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Dear Ms O’Brien

Response to the ALRC Issues Paper on the Review of the Family Law System

On behalf of the Koori Caucus Working Group on Family Violence (the working group), I would like to submit our response to the ALRC Issues Paper on the Review of the Family Law System.

Koori Caucus established the working group in October 2016 to work in partnership with the Victorian Department of Justice and Regulation to ensure Aboriginal knowledge and expertise informs the development of culturally safe responses to family violence. Koori Caucus are the Koori members of the Aboriginal Justice Forum and the Aboriginal signatories to the Victorian Aboriginal Justice Agreement. The Agreement is a partnership between Aboriginal people and the Government in Victoria to improve justice outcomes for Aboriginal people by requiring Aboriginal knowledge and expertise in the design, development and delivery of justice policies and programs affecting Aboriginal people.

The working group’s response to the ALRC Issues Paper draws on the extensive knowledge and expertise of our members and the cultural safety principles we developed in 2017 to support the implementation of the recommendations of the Victorian Royal Commission into Family Violence. We enclose the cultural safety principles as part of our response to the Issues Paper and urge the ALRC to refer to them when developing and implementing reforms affecting Aboriginal people.

I would also like to take this opportunity, on behalf of the working group, to support the submission made by the National Aboriginal Family Violence Prevention Legal Services Forum. You will note that our response aligns well with their submission.

Yours sincerely

Marion Hansen

Chair Koori Caucus Working Group on Family Violence

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1. Response to the ALRC Issues Paper

2. Cultural Safety Principles

3. Working group members

1. Working Group Response to the ALRC Issues Paper

The working group supports the review of the family law system to improve responses to the needs of diverse families and family structures.

Q1-2: what should the role and objectives of the modern family law system? What principles should guide any redevelopment of the family law?

The working group supports the proposed objectives.

The working group supports the proposed principles, with the following additions:

* embed cultural safety into the family law system
* recognise the importance of family and kinship structures and responsibilities for Aboriginal and Torres Strait Islander people, and
* understand the nature and dynamics of family violence

This addition will go towards ensuring that the family law system is responsive to the experiences of Aboriginal and Torres Strait Islander family violence victim-survivors and their children.

Q3: In what ways should access to information about the family law and family law related services, including family violence services, be improved?

Approximately 52 per cent of Aboriginal Victorians live outside metropolitan Melbourne. Aboriginal people in rural and regional areas are likely to have less access to and proficiency with technology. For this reason, information should be accessible and culturally relevant, to do this, work with relevant Aboriginal Community Controlled Organisations (ACCOs) to develop the information and test it with the people who will be using it. At a minimum, the information should explain when to use the family law system, the difference between the family law and child protection systems, and where to go for culturally safe specialist support.

Other ways to improve access is to lift the cultural competency of mainstream legal services by increasing the opportunities for collaboration between Aboriginal legal services and mainstream legal services. One way in which this could occur is by funding mainstream organisations to purchase secondary consultations from ACCOs and Aboriginal legal services.

Q4: How might people with family law related needs be assisted to navigate the system?

The working group does not support the use of mainstream ‘navigator’ roles for Aboriginal and Torres Strait Islander people, particularly those experiencing or at risk of family violence.

The working group is of the view that specialist family violence ACCO’s and Aboriginal legal services, with appropriate resourcing, could fulfil the proposed ‘navigator’ role for Aboriginal victim/survivors in a culturally safe and trusted way.

The working group supports reviewing and strengthening referral pathways for all Aboriginal and Torres Strait Islander people engaged with the family law system to culturally safe services and supports, including specific referral protocols for victims/survivors.

Q7-9: How can the accessibility of the family law system be improved for people with a disability, lesbian, gay, transgender, intersex and queer (LGBTIQ) people; and people living in rural, regional and remote areas of Australia?

When addressing Aboriginal and Torres Strait Islander people it is important to recognise the possible existence of multiple points of identity in addition to Aboriginality such as LGBTI, disability and rural, regional or remote living. The Inquiry should explicitly acknowledge that an individual could fit within several categories at once (Aboriginal, LGBTI, mental health and disability) and that this will have practical implications on their experiences of the family law system.

Q 11: What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?

The working group does not support increased measures of self-representation for vulnerable people – this includes Aboriginal and Torres Strait Islander victim/survivors of family violence. The working group is of the view improving accessibility for self-represented litigants does not negate the need for all Aboriginal and Torres Strait Islander people to have access to culturally safe specialised legal representation and support ion family law proceedings.

Q15: What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?

Amend the definition of family violence in the Family Law Act to the same definition of family violence used in the *Victorian Family Violence Protection Act 2008*.

Q24: Should legally assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

While FDR can be a useful process to avoid protracted proceedings, for family violence victim-survivors, FDR without legal support is dangerous. FDR presumes equal power between the parties, which cannot occur when there is family violence. Moreover, separation is a well-documented high-risk period for victim-survivors of family violence; this in itself could result in victim survivors’ accepting suboptimal solutions out of fear.

For this reason, the working group supports the use of FDR in the resolution of disputes involving family violence only with appropriately specialized legal representation. For Aboriginal and Torres Strait Islander victims/survivors, this must involve a referral to culturally safe specialist family violence assistance service for all prior to being involved in FDR.

Q25: How should the family law system address misuse of process as a form of abuse in family law matters?

Perpetrators of family violence can and do misuse family law processes to further the violence, for example, they may exert control over victim-survivors and their children by dragging out proceedings through their non-compliance with court orders. Such misuse should be addressed by:

* eliminating direct cross-examination of victim-survivors by self-represented perpetrators
* ensuring Aboriginal and Torres Strait Islander victim-survivors and perpetrators have culturally safe and specialised legal advice and representation
* ensuring family law professionals receive comprehensive and ongoing family violence and trauma-informed training so that they are equipped to recognise the manipulative behaviour of family violence perpetrators, and
* considering increasing court powers to mandate compliance with orders to attend culturally appropriate men’s behaviour change, case management or counselling programs.

Q30: Should family inclusive decision-making processes be incorporated into the family law system? How could this be done?

Family led decision-making: the working group supports the recommendation in the 2012 Family Law Council Final Report and again in the 2016 FLC Final Report to amend the Family Law Act 1975 to support the convening of family group conferences for Aboriginal and Torres Strait Islander families to assist informed decision-making in the best interests of the child. This reform process should occur in partnership with Aboriginal and Torres Strait Islander people with expertise in family violence prevention and response.

Problem solving decision-making: the hybrid model proposed where the court transfers the role of monitoring the parties’ engagement with services to a registrar of the court or to a community-based family relationship agency is preferable to the alternative option of Parent Management Hearings. Parent Management Hearings can be harmful for Aboriginal and Torres Strait Islander victim-survivors, as there is a strong likelihood that they will be unrepresented to the detriment of their safety. Further, the review team should consider the Koori Children’s Court in Melbourne, including through the participation of Elders who can provide cultural advice to the court, as a model to develop a specialised court hearing process in family law cases that involve Aboriginal and Torres Strait Islander children.

Q33: How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

The working group supports the approach recommended by the Victorian Royal Commission into Family Violence (the Victorian Royal Commission) about information sharing between court jurisdictions where it is necessary (and will not inhibit victim survivor safety). The Victorian Royal Commission noted similar issues arising from the disconnection between the family courts, child protection and family violence systems. To ensure that increased information sharing does not further disadvantage or deter Aboriginal and Torres Strait Islander families from accessing the family law system, the working group notes that such reforms must be accompanied by significant improvements to the cultural competency and family violence sensitivity of child protection agencies. The Victorian Royal Commission recommended the creation of a national database of court orders and supporting documentation for state and federal courts to access and exchange information across jurisdictions where necessary.

Q39: What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?

The working group recognises the need to uphold a child’s right to participate in family law processes while protecting them from harm. One way in which this could be achieved is through a provision that ensures Independent Children’s Lawyers meet directly with the child to ensure that proposed orders are in the child’s best interest. Further, the working group supports the development of a national accreditation system with minimum standards and ongoing professional development for family consultants, including capacity building and cultural safety, family violence and trauma informed training. Further, children and young people with sufficient capacity should be able to access their own legal representation.

The working group is of the view that family consultants should possess a high level of cultural competency and an understanding of the dynamics of family violence. Ideally, family consultants appointed for cases involving Aboriginal and Torres Strait Islander children should be Aboriginal and Torres Strait Islander themselves – they are more likely to understand, for example, that an Aboriginal and Torres Strait Islander child or young person is likely to have additional responsibilities as well as family and community obligations that other young people do not.

Q41- 42: 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? What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers maintain these competencies?

The Victorian Royal Commission noted a lack of family violence understanding displayed by staff within the family law system and the detrimental impact this had on victim-survivor experiences. The Victorian Royal Commission recommended that:

* court staff and judicial officers receive ongoing training and professional development to foster expertise and specialisation in family violence
* the Judicial College of Victoria continue offering regular programs on family violence to magistrates and include material on the dynamics and complexities of family violence

In line with the findings of the Victorian Royal Commission, the working group calls for ongoing training for judicial officers, court staff, legal representatives, police and non-legal family violence support workers. This training should encompass the nature and dynamics of family violence including the wider and more complex definition of family within Aboriginal culture.

1. Cultural Safety Principles

**Meaning of Cultural Safety**

Cultural safety is a term used to describe an approach to service delivery that is free from discrimination, is respectful of a person’s culture and beliefs, and does not question their identity. For Aboriginal and Torres Strait Islander people, this means recognising the ongoing effects of trauma, dispossession and racism when responding to family violence, and prioritising support for specialist community-controlled solutions to family violence.

**Principle 1: Whole of family – whole of community**

Whole of Family – Whole of Community is the overarching principle. It requires that the justice response to family violence in Aboriginal communities recognise the critical and unique role of family and community. This means understanding how extended family relationships are central to kinship and culture, how they define where a person fits in the community, and how they bind people together in relationships of sharing and obligation. It also means understanding and having a high regard for the role played by Elders in bridging the past and the present to guide the future.

**Principle 2: A culturally safe family violence system**

A culturally safe family violence system means ensuring that reforms consider cultural safety in the implementation process and approaching service delivery in a way that is respectful and free from discrimination. It also means being aware that up to 52 per cent of Aboriginal Victorians live outside of Metropolitan Melbourne and that this will impact on the accessibility of services.

**Principle 3: Victims own the pathway to recovery**

Victims own the pathway to recovery means responses that support victim-agency, designed to secure immediate safety and long-term recovery, is trauma-informed and draws on community driven initiatives.

**Principle 4: Perpetrators take responsibility for their actions**

Perpetrators take responsibility for their actions means interventions that are trauma-informed and include a range of complementary approaches such as court mandated education programs and community driven initiatives.

1. Members of the Koori Caucus Working Group on Family Violence

**Working group Chair:**

**Aunty Marion Hansen**, Chair of the Regional Aboriginal Justice Advisory Committee (RAJAC) for the South Metropolitan Region

**Working group members:**

* Mr Alfie Bamblett, Chair of the Victorian Aboriginal Justice Advisory Committee (VAJAC)
* Aunty Linda Bamblett, RAJAC Chair for the Northern Metropolitan Region
* Mr Tom Bell, Deputy Director Koori Justice Unit Department of Justice and Regulation
* Ms Antoinette Braybrook, CEO Djirra
* Ms Antoinette Gentile, Director Koori Justice Unit Department of Justice and Regulation
* Aunty Jemmes Handy, RAJAC Chair for Loddon Mallee Region
* Mr Tony Lovett, RAJAC Chair for Grampians Region
* Ms Nicola Perry, Acting RAJAC EO for Loddon Mallee Region