



7 May 2018

The Executive Director
Australian Law Reform Commission
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By Email: familylaw@alrc.gov.au

Dear Executive Director

Review of Family Law System - Submission in response to Issues Paper

Background

The Terms of Reference require, amongst other things, the ALRC "to consider the appropriate role of the family law system in contemporary Australia and how it can be responsive to the needs of diverse families and family structures" ([3]).

We understand that the Issues Paper and the 47 questions contained within it, reflect "the issues so far identified by the ALRC as relevant to the areas listed in the Terms of Reference" ([11]).

We note that the ALRC has sought submissions in response to these questions and the analysis outlined in the Issues Paper. This submission is not directed at any specific question, but rather the framing of the questions in their entirety.

Structural considerations

WLWA perceives the questions identified in the Issues Paper to reflect a primary concern with the formal rules and procedures currently constituting the Australian family law system, and how these impact on clients.

In our view, attention should be given to broader structural elements of the system, which are critical to the role that the family law system plays in Australian society and its capacity to respond to diverse families and family structures.

Client experience and accessibility

WLWA draws the ALRC's attention to the possibility that procedures which may be aimed at increasing accessibility may have the perverse and unintended consequence of preventing access.

While an increased use in electronic lodgement of court documents may be convenient for working lawyers and other professionals engaged in the system, it may also, inadvertently, create barriers to access for people without ready access to, or competency with, computers and the internet. These people include women dealing with domestic violence issues who may be relying on emergency accommodation, the generosity of community groups and 'couch surfing' between the residences of family and friends. These women will likely have limited access to a computer. There are also women that suffer from

economic domestic abuse and may be limited in their means to access technology at home because controlling behaviours by their partner either prevent their access, or involve surveillance over their online activity. Other groups impacted include those living in remote areas, women from non-English speaking backgrounds and women with disabilities. We urge the ALRC to consider access to justice issues that e-lodgement presents for these groups.

Impact on representatives and judicial officers

Further, in our view, increased awareness and consideration of structural and systemic factors should not be limited to the client experience of the family law system, but should also include the experience of practitioners and members of the judiciary within the family law system who are themselves family members.

Anecdotally, we understand that the high-stake nature of family law work and the usual course of litigation and the high volume of cases create a system that fails to acknowledge and accommodate family responsibilities for female practitioners and the judiciary, and contributes to an increased attrition rate of female practitioners. In particular, our members express the concern that there are only a small number of female practitioners over 40 years of age, which represents a great loss of potential institutional knowledge in the family law, and compromises the ability to make appropriate judicial appointments.

Of course the experiences of practitioners and the judiciary in family law are not unique to the family law system. However, insofar as the family law system has, as one its primary concern, the interests and contemporary needs of families and individuals, and the best interests of children, it is an important representative case study.

As the questions in the Issues Paper are currently framed, consideration of these aspects do not appear to have been a primary focus of the review. In our submission, it should be included in consideration of the substantive legal principles and procedural aspects of the system.

WLWA's recommended approach

We recommend ALRC consider the approach taken in undertaking the 1994 Gender Bias Taskforce Report in Western Australia. That taskforce examined the substantive law, the judicial appointments, court procedures, and the structure and workings of the legal profession, in investigating the extent of gender bias in Western Australia and to make recommendations for its elimination.

In 2014, WLWA released a review report of the 1994 Report. **Enclosed** is a copy of this review report. We draw your attention in particular to the recommendations in Chapter 2.

We look forward to the forthcoming Discussion Paper.

Yours sincerely



President
Women Lawyers of Western Australia Inc