

Review of the Family Law System

The Benevolent Society

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Contact:

Joanne Toohey

Chief Executive Officer

T: 02 8262 3400

E: joanne.toohey@benevolent.org.au

The Benevolent Society

Level 1, 188 Oxford St

PO Box 171

Paddington NSW 2021

www.benevolent.org.au

Introduction

The Benevolent Society welcomes the opportunity to make a submission to the Australian Law Reform Commission's *Review of the Family Law System*.

This submission draws upon our clients' experiences of the family law system and our services' efforts to assist them to achieve safety, wellbeing and justice outcomes. It is informed by the issues our practice staff have identified working with women, children and families to navigate the complexities of the system. They describe a system that is overburdened and under-resourced to respond to the needs of those seeking access and support and is characterised by:

- a critical lack of access to information and legal support;
- long delays in court processes and determinations;
- delaying tactics that seek to further traumatise victims of domestic and family violence;
- a system that is uninformed on the impacts of domestic and family violence and trauma on women and children; and
- a system where the voice of the child is rarely heard and understood.

This submission does not seek to provide answers to all of the questions posed in the *Review of the Family Law System* Issues Paper but instead responds to those questions that have a direct impact on and relevance to our work with children and families involved with the child protection system, and women and children who have experienced domestic and family violence.

In developing our response, The Benevolent Society has consulted with Child and Family practitioners, solicitors with experience working in the Family Law System and our General Counsel. We have also referred to Women's Legal Services Australia's *Safety First in Family Law*. *Safety First in Family Law* provides a clear pathway for reform of the family law system which places the safety of women and children at the centre of both procedures and outcomes.

Who we are

The Benevolent Society is Australia's first charity. We have helped people, families and communities achieve positive change for 200 years. We are a secular not-for-profit organisation with 1,615 staff and 658 volunteers. In 2016-2017, we supported more than 54,000 children and adults in 71 locations across New South Wales and Queensland. Our revenue in 2016-17 was \$ 108,454 million.

The Benevolent Society's work is guided at all times by a commitment to pursue the best interests of the child. We offer a range of services to families to help them thrive, such as parenting support and coaching, early childhood development programs, and specialist support when challenges arise. We provide services to vulnerable families where children have been identified as at risk, intensive case management programs, and a wide range of family support and out-of-home care programs and services.

In addition, we provide services which promote the health, wellbeing and welfare of women and their children with a focus on supporting women and children affected by domestic and family violence.

Response to the Issue Paper

Principles to guide the redevelopment of the family law system

Question 2)

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

The Issues Paper states that academic views on the function of the family law system include *‘that a modern family law system has a number of key functions, including advancing the safety, healthy development and economic support interests of children, protecting adult rights to physical safety and equitable distribution of resources and regulating the processes for resolving post-separation problems to ensure they are affordable and cost-effective’*.

These functions are framed by principles that support:

1. Ensuring safety
2. Accessibility and engagement
3. Fairness and recognition of diversity

The Benevolent Society urges consideration of significant reforms to give effect to Principle 1, particularly in terms of the way the family law system works to support the safety of children.

The best interests of the child is the paramount principle for all decisions regarding children and young people in the family law system. However, both the operation of the system and the application of the Family Law Act can deliver experiences and outcomes that are contrary to this principle.

While the family law system must place safety and risk at the centre of all practice and decision-making current barriers within the system, including a lack of child centred expertise and variable tools for assessing risk, mean that the system is not fit for purpose.

The Family Court determines whether a child should remain with a parent, and has to take into consideration the child’s safety. To do this the Court may use a wide range of tools and evidence of varying efficacy to reach its decision.

We note that responsibility for determining the safety of children in families is currently held by both the Family Court and the statutory child protection system. We are concerned at the absence of consistent standards and decision making processes across these two branches of government. Child protection systems – while far from perfect – are designed to assess the safety of children and to act to protect them. This is their core mandate and expertise. The Benevolent Society believes that the authority to determine the safety of children should be held in a single place, with the authority that is appropriately skilled to exercise that power. We note that the impact of intimate partner violence on children is already within the scope of that system. We advocate for a common assessment tool that focusses on the best interest of the child to be used across the family law system to assess risk of harm to the child. Further, the outcomes of that assessment should be decisive for the judiciary (absent an application for appeal or review).

We are, of course, conscious that child wellbeing is enhanced by a healthy attachment to both parents and that parental alienation can be profoundly damaging for the affected parent. In the absence of family violence, once the risk assessment is conducted, the presumptive choice should be for access and responsibility for both parents

The Benevolent Society believes that if the principles of child safety are taken seriously, it would require a re-shaping of the system in terms of workforce, capability and process. The family law system needs staff at all levels that are skilled in child development, trauma informed practice, cultural competence and domestic and family violence.

In relation to the safety of women, there are recommendations throughout this paper that speak to the current flaws in the system and encourage reform. We note that the defining feature of safety in situations of domestic and family violence is appropriate and secure housing to which the perpetrator does not have access.

Access and engagement

Question 3)

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

Question 4)

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

Sustained underfunding of community legal services, legal aid commissions, women's legal services and Aboriginal and Torres Strait Islander legal services has been repeatedly identified by inquiries, justice advocates and the justice and community services sectors as a barrier to the effective operation of the family law system, including access to appropriate information, representation and outcomes for families who require its services.¹

The lack of access to legal services has seen a steady rise in unrepresented litigants in the family courts, despite evidence that self-represented litigants are considered by family court judges and registrars to be disadvantaged by their lack of representation.²

For those who do secure legal aid representation, waiting times are extended, consultation times are constrained, legal advice may vary widely in quality, and there is little choice of provider. This is of particular concern for children, victims of domestic and family violence, and Aboriginal and Torres Strait Islander people.

Additionally, there is a lack of information about how to navigate the family law system provided by police or other first contact services after a domestic violence incident. Whilst some first responders may provide information on women's or community legal services, this is not guaranteed and victims of domestic or family violence may face significant delays in accessing any support or advice on the legal avenues available or required to protect themselves and their children. This is an issue of particular significance for women from culturally and linguistically diverse communities (CALD) or refugee backgrounds, who face additional language barriers to accessing assistance and are often unaware of their rights under Australian law and the services available to assist them.

In 2014, the Productivity Commission recommended in its *Access to Justice Arrangements* report that the legal assistance sector should receive an annual \$200 million increase in funding to meet increasing demand for legal services.³ To date there has been no commitment from the Australian Government to implement this recommendation.

The Benevolent Society supports the implementation of recommendation 21.4 of the 2014 Productivity Commission *Access to Justice Arrangements* report for an annual increase in funding by the Australian and state and territory governments of \$200 million to all legal assistance services comprised of: Community Legal Centres, including specialist Women’s Legal Services and programs; Family Violence Prevention and Legal Services; Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions. This increase in funding should comprise specific increases in funding for family law matters.

The Benevolent Society supports the development of Plain English materials on access to help with family law matters for distribution by police, health services and other first responders to domestic and family violence victims.

Question 5)

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

The Family Law Council, in the two 2012 reports commissioned by the Attorney-General’s Department, identified the barriers Aboriginal and Torres Strait Islander people and people from CALD backgrounds faced when accessing the family law system.⁴ These barriers include: a lack of access to services with culturally sensitive practices, a lack of diversity within the workforce, and client language and literacy issues. These issues were again canvassed in 2016 in the Family Law Council’s Final Report, which called on the Australian Government to implement the recommendations of the 2012 reports and the further recommendations made in the 2016 Report.⁵

The recommendations are based on wide consultation and are comprehensive. The Issues Paper acknowledges that many submissions have been made to past reviews on these issues and will have regard to these reports and recommendations.

The Benevolent Society supports the implementation of the recommendations 16 and 17 of the 2016 Family Law Council Final Report, which includes implementing the recommendations from the Family Law Councils 2012 reports. A full list of recommendations is at Appendix A.

Question 6)

How can the accessibility of the family law system be improved for people from culturally and linguistically diverse (CALD) communities?

An issue identified by The Benevolent Society practice staff and raised in the Issues Paper is the quality of interpreting services in the family law system. The Benevolent Society has experienced a number of situations where interpreters have refused to translate migrant women’s testimony correctly in court when it is perceived as contrary to cultural practice or cultural norms, particularly in the context of domestic and family violence. Benevolent Society staff have reported instances of interpreters telling women, in court, that they cannot speak about violence or other abusive behaviour perpetrated by their husbands.

The Benevolent Society’s Centre for Women’s, Children’s and Family Health has identified a critical lack of appropriate information and the system’s delayed response times as causing significant hardship for refugee and migrant women, particularly those on spousal visas. Women from CALD and refugee backgrounds often don’t know they have access to legal or other support and are facing complex immigration issues whilst dealing with family breakdown and often domestic and family violence.

The Benevolent Society supports relevant information on family law and domestic and family violence issues being made available by the Department of Immigration for all women on spousal, migrant and refugee visas.

The Benevolent Society supports further investigation into the possible cultural and gender bias from interpreters operating in the family law system.

Question 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?

Family courts do not provide safe or secure environments for women and children dealing with concerns for their personal safety. There seems to be limited understanding of how to ensure women's safety during proceedings, the effect of domestic and family violence and little understanding of the ongoing trauma and fear that women and child victims can experience.

The provision of safe rooms, while welcome, does not prevent intimidation, threats, and verbal and physical violence. Women and their children must still enter and exit the family court through the same entrances as their former partners, must attend the same registrar and in many cases, find themselves walking past, in front of, or beside the perpetrators of violence and their families and supporters. If safe rooms are deemed an appropriate safety response, they need to be standardised, staffed appropriately by qualified security personnel, and be available through separate entrances for women and children. The safety of children must also be a key consideration in the design and operation of safe rooms.

The Benevolent Society believes consideration must be given to allow women who are victims of domestic and family violence to give testimony by video link from another safe site.

As the Issues Paper notes, the Victorian Royal Commission into Family Violence has made substantial recommendations which have been accepted by the Victorian Government regarding the safety of women and children attending the Magistrates' Court of Victoria.⁶ These provide a benchmark for improving the safety of women and children in court.

The Benevolent Society supports the recommendations made by the Victorian Royal Commission into Family Violence regarding the safety of women and children attending the Magistrates Court of Victoria and their application to the family courts.

Legal principles in relation to parenting and property

Question 14)

What changes to the provisions in Part V11 of the Family Law Act could be made to produce the best outcomes for children?

In their 2009 and 2015 evaluations of family law reforms, the Australian Institute of Family Studies found:

- The provisions for 'equal shared parental responsibility' had to some extent diverted attention from the primacy of the best interests of the child, particularly in negotiations over parenting arrangements (2006);⁷

- Family law professionals considered that the ‘equal shared parental responsibility’ assumption diverted focus away from the safety and best interests of the child (2015).⁸

The legal presumption of 50/50 or shared responsibility puts parent’s rights as the starting point for consideration by the court. Instead, the best interests of the child and the child’s safety must be the starting point for the family law system in its considerations of children and young people.

While the presumption of equal shared parental responsibility is not meant to apply where there are domestic and family violence concerns, in practice there is often a lack of weight given to the evidence and impact of domestic and family violence on women and children. This can and does result in rulings from the court where the best interests and safety of the child are not upheld.

The pursuit of equal shared time is also used by some complainants to continue domestic and family violence against women and children, with perpetrators using the family law system to continue to harass, threaten and control women and children. This is widely referred to, and seen as ‘system abuse’. This continuation of abuse against an adult victim also causes harm to the child. There is considerable evidence that ‘maintaining relationships between children and abusive fathers is likely to be harmful, unless the abusive behaviour ends’.⁹

The Benevolent Society supports the removal of the language of ‘equal shared time’ and ‘equal shared parental responsibility’ and ‘substantial and significant time’ in the Family Law Act to shift culture and practice toward a greater focus on safety and risk to children and the primacy of the best interests of the child.

Question 15)

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?

The definition of domestic and family violence in the Family Law Act is not consistent with the broader definitions adopted by most state and territory jurisdictions that include psychological abuse, coercive and controlling behaviour, including the use of technology to stalk, harass, abuse and control. This limited definition does not take into account the full range of abuse being used against victims, may jeopardise their safety, and limits the court’s understanding and recognition of the abuse and the appropriate legal response.

The Benevolent Society supports the adoption of common definitions of domestic, family and sexual violence, consistent with state and territory jurisdictions that incorporate evidence-based understandings of psychological harm and trauma, and the impacts on child development and survivors of violence.

Question 16)

What changes could be made to Part V11 of the Family Law Act to enable it to apply consistently to all children irrespective of their family structure?

The limited application of Part V11 of the *Family Law Act* solely to a child’s biological or adoptive families is clearly in need of reform. The definition of family in the current Australian context should include provision for same-sex, intersex, and surrogate family members, and recognition of the broader scope of family relationships in Aboriginal and Torres Strait Islander families.

The Benevolent Society supports amendment of the definition of family to reflect the contemporary circumstances of families in Australia, and recommend consideration be given to the broader definition of family, reflected in state and territory domestic and family violence legislation.

Question 24)

Should legally-assisted family dispute resolution (FDR) processes play a greater role in the resolution of disputes involving family violence or abuse?

While the need for a trauma informed approach to service delivery in the family law system is acknowledged, the process of engaging in an adversarial court process can mirror the dynamics of an abusive relationship and cause more trauma for the victims. The resolution of children's matters dominates the workload of the family courts, with cases involving family violence or risks to the safety of the child more likely to involve protracted timeframes and delays.

FDR maybe used in two different ways in the family court system. Firstly, it may proceed in circumstances where there is domestic violence. In this instance FDR is inappropriate and leads to unsafe outcomes for women and children. Alternatively, cases may be screened out of non-legally assisted mediation due to safety concerns, leaving little opportunity for early resolution.

While some services have been reluctant to fully support FDR for families where there is domestic and family violence, early resolution in these instances may be possible through lawyer-assisted mediation with practitioners who are domestic violence and trauma informed, culturally competent and disability aware.¹⁰

Funding for legally assisted FDR pilots has been expanded and will be evaluated. The Social Policy Legal Affairs (SPLA) Committee's Family Law Report recommended that a positive evaluation of these programs should result in the Australian Government expanding the availability of legally assisted FDR.¹¹

The Benevolent Society supports the recommendation of the SPLA Committee's Family Law Report that a positive evaluation of pilot legally assisted FDR programs, the Australian Government should expand the availability of legally assisted FDR.

Integration and collaboration

Question 31)

How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

Dedicated funding is needed to support the implementation of integrated service approaches in family courts.

In *Safety First In Family Law*, Women's Legal Services Australia has called for domestic violence and child protection specialists to be established in family court registries to undertake risk assessment at the earliest stages of a case and provide recommendations on interim care arrangements for children.¹²

To support a child's placement, a process should be established to manage domestic violence cases with an emphasis on early decision making, triaging and case management. In addition, court based support services should include: specialist support for women from high risk groups, including Aboriginal and Torres Strait Islander women; housing services; and child and youth specialist workers.

The Benevolent Society supports the implementation of Recommendation 1 of the Family Law Council's 2016 Final Report.

Recommendation 1 of the Family Law Council's 2016 Final Report is:

The Australian Government consider ways to incorporate the expertise of specialist family violence services into the family law system to improve responses to families where there are issues of family violence or other safety concerns for children. This may include a combination of:

- 1) Funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- 2) Embedding workers from specialist family violence services in the family courts and Family Relationship Centres;
- 3) Creating a dedicated family safety service within the family law system.

The Benevolent Society supports the inclusion of child specialists in all integrated service system responses within the family law system.

Question 33)

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

While there is merit in the family law, domestic violence and child protection systems being separate, significant issues arise from the wide variations between state and territory legislation, especially when a single registry of the Family Court may be dealing with cases from different jurisdictions. Both child protection and family violence legislation would benefit from harmonisation, as demonstrated in the uniform credit laws and work safety laws across jurisdictions.

The intersection between child protection legislation and the Family Law Act creates situations where in practice legislative authority is unclear. When, due to the lack of clarity, the statutory child protection body is reluctant to act, through risk aversion or lack of knowledge or authority, the best interests of the child can be endangered.

Whilst ensuring the interests of privacy, information sharing legislation and regulation must include as integral and without question the best interests of the child. Whilst there is an overlap in State and Federal jurisdiction, there is a need for a uniform law to be adopted by the states that links this to any sharing of information with agencies and NGOs, in whole or part funded by government. There should also be a legislative indemnity that information so shared will not be actionable if provided pursuant to the obligation and done in good faith.

The Benevolent Society supports:

- greater harmonisation of state and territory child protection and family violence legislation with the Family Law Act
- a formal role/function that might act as a conduit between the 3 regimes for better co-ordination of services
- regulations to include processes for managing situations where family court orders are contradictory to a child's changed circumstance and no longer in the best interests of the child;
- training and support for state and territory statutory child protection staff to understand the family law system and provide timely and effective responses which are in the best interests of the child.

Children's experiences and perspectives

Question 34)

How can children's experiences of participation in court processes be improved?

Question 35)

What changes are needed to ensure children are informed about the outcome of court processes that affect them?

Question 36)

What mechanisms are best adapted to ensure children's views are heard in court proceedings?

Children's physical, mental, emotional and cultural safety must be paramount in all their experiences with the family law system. The voice of the child must be heard in court and the court must listen and give regard to the testimony of children.

While children have the right to have an active and informed role in decisions affecting their lives, research suggests that Australian judges do not currently have the skills and training to undertake direct interactions with children and young people. This often results in children not being informed of decisions or processes that affect them because they are deemed 'too young to understand'.¹³

The information provided to children about court processes is not child focussed or reliably available. In The Benevolent Society's experience, children often never meet their court appointed independent children's lawyer and receive little to no consistent information about court processes. There is no requirement for the independent children's lawyer to have any specific training on children's needs, child welfare or the impact of domestic and family violence on children, which means children are often left unsupported and unheard.

There is a clear need for the resourcing, training and provision of a children's advocate, appointed to the child or young person, to bring the voice of the child to the court process and to convey and explain the court processes and decisions to the child.

The advocate would have expertise in child development and child welfare, with additional skills in trauma informed practice. This specialist would be appointed to the child for the entire court process and would be independent of the child's parents and legal representatives. The advocate would be located separately from the integrated services team and would represent the child in court or elsewhere, acting as a conduit for information on court processes and outcomes to the child, and the voice and wishes of the child to the court.

The Benevolent Society supports the funding, training and appointment of children's advocates located at family courts to support children and young people through the processes of the family law system.

Question 37)

How can children be supported to participate in family dispute resolution processes?

Question 38)

Are there risks to children from involving them in decision making or dispute resolution processes? How should these risks be managed?

The Benevolent Society believes a child's participation in court or other processes such as FDR must at all times be protective, child focussed and child inclusive. In situations where domestic and family violence is

present, it is critical to involve highly skilled, trauma informed child specialists in the FDR process to manage and support children's participation and ensure the process is protective.

Many children experiencing family breakdown carry the burden of risk for the family. An evidenced based, trauma informed framework for a child's participation in FDR must underpin their participation during the whole process, including risk management that looks into the future.

The Family Advocacy and Support Service (FASS) model described in the Issues Paper provides a starting point for delivering a child focussed support framework for children's participation in FDR. As the Issues Paper notes, it will be evaluated in 2019 and, subject to a positive evaluation, has been recommended for ongoing funding and expansion by the SPLA Committee. The SPLA Committee has also recommended that the program be extended to include a child safety services attached to the family courts.¹⁴

The Benevolent Society supports the development of an evidenced based, trauma informed framework for a child's participation in FDR that is delivered by highly skilled, trauma informed child specialists and ensure the process is protective and in the best interests of the child.

Question 40)

How can efforts to improve children's experiences in the family law system best learn from children and young people who have experience of its processes?

In 2013, the ACT Children and Young People Commissioner published *Talking with children & young people about participation in family court proceedings*, an unfunded project undertaken by the Commissioner at the request of the Honorable Chief Justice Bryant of the Family Court. The report found that:

Children expressed clear views about a range of issues including *how* they would like to participate in family Court proceedings, *the sorts of things* they would like to have a say about, *the kind of person* they would like to have represent their views to the court, and how this person should *communicate* with them.

Overall, the consultation indicated that talking directly with children and young people about issues associated with Family Court is a useful and feasible model and the CYPC recommends further consultations with a larger number of children and young people to inform the court's planning about how to best support children and young people's participation in court proceedings.¹⁵

The report provides a model for engaging children and young people in discussions about their experiences of the family law system and an opportunity for the system's administrators to hear from children and respond to their concerns. State and territory Children's Commissioners may provide the forum and means to undertake similar consultations and reports on an ongoing basis.

The Benevolent Society supports the provision of funding by the Australian Government for the development of a consultation and reporting mechanism to provide a voice for children and young peoples' experience of the family law system.

The Benevolent Society supports resources and training for court officials to ensure they have the means to engage and communicate effectively with children of all ages about family court matters that concern them.

Professional skills and wellbeing

Question 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?

Question 42)

What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measure are needed to ensure that judicial officers have and maintain these competencies?

As the Issues Paper identifies, calls for professionals in the family law system to be trained in domestic and family violence, trauma informed approaches (particularly in relation to children) and cultural competency, have been made by many organisations in reviews, parliamentary inquiries and consultations.

At the core of these submissions is the belief that the current system is operating without knowledge of:

- the impacts of domestic and family violence and its impacts on women and children;
- the impacts of child abuse on children;
- working with victims of trauma;
- child development,
- application of the best interests of the child; and
- cultural competency.

Women's Legal Services Australia in its submission to the *Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected by Family Violence* made a number of considered recommendations, based on their practices' experience of the family law system and consultation with their clients and member organisations. These include mandatory training on domestic and family violence, cultural competency and working with victims of trauma, for family report writers, judicial officers and legal practitioners, including independent children's lawyers.

The Benevolent Society supports recommendations 17, 18, 19, 20, 21, 22 and 23 made in the Women's Legal Service Australia's submission to the *Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected by Family Violence*.¹⁶ (See Appendix A)

References

- ¹ Women's Legal Service Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence*. 27 April 2017; Community Law Australia, 'Budget cuts to legal assistance hot vulnerable hardest', Community Law Australia. Accessed: <http://www.communitylawaustralia.org.au/budget-cuts-to-legal-assistance-services-hot-vulnerable-hardest/>. Productivity Commission, "Access to Justice arrangements: Productivity Commission Inquiry Report Overview" (2014) p 63, recommendation 21.4. Available online at: <http://www.pc.gov.au/inquiries/completed/access-justice-overview.pdf>
- ² Family Court of Australia 2003, Self-represented litigants – a challenge: Project report December 2000 – December 2002, Family Court of Australia. Accessed: <http://www.familycourt.gov.au/wps/wcm/connect/54fe062f-3cd0-422c-9848->
- ³ Productivity Commission, "Access to Justice arrangements: Productivity Commission Inquiry Report Overview" (2014) p63, recommendation 21.4. Available online at: <http://www.pc.gov.au/inquiries/completed/access-justice-overview.pdf>
- ⁴ Family Law Council 2012, Improving the family law system for Aboriginal and Torres Strait Islander clients, Family Law Council. Accessed: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20System%20for%20Aboriginal%20and%20Torres%20Islander%20Clients.pdf>
- ⁵ Family Law Council (2012), Improving the family law system for Aboriginal and Torres Strait Islander clients. Accessed at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20the%20Family%20Law%20System%20for%20Aboriginal%20Torres%20Strait%20Islander%20Clients.pdf>
- ⁶ Family Law Council (2012), Improving the family law system for clients from culturally and linguistically diverse backgrounds. Accessed at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>
- ⁷ Judge N Crichton (1 July 2010), Family Drug and Alcohol Court, Wells Street , London W1 as quoted in The Munro Review of Child Protection Part One: A Systems Analysis 1 October 2010, accessed 12th September 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175407/TheMunroReviewPart_one.pdf
- ⁸ AIFS, "Executive summary: evaluation of the 2006 family law reforms" (2009) p3-4. Available online at: <https://aifs.gov.au/sites/default/files/publication-documents/executivesummary>.
- ⁹ Kaspiew, R., Carson, R., Dunstan, J., Qu, L., Horsfall, B., De Maio, J., Moore, S., Moloney, L., Coulson, M. & Taton, S 2015, Evaluation of the 2012 family violence amendments: responding to family violence , p24-25. Available online at: <https://aifs.gov.au/sites/default/files/publication-documents/efva-rfv.pdf>
- ¹⁰ ANROWS, Domestic and family violence and parenting: Mixed methods, insights, impact and support needs: State of knowledge paper (2016) p28-30
- ¹¹ Women's Legal Services Australia, (2018) Australian Law Reform Commission Review of the Family Law System ADVOCACY GUIDE
- ¹² Attorney General's Department (Cth) SPLA Committee, Parliament of Australia, A Better Family Law System (May 2017). 6
- ¹³ Women's Legal Services Australia, *Safety First in Family Law* (2017). Available online at: https://5_step_plan_to_put_safety_first_in_family_law
- ¹⁴ Michelle Fernando, "Children's direct participation and the views of Australian judges" (2013) 92 *Family Matters* 40. Available online at: <https://aifs.gov.au/publications/family-matters/issue-92/childrens-direct-participation-and-views-australian-judges>.
- ¹⁵ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia (2016) n13, 145 rec 20.
- ¹⁶ Roy, A., McKinnon, G., Yates, H., Talking with children & young people about participation in family court proceedings, ACT Children and Young Peoples Commissioner (2013) Accessed at: <http://www.hrc.act.gov.au/res/Family%20Court%20Report.pdf>
- ¹⁷ Women's Legal Services Australia, Women's Legal Service Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Submission to the parliamentary inquiry into a better family law system to support and protect those affected by family violence*. 27 April 2017. Available online at: http://www.wlsa.org.au/submissions/parliamentary_family_law_inquiry_may_2017

Appendix A - Full text of recommendations from other reports endorsed by The Benevolent Society

2016 FLC Final Report

Recommendation 16: Aboriginal and Torres Strait Islander families

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*.

2) Part VII of the *Family Law Act 1975* be amended to provide for the preparation of Cultural Reports, which may be included in Family Reports for Aboriginal and Torres Strait Islander children where a cultural issue is relevant, and for the Family Report to include a cultural plan which sets out how the child's ongoing connection with kinship networks and country may be maintained.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for Aboriginal and Torres Strait Islander families in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow them to be cared for within their own families and communities wherever possible, based on the Aboriginal and Torres Strait Islander Child Placement Principles.

4) The Australian Government consider a pilot of a specialised court hearing process in family law cases that involve an Aboriginal or Torres Strait Islander child to enhance cultural safety for Aboriginal and Torres Strait Islander families, including through the participation of Elders or Respected Persons who can provide cultural advice to the court in relation to the child or young person and a specially reconfigured courtroom design.

5) The Australian Government consult with Aboriginal and Torres Strait Islander representative institutions in the development of any reforms arising from Council's work that affects Aboriginal and Torres Strait Islander children.

Recommendation 17: Culturally and linguistically diverse families

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.

2) The Australian Government ensure that workers from Culturally and Linguistically Diverse specific services are incorporated into the development of any court-based and family relationship sector-based integrated services model as recommended by Council in Recommendations 6 and 7.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for families from culturally and linguistically diverse backgrounds in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow children to be cared for within their own families and communities wherever possible.

Women's Legal Service Australia's - Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected by Family Violence.

5 – Increasing the Family Violence Understanding of Family Law Professionals

Recommendation 17

The Australian Government funds, and together with the Judicial College of Australia develops a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence. We recommend this training package includes content on family violence (including recognising the dynamics of family violence and unconscious bias), cultural competency, working with victims of trauma, family law (for state and territory judges) and child protection.

Recommendation 18

The Australian Government adopt recommendations 215 and 216 of the 2016 Royal Commission into Family Violence Report (Victoria) such that (215) material on the dynamics of family violence be included in general judicial officer training and (216) the comprehensive family violence learning and development program for court staff and magistrates in Victoria continue to be developed and expanded Australia wide.

Recommendation 19

The Australian Government fund and coordinate the development of a national, comprehensive family violence training program for family law legal professionals, including Independent Children's Lawyers and Family Dispute Resolution practitioners and work with state and territory law institutes and bar associations to roll out the training.

Recommendation 20

The training modules for family law professionals referred to the Recommendations include training on:

- the intersection of family law, child protection and family violence;
- Cultural competency in working with Aboriginal and Torres Strait Islander clients, including training that builds an understanding of the multiple and diverse factors contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures.
- Cultural competency in relation to working with clients of culturally or linguistically diverse background (including working with interpreters).
- Working with LGBTQI families.
- Working with people with a disability
- Working with vulnerable clients
- Trauma informed practice

Recommendation 21

The Australian Government, through the Attorney Generals Department, in consultation with family violence and family law experts, coordinate the development of consistent training, an accreditation process and minimum standards for family consultants. In addition, that the training and accreditation process and minimum standards include a focus on capabilities in relation to understanding and identifying family violence, cultural competency and trauma informed practice.

Recommendation 22

That Aboriginal and Torres Strait Islander litigants have access to adequately trained Aboriginal and Torres Strait Islander Family Consultants, and that adequate cultural awareness training be provided to all non-Aboriginal family consultants.

Recommendation 23

The Australian Government establish an oversight mechanism and complaint process to monitor and review the conduct of family consultants.