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Submitted by user: FLPAWA

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This submission is on behalf of an organisation

Name of organisation Family Law Practitioners' Association WA (Inc)

Would you like to ... Use this form to answer questions

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Question 9

Western Australia has unique issues regarding accessibility to the family law system for people living in rural, regional and remote areas of the State due to its geographical size and distribution of population. Although cognisant that the “family law system” is comprised of many more services than court services, this submission is limited to court resources. At present the Family Court of WA (FCWA) has only 1 filing registry – 150 Terrace Road, Perth. Court documents may be filed outside of the Perth Metropolitan Region in the registries of the Magistrates Court throughout WA. After hearing urgent, interim and programming matters, regional Magistrates then transfer the proceedings to the FCWA whereupon directions as to the further hearing of the matter are made by a Registrar of the FCWA, usually for inclusion in a circuit conducted by a WA Family Law Magistrate. Non-Family Law Magistrates therefore conduct a significant amount of family law work outside of the Perth Metropolitan Region. These Non-Family Law Magistrates could be provided with ongoing training so they are able to assist as best they can the people in the rural areas. Court documents may be filed in the FCWA registry and sought to be listed in a circuit location. The FCWA Judges conduct 6 weeks of circuits per year (hearing trials) in Bunbury and 3 weeks per year in Albany, Broome, Geraldton and Kalgoorlie. WA Family Law Magistrates conduct 11 weeks of circuits per year in Bunbury and 3 weeks per year in Albany, Broome, Geraldton and Kalgoorlie. FLPAWA submits that the Federal Government seek a business case from the WA Government regarding establishing a FCWA Registry, staff, family consultant/s and a judicial officer in Bunbury to hear family law matters from the South West and alleviate the need to divert those resources from Perth. FLPAWA is aware of the significant work being done with respect to e-filing of all family law documents and supports that process. To maximise the efficiency of this process, all courts throughout the state should have facilities for conducting hearings by electronic means, with rules guiding the appropriate types of hearings that may be so conducted.

Question 10

Matters which FLPAWA considered under this question include: - Funding at the front end for reports to be produced; - Funding of more Consultants at the FCWA who will be able to assist with the preparation of reports; - Compulsory compliance with pre-filing procedures in financial matters (Similar to a S.60I in the Family Law Act 1975 (Cth) and S.66H in Family Court Act 1997 (WA) - giving the Court the power to order parties to participate in mediation in financial matters; - giving the Court the power to order social / psychological / psychiatric assessments as an independent power; - giving the Court the power to order the attendance of parties at any therapeutic course / intervention as an independent head of power.

Question 11

The FCWA conducted Information Sessions which non legally represented parties could attend. This information is available on the FCWA website. These sessions were very useful and could be used again.

Question 12

Question 13

The FCWA has in place many measures to try and address security concerns. The use of electronic facilities by FCWA enables matters to be heard with parties in different buildings or parts of Western Australia. The building designs do not need improvement, the use of the existing arrangements needs to be better taken up. There is also benefit to providing information on the Courts websites about transport to the Court, parking, and access to the building to enable someone with a security concern to consider these matters in advance of attend at the Court house.

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- FCWA having the power to order parties to mediation in financial matters - Long time allocated to a Conciliation Conference to try and resolve a matter early in the process - if parties are unable to fund private mediation - use of Judicial Conferences more regularly

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Western Australia is in a unique position to integrate Family Violence Restraining Orders, Child Protection and the family law jurisdictions. If not integration then the seamless exchange of information and the updating of procedures on a regular basis. By way of observation of the progress being made in Western Australia already in this area, the FCWA has in place Memorandums of Understanding with many government organisations and other Courts in Western Australia including: - Department of Communities; - Western Australian Police; - Children's Court of Western Australia; - Legal Aid WA. The Memorandums of Understanding ensure a flow of information between the relevant department or Court so as to ensure the FCWA has as much relevant information before it when considering a matter. There are also Practice Directions issued by the FCWA to reflect the information sharing protocols between FCWA and other departments - for example the issuing of subpoenas to the Department of Communities. A Report on the Review of the Children and Community Services Act 2004 (WA) was tabled in WA Parliament in November 2017. One of the terms of reference was to examine issues relating to the intersection between child protection proceedings under Part 5 of the Act and proceedings in the FCWA. FLPAWA supports recommendations 27 to 34 inclusive of this Report which deals specifically with this intersection and we commend the Report to the ALRC. State and Commonwealth Government cooperation is required for any jurisdiction change.

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Arguably Section 121 of the Family Law Act had the unintended consequences of rendering members of the public ignorant of family law processes other than the outcomes of celebrity divorces overseas and to members to some extent in Australia. The privacy provisions have protected the guilty as well as the vulnerable. Parties can account their experience of deeply personal life but not in the FCWA; that offends notions of personal freedom and also means valuable experiences are not shared with those that might benefit from them. Safeguards that respect the private space of parties i.e. preventing them from being photographed coming to and from the Court and preventing the stalking of them by media outside their home could be put in place. The continued embargo of the publication of names where the children are under age could be considered.

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Question 47

Other comments?

The Family Law Practitioners' Association WA (Inc) (FLPAWA) has had the benefit of being involved in discussions with and reviewing the Policy Response of Family Law Section (Law Council of Australia) on the ALRC Issues Paper. Accordingly, FLPAWA has not addressed all of the questions above, although they have been considered at length by FLPAWA and read with the Family Law Section submission. We have endeavoured to address questions where a Western Australia element exists. It is noted by FLPAWA much of the Family Law Section submission relates to the unique problems faced by the dichotomy of jurisdictions in family law apart from Western Australia, and consequential issues, for example further delegation of power to Registrars. These are matters upon which we do not intend to express a view either for or against. FLPAWA is very keen to continue to be involved in the ALRC Family Law Review.

File

The results of this submission may be viewed at:

<https://www.alrc.gov.au/node/8362/submission/7766>