

12 November 2018

Australian Law Reform Commission
Sent by email: familylaw@alrc.gov.au

Dear Advisory Committee,

Review of the Family Law System

Global Mobility Immigration Lawyers & Migration Agents welcomes this opportunity to make submissions to the Australian Law Reform Commission (ALRC) in relation to the review (“the Review”) of the Family Law System (“the System”).

Global Mobility Immigration Lawyers & Migration Agents

[Global Mobility Immigration Lawyers & Migration Agents](#) is a Melbourne-based firm, committed to giving our clients a voice in any law reform initiative touching on their interests.

Overview

The impetus behind the Review is the lack of comprehensive review and reform of the Family Law Act since its commencement in 1976. The structure of Australian communities, and family units within those communities, has changed substantially since that time. Australia is, more than ever, a country of migrants, and migrant communities need to be taken into consideration in a modern System.

A review is well overdue, to ensure systemic efficiencies, accessibility of services, and the wellbeing and welfare of children in all Australian communities.

Some specific considerations are set out below.

Education, Awareness and Information

We welcome any efforts to make information accessible to families going through separation. It is important, however, that all resources are prepared and disseminated with a view to getting information to the communities that need it most. Proper consultation ensures such resources are understood as intended.

One must be mindful of the special needs and vulnerabilities of migrant communities. For example:

- migrant communities, particularly those coming from authoritarian countries, can be nervous of governments and bureaucracy
- English may not be their first language, and often the most vulnerable groups, such as asylum seekers, have very little English at all

- information about laws and processes is only helpful when it is partnered with practical assistance. Community organisations are particularly important for migrant families, and should be consulted.
- while online resources are important, not all people are tech savvy. To facilitate the broadest possible access, information should be disseminated in a variety of forms, media and languages.

Simpler and Clearer Legislation, Forms and Process

Any attempt to make legislation simpler and clearer is to be commended. As with the immigration process, many families going through the System are self-represented.

It is important when preparing support documents to use a tone that communities will relate to – i.e. not ‘legalese’. This is particularly important with migrant families.

The document burden when going through any legal process can be overwhelming for any family, and this is especially true for migrant families.

Significant effort in the Review should be directed towards minimizing, as much as possible, the information and forms required for the process. This includes:

- Simplification of the structure and wording of forms. Questions should be written as directly as possible and in plain English.
- Minimise repetition. Forms being used by the same Department or Agency should avoid asking for the same information more than once.
- Forms should be available in more than one medium – i.e. online and as a paper version, for those who cannot use technology.
- Forms should be available in as many community languages as possible.
- Where forms may be overwhelming, additional resources should be available to assist people to navigate through them – i.e. example answers or further information to explain why certain data is being requested.
- Assistance should be clearly available for applicants who have low levels of literacy.

Access to Advice and Support

The proposed “Family Hub” and expansion of the Family Advocacy and Support Service (FASS) are worthwhile considerations. However the Review should work directly with, and amplify the views of, those people and organisations who are working at the ‘coal face’.

The success of the proposed programs will depend on how well they communicate and work with community services that are already utilized and trusted by families, particularly within migrant communities. These are the people who truly understand the needs of their own community.

Family Violence

Family violence within migrant communities and its impact on family separation is a particularly complex issue. It can manifest in different ways within different cultures. Accordingly, it is essential that Case Managers within services like the Family Hub are trained appropriately when it comes to cultural sensitivities and recognising signs of family violence within a cultural context.

It should also be recognized that many migrants are scared to ask for help in situations of family separation and violence, as they may be scared of the impact it will have on their visa status. It is important that Case Managers understand these potential concerns, and have the ability to refer to organisations who can advise or support victims in this respect.

It is crucial that Case Managers understand the best resources to refer migrant clients to, when family violence is presented. It may be best to refer to a culture-specific community centre rather than a generic government organization, and the System should be set up to facilitate this.

It is also essential that any service creation or expansion is resourced appropriately. In recent years, we have seen increasing workloads and decreasing resources available to both government departments and organisations assisting migrants and asylum seekers with the visa application and review process. It is essential that any future reforms in the family law System ensure sufficient resources are allocated, as case managers cannot possibly support, refer or follow up appropriately if they are stretched too thin.

Financial and Debt Considerations

Family separation can be financially crippling for all parties, however migrants and temporary visa holders are particularly vulnerable.

Temporary visa holders are often unable to access social security benefits or certain community services. For example, if a person is the holder of a subclass 820 Provisional Partner Visa, they are technically still a temporary visa holder. Consideration needs to be given to ways vulnerable migrants who have experienced family violence can access benefits and services.

Any and all options to alleviate financial distress should be considered, including the early release of superannuation. Other options might be considered, such as:

- interest free government loans
- tax concessions
- assistance with childcare costs

Accreditation

We support moves to accreditation for professionals working within the System. As outlined in the Discussion Paper, Migration Agents (aka Immigration Agents) have been subject to similar accreditation for some time.

A process of training and subsequent accreditation is important as:

- it ensures more consistent support and advice across different organisations, departments and communities
- it can assist in creating a relationship of trust with a community and other stakeholders
- families going through separation require advice that is accurate, fast, and will have the best impact on their situation

Dispute Resolution

Mediation and communication are an important part of the System.

It is particularly important that mediators are given training in cultural considerations and dealing with cases involving family violence.

It is important that all parties have access to effective communication with someone who can speak their primary language, work through the heightened emotions of the separation and understand the goals of each party.

Conclusion

Any review of the Family Law System must take migrant communities into consideration, in particular temporary visa holders, asylum seekers and migrants who have been victims of family violence.

A complicated system with barriers for comprehension and access will lead to clients falling through the gaps.

All attempts should be made to ensure the System is accessible and easy to navigate for all parties, including those who were not born in Australia.

We thank you for your consideration, and remain at your service in relation to this Review.

Yours faithfully

[sent electronically without signature]

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