

## **Australian Law Reforms Commission**

### **Review of the Family Law System - Issues Paper (IP 48)**

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**DISPUTE MANAGEMENT AUSTRALIA**

# **Review of the Family Law System - Issues Paper (IP 48)**

## **About Tania E Murdock, Dispute Management Australia**

Tania is an Accredited Family Dispute Resolution Practitioner with the Attorney-General's Department, an Accredited Mediator - NMAS, & is also an appointed Mediator by the Office of Franchising Mediation Authority. Tania works within the private sector (Dispute Management Australia), and is also employed within a Family Relationship Centre (FRC) part-time.

Tania is a Behavioural Healthcare Specialist, with a particular focus on Family Functioning, and Emotional Health & Wellbeing. Tania began her work within this area some 26 years ago, as a Volunteer for a Drug Awareness & Relief Movement Organisation (Drug-Arm) in 1992, working to help homeless people and to also raise social awareness within the community.

Completing her Bachelor's Degree in Behavioural Science (Psychology) at Monash University in 2006, Tania is educated in the areas of the Sociology of Children, Family & Generation; Perception & Personality; Abnormal Psychology; Global Sociology; Forensic & Health Psychology.

Tania has a Graduate Diploma in Dispute Resolution, and has undertaken further specialist training in Family & Domestic Violence Prevention & Engagement; Child Inclusive Practice; Brain Development; Parental Alienation: Childhood Alignment & Rejection; and Assessing Suitability & Preparing Clients for Mediation - The Resolution Institute.

Tania has also engaged with the Brisbane Family Court & Federal Circuit Court training with Judge Jarrett, Judge Baumann, & Judge Howard; Specialist Domestic & Family Violence Court & the Magistrates Court training with Magistrate Strofield, Judge Laphorn, Magistrate Hogan, & Acting Superintendent of Police, Chris Emzin; Department of Justice & Attorney-General Workplace Conflict Resolution; Negotiation Skills Training & Managing Difficult Behaviours.

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**Family & Relationship Services Australia 2017 Conference meeting with the Honourable George Brandis discussing Family Law Reform matters.**

Tania is a conscientious educator and has presented workshops on topics such as Vicarious Trauma & the Effects of Chronic Stress at various Conferences including the Family Law Practitioners' Association 2017 Residential, the Family & Relationship Services Australia 2017 Conference (meeting with the Honourable George Brandis), and most recently at the "No More Harm" 2018 Conference in Melbourne.

Tania's work also involves "Chronic Stress" risk assessment, screening & awareness to help identify, reduce and prevent harm with families, individuals, organisations and other professionals. The Robina Anglican Church in Queensland has engaged Tania to provide specialist educational services to their families & members.

As a member of the Police Accountability Team Committee (PACT) in the Tweed/Byron area for the last twelve years, Tania collaborates with the Local Area Police Command to achieve safer outcomes for the community in this area.

### **Affiliations & Memberships that Tania E Murdock is associated with:**

**Qld Law Society - Member QLS**

**Law Council of Australia - Family Law Section Member**

**Child Protection Practitioners Assoc. Qld Member CPPAQ**

**Police Accountability Team Committee (PACT) Tweed/Byron Member**

**Queensland Association of Collaborative Practitioners Member QACP**

**Resolution Institute - PRI Member**

**Australian Mediation Association - Member AMA**

**Family Law Practitioners Association Qld Member FLPA**

**Australian Institute of Family Law Arbitrators & Mediators Member AIFLAM**

**Family Law Pathways Network Member FLPN**

**Association of Family & Conciliation Courts Member AFCC**

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### **Special Note regarding the content of this Submission:**

*This Submission is made on the basis of the experience and specialist area of work that Tania E Murdock of Dispute Management Australia is engaged, within the Family Law context. There are questions within the Issues Paper (IP 48) that this submission will not specifically address due to the specific experience and knowledge that would be required for an appropriate response. As such, this Submission will not include a response to every specific question, rather recommendations will be proposed more broadly, and these recommendations endeavour to address the ALRC wide ranging Terms of Reference.*

*With this considered, this Submission will identify the overall Objectives & Principles with regard to the redevelopment of the family law system, responses will be made in relation to specific areas that are suggesting to require crucial urgent attention. Please note that the focus within this Submissions will be made with the best interests of children in mind, and will be proposed from a Psychological/Behavioural/Social Science perspective, and in no way intends to minimise any other Specialist Practitioners work within the Family Law context.*

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## Objectives and principles

Since the Family Law Act 1975 (Cth) (the Act) commenced in 1975, social and family life in Australia has indeed undergone significant change, (as the ALRC's Review of the Family Law System has identified).

Our understanding and awareness of the impact of issues such as Family Violence, Chronic Stress, and Drug & Alcohol abuse on Family Functioning, for example, has also changed significantly.

### In response to Question 1 and Question 2 of the Issues Paper ....

**What should be the role and objectives of the modern family law system?**

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

The ideal role and objective of the modern family law system in 1975 to provide families with legal and counselling services to help them resolve disputes (Issues Paper), is recommended to continue as such, however, ***to be urgently expanded to include certain areas requiring a crucial added focus.***

***The following areas are recommended to address these crucial areas of focus are listed below:***

- \* Reducing the ongoing conflict that families are exposed to during the Court process and hence, reducing the harm to children and families during the process of separation;
- \* Increasing the affordability of dispute resolution;
- \* Increasing the timeliness of dispute resolution;
- \* Increasing community awareness of the options for dispute resolution;
- \* Providing equal Government Funding equally to all Accredited Family Dispute Resolution Practitioners, as opposed to only "Family Relationship Centres";
- \* Introducing changes to how the Section 60I Certificate is being used by Family Dispute Resolution Practitioners, by the Family Court, and by Family Lawyers;
- \* and mandatory training with regulation for all professionals working within the Family Law context, with particular focus on Domestic Violence/Risk Assessment, Vicarious Trauma & specific training and Assessments with regard to the Effects of experiencing Ongoing Conflict and High Conflict Personalities.

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It is well acknowledged that our family courts system is in crisis and has unfortunately failed to keep up with the Australian population growth and demands requiring access to the Family Court. Chronic underfunding over time has sadly led to a court system which struggles continually to meet the needs of the community.

Given the recommended areas of ***urgent and crucial added focus*** proposed in this submission, and with consideration given to the vast amount of research relating to the harm caused to children due to ongoing high family conflict, **every effort** should be made to avoid families being exposed to the ongoing high family conflict of Family Court proceedings and the adversarial process generally.

At present, it is estimated that in approximately 50% of family dispute cases, Mediation has not been considered as an option. This means that of all family separation cases, approximately half of families are being exposed to significant harm as a result of ongoing high conflict disputes. **This figure is astounding.**

And further, it is not surprising to see our Family Courts system in crisis. Although there are significantly less harmful options available to families facing separation, these options are not being fully utilised, and therefore overwhelming the Family Court system.

This 50% is understood to be due to a number of factors, with one being that the community is still not fully aware of alternative dispute resolution options such as Mediation, and unfortunately some Family Lawyers don't advise their clients of Mediation as a preferable option. There has been acknowledgement within the legal industry, that some Family Lawyers actually exploit the Family Law Act 1975 provision for the "exception to Family Dispute Resolution/Mediation due to Domestic Violence" whereby the Family Dispute Resolution/Mediation process is completely bypassed due to Domestic Violence allegations. Some of these cases are either, not adequately risk assessed, and some are at the lower end of the spectrum of Domestic Violence risk, and could still be Mediated, but are not. This of course results in long term damage to family relationships, both emotionally and financially, amongst other affects, adversely impacting children's lives in the process, and further overwhelming the Family Court system, unnecessarily.

It is important to address this issue urgently. Still at the present time, some Family Law Firm websites do not even mention Family Dispute Resolution/Mediation and some Lawyers are suggesting to their clients that Mediation is usually unsuccessful, influencing parents to use the adversarial process instead.

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The fact is of course, that Mediation has been shown to be very successful in resolving disputes, across many areas of conflict. Agreements reached are then commonly documented by lawyers drafting and filing consent orders, financial agreements and/or child support agreements.

Support and funding of Family Dispute Resolution services that encourage and assist separating couples to resolve their financial and/or parenting arrangements without the necessity for court proceedings should be a mandatory priority. And although Family Lawyers are required to suggest Mediation as an option, it is apparent that in many cases, clients have not been advised of the Family Dispute Resolution/Mediation option. It is a recommendation of this Submission that there needs to be more regulation specific to this issue.

It is a recommendation of this Submission that the first point of contact for people experiencing a family dispute (the gatekeeper) should be via a formally trained Practitioner within the specialist area of either Social Science, Behavioural Science, Counselling, Social Work, or Psychology.

People who need to issue proceedings in the family courts should only be because their needs or issues are so urgent and serious that they cannot delay seeking court intervention, for example:

In such cases as when a parent might prevent the other parent from spending time with their child(ren). They may do so based on disputed allegations of risk that the other parent may present to the child(ren);

In other cases where one person denies or restricts the other person's access to financial resources sufficient to enable them to support themselves;

And in cases where injunctions may be necessary to preserve the asset pool pending a settlement of their respective property settlement claims.

There are however, many couples with complex needs who, despite those needs, are able to resolve their family law issues by way of Family Dispute Resolution.

It is a recommendation of this Submission, that when people experience a family dispute, that a mandatory regulation is introduced to direct these people for risk & safety assessment immediately, with a specialist with a Social Science/Psychology background.

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Surprisingly, there are still presently Family Lawyers that have had no formal specialised training to identify and assess risk and safety.

In the best interests of children and family safety, there needs to be a consistent and regulated Domestic Violence & Safety Screening testing process. At present, there are numerous variations of DV screening in use across all areas of Family Law. Family Relationship Centres and Private Family Dispute Resolution Practitioners use different screening processes, some more effective than others.

### **In response to Question 3 and Question 4 of the Issues Paper .... Access and Engagement**

**In what ways could access to information about family law and family law related services, including family violence services, be improved?**

**How might people with family law related needs be assisted to navigate the family law system?**

It is a recommendation of this Submission that community awareness is increased with regard to Family Dispute Resolution/Mediation to provide the first point of call the community. The current system directs families with disputes to engage “Family Relationship Centres” as a first point of call when Family Dispute Resolution/Mediation is required.

The Family Relationship Centres are often overloaded, and there have been cases of a “four month” wait before a client can even be seen to in the initial stage of Family Dispute Resolution. There was a recent case of a client suggesting that he would have unfortunately taken his life, had the client not researched further himself for an Independent Family Dispute Resolution Practitioner due to a Family Relationship Centre turning him away for assistance for an extended four month wait. The client was in a desperate situation with regard to children’s matters, and the client did not have a great deal of money to assist. It is a recommendation of this Submission that Government funding should not be discriminating to fund only “Family Relationship Centres” for Family Dispute Resolution services, particularly when there can be extended delays for families and children in high conflict, and given the research once again, suggests this ongoing high conflict to be extremely harmful to children.



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It is a recommendation of this Submission that all Accredited Family Dispute Resolution Practitioners are treated equal, and that funding should allow families to obtain Family Dispute Resolution from their own choice, and not be directed and funded by Government assistance only to attend Family Relationship Centres. This would address the **crucial issue** of increasing the timeliness of Family Dispute Resolution.

**In response to Question 10 of the Issues Paper ....**

**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?**

Numerous Family Court matters could be minimised and/or avoided, and family disputes can be resolved by increasing the use of Family Dispute Resolution/Mediation services. Increasing the use of Family Dispute Resolution services would minimise the adverse effects on children and families to a much greater extent. With long Court delays, ongoing high conflict via traditional, *out of date* adversarial legal approaches, and the subsequent correspondence exchanged between Solicitors, (amounting to extensive legal costs), families are being irreconcilably damaged, emotionally, financially, and socially. There is a more effective options, and these options are not being utilised, to the detriment of families and children.

It is important to also note that there are some families for whom access to timely court intervention is a necessity. The increasing complexity of the circumstances of the people who use the family courts - for example people who have experienced levels of family violence where Mediation may not be suitable, families where drug addiction, alcohol abuse and/or mental health issues affects one or both adults or where there are allegations of child abuse.

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It is a recommendation of this Submission that the accurate identification of safety & risk, needs to be a priority and it is of great importance that the assessment of these cases be initially undertaken by a specialist within a Social Science/Psychology background. A family lawyer for example, is a specialist in Family Law, but not in social/psychological science, unless of course, they are qualified in both specialist areas. A Social Scientist or Behavioural Scientist is a specialist in human behaviour and human welfare, not a specialist in Law, and it is therefore not appropriate to provide legal advice to clients, unless of course they have an educational/training background in both.

### **Introducing changes to how the Section 60I Certificate is being used by Family Dispute Resolution Practitioners, by the Family Court, and by Family Lawyers**

When Family Dispute Resolution Practitioners issue a Section 60I Certificate, they need to feel safe enough to be honest with regard to whether a client has indeed made a genuine effort or not. It is well acknowledged that Family Dispute Resolution Practitioners avoid using the “party or parties did not make a genuine effort” Section 60I Certificate, due to the harassment that can ensue from either the client, or the client’s Family Lawyer in the aftermath.

There is an existing case where a Family Dispute Resolution Practitioner has been continually harassed by a client’s Family Lawyer with regard to a Family Dispute Resolution issuing of a Section 60I Certificate client matter over 12 months prior. The Family Lawyer insisted that the Section 60I Certificate was wrongly identified and issued, and that their client did in fact, make a genuine effort (although the Family Lawyer was not present at any times of Family Dispute Resolution). The Family Lawyer pressured the Family Dispute Resolution Practitioner to change the 60I Certificate to be re-issued in their client’s favour.

There is also a problem with regard to Family Dispute Resolution Practitioners being ‘stalked’ by clients after issuing a “non genuine effort” Section 60I Certificate, and client complaints have been made to Accreditation bodies in this regard. This may have an obvious impact on Family Dispute Resolution Practitioners choices when issuing the relevant Section 60I Certificates.

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Another point of significance to this topic, relates to Family Lawyers, who are also Mediators, who typically “swap” clients between their Lawyer colleagues for Mediation and/or Legal Representation. There may be an area of conflict of interest in these cases that requires further investigation. There are client reported situations where some Family Lawyer/Mediators use the Section 60I Certificate as a weapon to coerce parties into agreements which they may otherwise not agree to, within Mediation. This may be considered unethical.

There is also much inconsistency as to whether the Court will acknowledge and respond to the “reason indicated” on the Section 60I Certificate. The Family Law Act 1975 refers to the possibility of costs being awarded to the party that has not made a genuine effort to Mediate, however this rarely occurs. Parties and their Family Lawyers are well aware of this, and there is little weight given to the importance of trying to resolve a dispute without the Family Court process.

It is recommended by this Submission, that a consequence is to be provided whenever parties have not made a genuine effort in Mediation, this can be used as a measure to increase participation in Family Dispute Resolution. Once the Court starts to issue consequences, and award costs against parties who do not make a genuine effort, Mediation will be taken more seriously, and pressure on the Court system will reduce.

### **In response to Question 14 of the Issues Paper ....**

#### **What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children.**

It is recommended by this Submission that **every effort** should be made to avoid families being exposed to the ongoing high family conflict of Family Court proceedings and the adversarial process generally. The use of other Family Dispute Resolution processes such as Mediation is highly recommended as the first point of call.

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**In response to Question 17 of the Issues Paper ....**

**What changes could be made to the provisions in the *Family Law Act* governing property division to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?**

It is again recommended by this Submission that **every effort** should be made to avoid families being exposed to the ongoing high family conflict of Family Court proceedings and the adversarial process generally. The use of other Family Dispute Resolution processes such as Mediation is highly recommended as the first point of call.

There are Family Lawyers practising at present with limited, if any Family Violence training.

There are no specific Government guidelines provided to follow in relation to screening tools, and training within this area, particularly with Family Lawyers needs to be addressed urgently. These significant inconsistencies across the Family Law System are impacting the safety of children and families.

It is recommended in this Submission that the required training to become an Accredited Family Dispute Resolution Practitioner requires more stringent, specific Government regulation, and consistency, and that the qualification inconsistency across Accredited Family Dispute Resolution Practitioners is addressed.

For example, there are FDR Practitioners that have completed Under Graduate Degrees (in a related discipline eg. Psychology/Social Work/Law/Behavioural Science) and have an additional post Graduate Diploma in Family Dispute Resolution. There are other FDR Practitioners that have undergone only a limited (4 day, plus 5 day), some without any undergraduate degree at all. There are gaps in the training comparatively, and therefore significant differences in expertise with adverse affects on the outcomes for families.

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Early education is a must for families & children to help understand and prepare for the effects of family separation and the changes that may ensue. Education would also include awareness & prevention of Domestic Violence and in particular the importance of respecting each other, even during difficult times. Preventative Support Services need to be easily accessible for families and individuals. Mediation can be used also as an Early Intervention Tool, to educate families going through difficult times, before separation occurs. Often counselling assists in addressing how to manage relationships. Mediation is more focussed on achieving the best possible outcomes and agreements relating to specific issues.

### **Professional Skills and Wellbeing**

It is a recommendation by this Submission to introduce mandatory ongoing training and assessment for professionals working within the area of Family Law, including Lawyers and Family Dispute Resolution Practitioners and other professionals working within this area. This training would include topics such as increasing awareness of repeated exposure to ongoing conflict, chronic stress and vicarious trauma. Considering the effects that result in ongoing chronic stress, particularly within the legal profession, these areas of training should be mandatory. A minimum of quarterly professional psychological risk assessments are recommended to be undertaken to help identify current risk factors versus a balance of available psychological buffers to provide emotional resilience when necessary.

Group staff and particularly management training focussing on the importance of professional wellbeing, and it's consequences if neglected. This training is recommended within organisations at minimum quarterly intervals, and would address employee awareness and encourage acceptance of professional wellbeing within the Family Law context.

### ***A special note in conclusion of this Submission:***

***It is requested that Tania E Murdock, from Dispute Management Australia, be involved in further consultations with regard to Review of the Family Law System - Issues Paper (IP 48). Tania is prepared to travel to be involved to make a contribution to the Review. Please refer contact details on the opening page of this Submission.***