related to one of the parties involved).

Case study 1 – Accessibility for Aboriginal clients living in remote communities

Sarah is an Aboriginal client who lives in a remote community, several hours away from Alice Springs. Sarah engaged with the family law system in order to recover her children from the paternal family. There were significant barriers for Sarah when engaging in the family law system. Sarah spoke limited English and relied on interpreters. There was no internet or mobile coverage in her community and she did not have a phone. Sarah lived in her family home when she was in her community, but she was not permanently residing at her family home, particularly due to sorry business or funerals which were often interstate.*

The paternal family lived in another remote community which was a several hours away from Sarah and from Alice Springs. There were significant challenges in the parties engaging in the family law system in Alice Springs, including in relation to mediation and changeover. Sarah and the other party were financially disadvantaged. Sarah did not have a car or driver's licence. The public transport option (bush bus) was very expensive and Sarah did not have sufficient funds to cover public transport and accommodation while in Alice Springs. Due to a history of family violence by the paternal family, there were also safety issues involved in having both parties present in one place.

Case study 2 – Accessibility for Aboriginal clients living in remote communities

Harriet is an Aboriginal client who engaged with the family law system in order to recover her children from the paternal family. There were significant barriers for Harriet in engaging with the family law system. Harriet had experienced significant trauma as a result of family violence and felt re-traumatised by the family law process which impacted on her capacity for ongoing engagement in*

the family law system. There were challenges involved in setting up changeover arrangements as the parties lived in remote communities. Harriet did not have a driver's licence and could often not afford public transport (i.e. bush bus). Harriet could also not travel to the community where her children were living with their paternal family due to the history of family violence in that community and the safety risks involved.

10. What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

In line with the Issues Paper, CAWLS recognises that the costs in family law proceedings can be extremely high. CAWLS supports the recommendations in paragraph 107 of the Issues Paper to expand the availability of low-cost family dispute resolution services and affordable legal advice on parenting and financial issues, particularly where there is family violence.

In particular, CAWLS recognises that there can be a gap in available low-cost legal services for families who are low-to-medium income and do not qualify for legal aid or community legal centres in relation to property disputes. CAWLS supports the funding of low-cost legal services for this purpose.

In the Central Australian context, there are currently two main family dispute resolution services: Relationships Australia (RA) and Family Law Conferencing through the Northern Territory Legal Aid Commission (NTLAC). Currently, RA does not involve lawyers and generally will not mediate in circumstances where there is family violence. The Family Law Conferencing involves lawyers and is subject to a financial means test set by Legal Aid and is therefore only available to parties that meet this financial threshold. In the Central Australian context, there is a gap in available mediation services and affordable legal services for parties who are above the Legal Aid financial threshold and experience family violence.

CAWLS supports the establishment of a family dispute resolution service which is specifically designed for families experiencing family violence. CAWLS supports the involvement of lawyers in the family dispute resolution process in order to address unequal power dynamics, as well as other support services, such as counsellors and social workers, to assist families outside of the actual mediation. Further, CAWLS considers that this service should be low-cost or free where a party to the dispute is experiencing financial hardship. CAWLS recommends that family dispute resolution be undertaken at the earliest possible opportunity.

13. What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

CAWLS agrees with the concerns relating to the physical design of family courts set out in paragraph 119 and 120 of the Issues Paper.

CAWLS supports the following initiatives:

- More safe rooms at Court, particularly for parties who have experienced family violence;
- More 'break-out' rooms at Court in order to allow parties to negotiate during Court proceedings;
- More child friendly spaces (to accommodate parents who have no alternate options for child care);
- More safe waiting areas with an option of the parties being called when their matter is being heard rather than having to wait inside the Court;
- More space for co-located service providers, such as low-cost family law services, family dispute resolution services and counselling;
- Wider discretion for having closed courts in family law proceedings in order to safeguard the privacy of parties and reduce the stress on parties in having their family disputes aired publicly; and
- A Family Law registry in Central Australia.

Currently there is no dedicated facility for the Federal Circuit Court to hear matters in Alice Springs. The Federal Circuit Court sits in the Northern Territory Civil and Administrative Tribunal building. This building is small, offering very limited offices and in most cases lawyers must speak to their clients in the carpark out front of the building. There are no safe rooms and the waiting area is insufficient for any more than an estimated eight people.

20. What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

CAWLS supports the fast-tracking of matters involving family violence and abuse once the matter has been filed in Court. In these matters, CAWLS supports the appointment of Independent Children's Lawyers at the earliest possible opportunity and for mandatory mediation as discussed below.

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?

In CAWLS experience, family law matters are often filed on the basis of urgency where mediation has not been attempted or in circumstances where a party/parties has not made a genuine effort to mediate prior to commencing Court action. CAWLS recognises that there is a requirement for mandatory mediation in relation to parenting matters prior to commencing legal action in Court, subject to certain exceptions, such as family violence, child abuse and urgency.

In addition to mandatory mediation prior to filing in Court which is already set out in the Family Law Act, CAWLS recommends that there be mandatory family dispute resolution, which is legally assisted, at the earliest possible opportunity once an application for parenting and/or property matters has been filed in Court (subject to judicial discretion).

Where possible this could take place prior to the first court date in order for the parties to clarify which issues are agreed and which issues remain unresolved. In relation to property matters, this should involve both mandatory mediation and full and frank disclosure by both parties. The mediation could be a form of mediation set up by the Court and could be conducted either in person or over the phone with a report to be provided to the Court on the key issues in dispute.

Case study 3

Jess attended CAWLS after receiving an initiating application in relation to parenting matters from Kym* about their child Cassie*. Kym made the application whilst the parties were still in a relationship as he believed that Jess was going to relocate interstate with Cassie. Mediation had not been attempted and Jess had not received any correspondence from Kym's lawyer prior to receiving the application. As a result of the application having been made, the parties' relationship ended. There was high conflict between the parties as a result of the application having been made. CAWLS assisted Jess by appearing in Court and negotiating the matter with Kym's lawyer.*

23. How can parties who have experienced family violence or abuse be better supported at Court; AND 24. Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

Please refer to previous commentary.

25. How should the family law system address misuse of process as a form of abuse in family law matters?

CAWLS recognises that perpetrators of family violence can misuse the family law process as a form of coercive control over, and abuse against, the victim. CAWLS supports the expansion of the definition of 'family violence' in the Family Law Act to include 'abuse of process'. CAWLS considers that judicial officers should be afforded greater discretion to dismiss proceedings with no merit or to penalise a party in circumstances where a party is misusing the family law proceedings in the context of family violence. CAWLS recognises that care will need to be taken so that this does not negatively impact vulnerable women and further empower the stronger party.

There should be safeguards for vulnerable witnesses to prevent direct cross-examination of a victim by a perpetrator of family violence. For example, the vulnerable witness could appear by video-link and be cross-examined by a third party intermediary rather than the perpetrator (where the perpetrator is not legally represented).

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

CAWLS considers that professionals involved in the family law system (including family lawyers) should have core competency in family law, as well as 'soft skills' and other relevant fields, including an understanding of:

- how to respond and address family violence in the context of separating families and family law proceedings;
- how to work with clients/parties who are experiencing trauma and trauma-informed practice models;

- the impact of separation on children (ie. research from a psychological/social science perspective on children's development and trauma, particularly in the context of separating families and family law proceedings);
- the type of shared care/parenting arrangements that are likely to be in the best interests of a child at various ages (based on psychological/social science research); and
- the availability and benefit of non-Court based resolution options. (In particular, family lawyers should be encouraged to explore therapeutic/problem-solving models for resolving disputes, rather than relying on a litigious approach.) .

Professionals should have opportunities to undertake regular training in the above areas. There should also be professional supervision and opportunities for de-briefing for all professionals in order to manage vicarious trauma given the stress associated with working in the family law area.

43. How should concerns about professional practices that exacerbate conflict be addressed?

CAWLS has seen a number of matters where mediation should have occurred prior to the other party filing legal proceedings in the Federal Circuit Court or correspondence has not been sent to try negotiate the matter prior to filing. In some of these matters, the commencement of litigation without first attempting to negotiate or mediate with the other party escalated the conflict between the parties. CAWLS recommends that the Court should have greater discretion to dismiss matters and refer them to mediation where litigation has been commenced prematurely or where the pre-action procedures for the Family Court have not been followed and the matter is not genuinely urgent or does not fall within any other exceptions.

The *Best Practice Guidelines for lawyers doing family law work October 2010* (the **Guidelines**) emphasises the role of family lawyers in exploring non-Court based options for resolution prior to commencing legal action in Court (unless the matter is genuinely urgent or falls within another exception). The Guidelines also sets out that best practice in family law is characterised by:

- A constructive and conciliatory approach to the resolution of family disputes;
- The minimisation of any risks to separating couples and/or children by: alerting separating couples to treat safety as a primary concern, avoiding arguments in front of children, and keeping children out of conflicts arising between separating couples;
- Having regard to the interests and protection of children and encouraging long-term family relationships;

- The narrowing of the issues in dispute and the effective and timely resolution of disputes, and
- Ensuring that costs are not unreasonably incurred.

The Guidelines recognise that family law is different to other areas of law, such as commercial disputes, and that while a lawyer must act in their client's best interests, they also must have regard to broader factors noted above.

While the Guidelines set out important obligations on family lawyers, they are not enforceable by legal professional bodies. The key obligations set out in the Guidelines could be codified in (national) professional conduct rules for lawyers who practice in the area of family law to the extent that they are consistent and do not overlap with existing professional codes. That way, if a family lawyer is exacerbating conflict between parties in circumstances where there are alternate options for resolution and disregarding other key obligations (particularly where prolonging the proceedings generates more legal fees), then there could be recourse to a professional body in appropriate circumstances.

Family lawyers could also receive 'soft skills' training in techniques/strategies to deescalate conflict between parties, assist clients to refocus on the best interests of the children and on how to manage client's expectations of the likely family law outcome (eg., to address circumstances where a client has a fixed position that is not in line with the principles of the Family Law Act).

Case study 4

Maria attended CAWLS after engaging in mediation with Jim* about the parenting arrangements for their son, Matthew*. CAWLS assisted Maria by drafting the parenting proposal in a letter and sending it to Jim. Jim did not reply to the proposal. Over a year later, despite there being no further contact, Jim filed an initiating application in the Federal Circuit Court through his lawyer. His lawyer was not able to assist Jim in court, and Jim had to attend court unrepresented. Jim spoke very limited English, and failed to comply with the requirements and orders of the court. The matter was adjourned three times and lasted 11 months before an agreement was reached at legally assisted mediation.*

CAWLS thanks you for the opportunity to comment on this important topic and we would be willing to be involved in any further consultations with respect to its development.

Yours faithfully



Janet Taylor

Managing Principal Solicitor

Endorsed by: Darwin Community Legal Service, Contact Linda Weatherhead 

