



Resolution  
Institute

Resolution Institute  
Australian Law Reform  
Commission Review of the Family  
Law System – *Response to the*  
*Discussion Paper*

November 2018

# Contents

---

Preamble .....	3
About this <i>Response</i> .....	4
Education, Awareness and Information (Chapter 2).....	5
Simpler and Clearer Legislation (Chapter 3) .....	5
Getting Advice and Support (Chapter 4).....	7
Dispute Resolution (Chapter 5) .....	9
Reshaping the Adjudication Landscape (Chapter 6) .....	11
Children in the Family System (Chapter7).....	13
Reducing Harm (Chapter 8).....	15
Additional Legislative Issues (Chapter 9) .....	16
A Skilled and Supported Workforce (Chapter 10).....	16
Information Sharing (Chapter 11) .....	18
System Oversight and Reform Evaluation (Chapter 12) .....	18
Conclusion .....	20

## Preamble

---

Resolution Institute is pleased to submit this Response to the Australian Law Reform Commission (ALRC) Review of the Family Law System *Discussion Paper 86 (Discussion Paper)*.

We note that the ALRC is seeking written submissions to the *Discussion Paper* by 13 November 2018 as part of the ongoing preparation of the *Final Report* due to the Commonwealth Attorney-General by 31 March 2019.

We note that the *Discussion Paper* asks 33 questions and makes 124 proposals for change to the family law system, which address:

- support for children;
- improving public understanding of the family law system;
- accessible and coordinated service delivery, and
- enhanced oversight of the family law system and its key participants.

Resolution Institute was pleased to submit its comments on the *Australian Law Reform Commission (ALRC) Review of the Family Law System Issues Paper (Issues Paper)* in May 2018. The submission dated 7 May 2018 was accepted by the ALRC review and appears on the review website.

Resolution Institute supports all reforms to simplify and enhance access, remove formalised and expensive adversarial processes and address cultural factors and other impediments to resolution of disputes.

Resolution Institute is the largest membership organisation of dispute resolution (DR) professionals in Australasia. Resolution Institute has a membership base of over 3,000 DR professionals, across a diverse range of industry sectors, including family, building and construction, finance, commercial, community, technology, mining, local government, insurance, and environmental. At the end of March 2018, 337 of Resolution Institute members identified as accredited Family Dispute Resolution Practitioners. Information about Resolution Institute and its interest in family dispute resolution was included in our response to the *Issues Paper*. Further information about Resolution Institute may be obtained at [www.resolution.institute](http://www.resolution.institute) or by contacting our head office in Sydney.

## About this Response

---

Resolution Institute conducted a consultation process with its members to inform the preparation of this *Response*. The consultation process comprised:

- a survey sent to members who identified as family dispute resolution practitioners (FDRPs) asking to what extent they agreed with the proposals in the *Discussion Paper*, and seeking comments in relation to the questions and proposals.
- a facilitated session with the NSW Resolution Institute Family Dispute Resolution Special Interest Group (SIG), seeking member FDRP attendees' views and commentary. The Family Dispute Resolution SIG is a forum of members dedicated to all dispute resolution aspects of families, and supports continuing professional development (CPD) and networking events, expands networks of DR practitioners and provides a conduit for communicating information and ideas to Resolution Institute.
- Informal conversations with a small number of very experienced FDRPs

In addition, Resolution Institute also encouraged its members to make their own submissions individually in response to the ALRC *Discussion Paper*.

Resolution Institute synthesised and summarised responses from individual survey respondents and comments from those who participated in the consultation session. We noted common themes, as well as identifying any significant diversity of opinion in relation to specific issues, consistent with the approach taken in Resolution Institute's response to the *Issues Paper*. Resolution Institute also summarised the survey results and commentary into broad categories of support for, or opposition to, the ALRC *Discussion Paper* proposals. You will see that in this *Response*, informed by the consultation process with member FDRPs, Resolution Institute, expresses overwhelming support for the majority of the proposals included in the *Discussion Paper*.

Resolution Institute has provided responses to those proposals and questions posed in the *Discussion Paper*, where we have the knowledge and experience to do so and where comments we make augment or develop the responses, we gave to the *Issues Paper*. The Resolution Institute *Response* follows.

## Education, Awareness and Information (Chapter 2)

---

### *Proposals 2.1 to 2.3 Education and awareness*

#### **Supported**

Resolution Institute supports the development of a national education and awareness campaign by the Australian Government to enhance community understanding of the family law system as proposed in the *Discussion Paper*. Member FDRPs who engaged in the consultation process also supported this proposal.

### *Proposal 2.4 Families Hub*

See commentary under Proposals 4.1 -4.8

### *Proposals 2.5 to 2.8 Family law system information package*

#### **Supported**

Resolution Institute supports the suggested process for the development of a family law system information package and the broad content proposed. One member FDRP who engaged in the consultation process commented that information empowers and enables choice. Resolution Institute reiterates the importance of information being accurate, up to date, sensitive to audience and accessible.

Another member FDRP noted some reservations about the scope and type of the information available. The member noted that information needs to be widely available for the broad community, and include public and private options, noting that even those who are separating in a cooperative manner, may be interested in Family Dispute Resolution (FDR) as an alternative to using the better-known service that solicitors provide.

Resolution Institute supports the wide availability of a family law system information package addressing the full suite of DR options, with a focus on early intervention and FDR.

## Simpler and Clearer Legislation (Chapter 3)

---

### *Proposals 3.1 and 3.2 Simplification*

#### **Supported**

Resolution Institute is in favour of the *Family Law Act 1975* (Cth) (*Family Law Act*) and its subordinate legislation being redrafted with the aim of simplification and readability.

Resolution Institute also favours review of the Family Law court forms to ensure accessible usability.

### *Proposal 3.3 Safety and best interests*

#### **Supported**

Resolution Institute considers that the paramount importance that is given to the child's best interests in the current *Family Law Act* (s60CA) should already be understood to include

safety. Resolution Institute considers making safety explicit will alert parties and professionals to its importance with the potential of enhancing parties' decision making with regard to children. This amendment was broadly supported by member FDRPs who engaged in the consultation process.

### *Proposals 3.4 to 3.7 Guidance*

#### **Supported**

Resolution Institute considers that the intention of proposals 3.4-3.7 to provide more easily understood guidance is appropriate. We defer to those with higher expertise in this area to make specific comments about the particular guidance elements to be included in a revised Act.

While Resolution Institute supports the emphasis in Proposal 3.7 on decision making, we are in favour of retaining the notion of parental responsibility as we believe that parental responsibility encompasses more than decision making. Resolution Institute suggests that the two ideas could be coupled in a revised *Family Law Act* as "parental and decision-making responsibilities". Resolution Institute supports distinguishing the best interests of each child separately from each other child.

#### *Question 3.1 How should confusion about what matters require consultation between parents be resolved?*

Resolution Institute considers that FDR provides for parents, with professional support, to determine themselves what matters require consultation. These decisions can be documented in a Parenting Plan. Parenting Plans to be informal and flexible, so that they can be changed as needed, with or without support from an FDRP. Resolution Institute also notes that the matters about which consultation between parents is required, will vary from one set of parents to another. Therefore, Resolution Institute favours broad guidelines to support parents' own decision making and FDRPs with highly developed mediation skills.

### *Proposal 3.8 Leave for new parenting orders*

#### **Supported**

Resolution Institute notes that the *Discussion Paper* articulates two goals for this proposal: first to minimise re-litigation, which the *Discussion Paper* asserts is not in the best interests of the child; and second, to make the circumstances in which an application for new parenting orders is likely to be accepted by the Court, more transparent for parents generally and particularly for parents who are non-represented litigants.

Resolution Institute supports these two goals. We consider that both these goals are best met by making widely available highly readable information which emphasises the flexibility of Parenting Plans that can be altered by the parents themselves when circumstances change and which explains the alternative process of obtaining parenting orders and the process for having those orders altered.

With priority given to making highly readable information available to parents in the early stages of separation, Resolution Institute considers that it is appropriate to make transparent

what is essentially current practice by including in the Act information about the circumstances in which a court will provide leave for new parenting orders.

### *Proposal 3.9 Body to assist with formulating care arrangements*

#### **Supported**

Resolution Institute supports the establishment of new and separate Commonwealth body to develop evidence-based information resources to assist families in formulating care arrangements for children after separation that support children's wellbeing. Responses from member FDRPs who engaged in the consultation process also supported this proposal.

### **Proposal 3.10 - 3.19 relating to property and financial matters**

The *Discussion Paper* identified the complexity of property and financial matters, the range of policy considerations and the still emerging understandings about the impacts of options canvassed in the *Paper* for achieving equity and the relieving hardship.

Resolution Institute defers to people with greater expertise in this area. We include here some of the comments made by those FDRP members who we consulted.

- In order to resolve property and financial disputes, parties are likely to need greater assistance in preparation.
- Options need to be considered that would assist in funding early assistance to resolve property and financial matters such as a “buy now and pay later” means tested scheme, (similar to HECS)
- The *Family Law Act* should mandate full disclosure of property and consider penalties in the event of non-disclosure (this means a greater role for technically qualified experts earlier in the process)
- A refusal to participate meaningfully in early property/financial DR should be strongly encouraged with penalties (such as a certificate indicating non-participation to be used if litigation is necessary) considered in cases where this does not occur.

## **Getting Advice and Support (Chapter 4)**

---

### *Proposals 4.1 to 4.8 Support, referrals and Families Hubs*

#### **Supported**

Resolution Institute supports the initiative of Families Hubs to support referrals to family law services, including those services that work with families and children in general, and also those that are the first points of contact in the event of family violence. Resolution Institute also supports expanding the Family Advocacy and Support Service (FASS) in each state and territory.

Responses from our member FDRPs engaged in the consultation process, generally expressed support for the services provided by the Hubs. Some of those consulted expressed a view that Family Relationship Centres already provide a similar range of such services, which could be

extended with greater funding. In contrast others commented that they have a preference for hub services to be provided by government, as this will better support the continued provision of FDR services both by non-government and private providers.

Favourable commentary from those member FDRPs who engaged in the consultation process noted that Families Hubs would:

- mark a real shift in emphasis and a move to the meaningful one-stop shop
- integrate legal and FDR and other support. As such, it is visionary and meaningful
- mean simplification of process and less complexity about legal processes e.g. easier to file consent orders after agreements reached though the hub experience
- represent a return to the original model of Family Relationship Centres
- provide better service for high needs families such as those experiencing housing crises, violence or other difficulties.
- promote early intervention, which is successful and cost effective
- provide an enormous opportunity for the expansion of FDR, as the primary method of dispute resolution
- provide an opportunity to develop a strong culture of FDR and cooperation
- tap into existing organizations to amalgamate and avoid duplication
- potentially reduce trauma and conflict resulting from confusion
- increase the likelihood of information sharing relevant for children's safety
- contribute to congruent and fair outcomes
- benefit parents and children by assisting in the development of a positive FDR culture
- increase efficiency, preparation for DR, information sharing and collaboration.

**Additional commentary from those consulted suggested improvements could be made by:**

- returning to the previous collaboration between Family Relationship Centres and Community Legal Centres to provide community legal education and individual advice, the funding for which has now diminished.
- introducing a stronger requirement to attempt FDR
- providing appropriate funding for expanded services
- introducing more tiered, graduated models or system of dispute resolution e.g. compulsory screening, assessment to triage/direct people to appropriate services
- ensuring appropriate sharing of information. Advantages of sharing information more freely is that this may increase protection for vulnerable parties; risks of sharing too freely is that it may lead to parties becoming hesitant to be open and professionals and support people may also be reluctant to be open in circumstances where they perceive potential danger.
- introducing an option of publicly funded arbitration to be incorporated at this stage

Resolution Institute supports a model of a one stop service (as envisaged by the Families Hub) offering early intervention, multi-disciplinary support, simplified procedures and a focus on the strong encouragement of FDR.

## Dispute Resolution (Chapter 5)

---

### *Proposals 5.1 to 5.2 Suitability for family dispute resolution*

#### **Supported**

Resolution Institute supports the guidance as to assessment of suitability for FDR being located within the *Family Law Act* and also the inclusion of an additional consideration about the parties' respective levels of knowledge of the matters in dispute, including an imbalance in knowledge of relevant financial arrangements.

### *Proposals 5.3 to 5.5 Must attempt family dispute resolution before court*

#### **Supported**

Resolution Institute supports amendments to the *Family Law Act* requiring parties to attempt FDR prior to lodging a court application for property and financial matters (with limited exceptions). Resolution Institute also supports courts not being permitted to hear an application for orders in relation to property and financial matters unless the parties have lodged a genuine steps statement at the time of filing the application (with a certificate from a FDRP). Resolution Institute considers it appropriate to align the genuine steps requirement within the *Family Law Act* with the 'genuine steps' approach taken in the Civil Dispute Resolution Act 2011 (Cth) for the reasons identified in the *Discussion Paper*: assisting courts in case management and in making costs orders.

### *Question 5.1 Should the requirement in the Family Law Act that proceedings in property and financial matters must be instigated within twelve months of divorce or two years of separation from a de facto relationship be revised?*

Rather than revising the time frame, Resolution Institute considers that it would be appropriate to remove this requirement from the *Family Law Act*. Resolution Institute considers that a specified timeframe does not provide the flexibility appropriate to the needs of different parties. Not prescribing the time in which proceedings must be instigated provides choice for parties to decide for example, to attend to the wellbeing of their children and then perhaps to their own emotional, psychological and physical wellbeing before instigating proceedings about property and financial matters. Some parties may wish to delay resolving the financial and property matters for some years; others may wish to resolve these matters in a much shorter timeframe. The *Family Law Act* should not prescribe a timeframe for instigating proceedings as this unnecessarily limits the choices parties can make.

## *Proposals 5.6 to 5.7 Property and financial disclosure and consequences*

### **Supported**

Resolution Institute supports the *Family Law Act* setting out the duties of parties to provide early, full and continuing disclosure of all property and financial information relevant to the case. Resolution Institute also supports a failure to do so resulting in consequences.

### *Question 5.2 Should the provisions in the Family Law Act setting out disclosure duties be supported by civil or criminal penalties for non-disclosure?*

Resolution Institute supports penalties for non-disclosure. Without penalties, disclosure duties within the *Family Law Act* are unlikely to take full effect.

## *Proposal 5.8 Advisers' obligations*

### **Supported**

Resolution Institute is in favour of the *Family Law Act* setting out advisers' obligations in relation to providing advice to parties contemplating or undertaking FDR, negotiation or court proceedings about property and financial matters. Resolution Institute further supports that advisers be required to inform parties of the duty for full, frank and continuing disclosure, and that if the matter proceeds to court and a party fails to meet this duty, Resolution Institute favours courts being able to impose consequences as set out within this proposal.

### *Question 5.3 Is there a need to review the process for showing that the legal requirement to attempt FDR prior to lodging a court application for parenting orders has been satisfied? Should this process be aligned with the process proposed for property and financial matters?*

Resolution Institute considers that review is necessary and that the processes with regard to FDR and to property and financial matters should be aligned. This reflects the majority view held by the FDRP members engaged in the consultation process. Commentary included that aligning these two processes would reduce the time wasted by the courts, help to ensure that applications made to court meet the legal requirements and that the reasons given on certificates add value to court proceedings. All too often currently, there are reports that certificates are used simply as a filing requirement.

## *Proposals 5.9 to 5.11 Development of models and practice guidelines*

### **Supported**

Resolution Institute is in favour of there being increased support for the further development of culturally appropriate and safe models of FDR for parenting and financial matters, along with the development of effective practice guidelines for the delivery of legally assisted dispute resolution (LADR) for parenting and property matters.

Resolution Institute considers that further training is required for FDRPs and lawyers in how to provide safe models of FDR, considering the specific needs of parties, particularly those who are most vulnerable.

Commentary from our member FDRPs includes:

- LADR should be better funded as it is more cost effective than litigation
- In LADR advice is provided that supports reality checking of parties' perceptions. Parties are exposed to the reality of what litigation might be like
- LADR supports better diagnosis at the entry/assessment stage. For example, if clients need extra or specialised assistance (e.g. addiction), they can be referred to other services
- For LADR to be effective, lawyers should be supported to have an in-depth understanding of the FDR mediation process and adopt a cooperative approach. Lawyers with their particular skill sets and appropriate FDR training have a lot to offer to LADR
- Legal assistance at an early conflict stage may help to address power imbalances between parties in dispute, arising from inability to advocate for one's self, vulnerability, financial inequality, education, mental health and safety issues
- FDRPs and lawyers need clear guidelines on their roles and on practice and procedural protocols for FDR
- LADR offers a viable option to the many who cannot afford to proceed to court

## Reshaping the Adjudication Landscape (Chapter 6)

---

### *Proposals 6.1 and 6.2 Triage processes*

#### **Partially supported**

Resolution Institute supports establishing a multi-disciplinary triage process to ensure that matters are directed to appropriate DR processes and specialist pathways. Resolution Institute would prefer that this triage process is established outside the court system, to assist in shifting the presumption that the starting point for resolving family disputes is litigation.

This view was supported in the commentary from a member FDRP who emphasised that triage should be implemented prior to any family court proceedings. The member noted that parents who have experienced a thorough triage process, have reported they would have appreciated more knowledge prior to going to court, and further state the benefits for them attending a triage process may have prevented the need for court in the first instance.

Introducing FDR prior to going to court frees up court time and makes it more possible to move matters through the system more quickly. One member FDRP stated that the mediation conducted by an FDRP is often more effective, less adversarial and produces more durable outcomes than do the process that courts refer to as mediation. courts

In line with our preference for a thorough triage process to be conducted outside of the court system, we also favour specialists other than registrars and family consultants being employed to conduct the triage process.

### *Proposal 6.3 Specialist pathways*

#### **Supported**

Resolution Institute supports the provision of specialist pathways, which provide appropriate and timely support to address the particular needs of vulnerable parties. Resolution Institute considers it important that FDR with additional appropriate support be offered to enable parties to make their own decisions as far as possible.

### *Proposals 6.4 - 6.6 Parenting Management Hearings process*

#### **Supported**

For those cases where FDR has been assessed as not appropriate, Resolution Institute supports the provision and implementation of a simplified court process as described in the *Discussion Paper* for matters involving smaller property pools.

#### *Question 6-1 What criteria should be used to establish eligibility for the family violence list?*

Resolution Institute notes comments in the *Discussion Paper* about evidence demonstrating that the majority of parenting matters in the family law courts involve family violence. Resolution Institute therefore supports the specialist list being reserved for ‘high risk’ cases determined by assessment of the factors listed in the proposal.

#### *Question 6-2 What are the risks and benefits of early fact-finding hearings? How could an early fact-finding process be designed to limit risks?*

Resolution Institute is in favour of a cautious approach to early fact finding. Resolution Institute considers that the current limited use of early fact finding under s 69ZR of the *Family Law Act* is appropriate and defers to people with more expertise in this area on how the potential risk can be best managed.

### *Proposal 6.7*

#### **Supported**

Resolution Institute supports the establishment of specialist lists for the hearing of high-risk family violence matters in each registry.

### *Proposals 6.9 to 6.11 Parenting support service*

#### **Supported**

Resolution Institute is in favour of the development of a post-order parenting support service to assist parties to implement parenting orders and manage their co-parenting relationship. Resolution Institute is also in favour of drawing on the expertise of other professional groups such as those listed in 6.10 and of the proposed Family Law Commission being responsible for developing accreditation and training requirements for professionals working in this service.

### *Proposal 6.12 Family court premises*

#### **Supported**

Resolution Institute agrees that the Australian Government should ensure that all family court premises, including circuit locations and state and territory court buildings that are used for family law matters, are safe for attendees, with the features listed in the proposal

## Children in the Family System (Chapter7)

---

### *Proposal 7.1 Information for children about family law processes*

#### **Supported**

Resolution Institute considers that it is respectful to children to provide them with developmentally and culturally appropriate information, presented through a variety of media, during an FDR process.

Most member FDRPs who participated in the consultation process strongly supported these proposals. They emphasised the importance of sensitivity to the increased vulnerability that many children experience during FDR, with some noting that sound and developmentally appropriate information may provide reassurance to children that their perspectives will be heard and considered. It was also noted that there are many good services currently available to support children who need it.

### *Proposal 7.2 Integrated support services for children*

#### **Supported**

Resolution Institute supports the proposal to have staff with high levels of skill in working with children and young people being included in Families Hubs. Resolution Institute favours such staff members being trained in providing support to children and young people during FDR.

### *Proposals 7.3 to 7.4 Expressing children's views*

#### **Supported**

Resolution Institute supports both of these proposals as did all the member FDRPs who participated in the consultation process. It was noted that by making it standard for children to have the right to be heard in FDR contributes to removing the perception of one or both parents as the only expert(s).

As with Proposal 7.1, a number of members noted the vulnerability that children may be experiencing during FDR and emphasised the importance of attending to their safety and engaging them at carefully considered times in carefully considered ways. Members also noted that FDRPs and other professionals need to be alert to the risks of children being manipulated or coerced.

### *Proposals 7.5 Best practice child-inclusive family DR*

#### **Supported**

Resolution Institute supports these proposals about the development of best practice guidance on child-inclusive family dispute resolution.

### *Proposals 7.6 to 7.7 Safe participation*

#### **Supported**

Resolution Institute supports these proposals with member FDRPs who participate in the consultation process emphasising no compulsion on children to participate, ongoing risk assessment, and the paramount importance of children's safety and well-being. Member FDRPs expressed strong support for appropriately funding such an extension of service.

### *Proposals 7.8 to 7.10 Supporting children's participation*

#### **Supported**

Resolution Institute strongly favours children's advocates supporting children through the family law system and also separate legal representatives being appointed in appropriate circumstances. Member FDRPs who participated in the consultation expressed agreement with these proposals noting that child advocates having high level skills will be essential for this approach to be successful. Training and accreditation should be considered.

#### *Question 7.1 In what circumstances should a separate legal representative for a child be appointed in addition to a children's advocate?*

Resolution Institute considers that it is appropriate to define the circumstances when a separate legal representative will be appointed, to ensure that it does not become part of standard practice. Member FDRPs who participated in the consultation process noted risks of too many professionals being involved with children and offered circumstances when it may be warranted as those where there is significant family violence, very high parental conflict, a very high level of vulnerability or where a child requests such as appointment.

#### *Question 7.2 How should the appointment, management and coordination of children's advocates and separate legal representatives be overseen? For example, should a new body be created to undertake this task?*

Member FDRPs agreed that this should be overseen by an independent body with clear protocols about sharing information consistent with confidentiality agreements and other requirements.

#### *Question 7.3 What approach should be taken to forensic issues relating to the role of the children's advocate?*

The view most strongly expressed about this question is that the children's advocate needs specialist training to support them in decision making about this role and in identifying the underlying issues and ongoing risks for the children.

### *Proposals 7.11 to 7.13 Children's support and participation*

#### **Supported**

Resolution Institute supports children being able to express their views in court proceedings and family dispute resolution processes in a range of ways (as proposed) including establishing a Children and Young People's Advisory Board for the family law system and guidance to assist judicial officers where children seek to meet with them or otherwise participate in proceedings. Some member FDRPs who participated in the consultation process expressed the view that the voice of children is currently too filtered, and that support from a children's advocate is likely to support children expressing comments directly. Others noted that children should be assessed for suitability to express their view in all instances.

## Reducing Harm (Chapter 8)

---

### *Proposals 8.1 to 8.3 Children's support and participation*

#### **Supported**

Resolution Institute agrees with this proposal to amend definition of family violence in the Family Law Act to clarify some terms, cover other behaviours including emotional and psychological abuse, technology facilitated abuse, misuse of legal and other systems and processes, and explicitly cross-reference between the definitions of family violence and abuse.

*Question 8.3 Should the requirement for proceedings to have been instituted 'frequently' be removed from provisions in the FLA setting out courts powers to address vexatious litigation? Should another term, such as 'repeated' be substituted?*

Resolution Institute agrees with both suggestions implicit in these questions.

### *Proposals 8.6 Excluding protected confidences*

Resolution Institute notes that confidentiality contributes significantly to the willingness of parties to share information with advisers, which in turn assists in making progress towards resolving the dispute. Resolution Institute considers that the circumstances, suggested in the *Discussion Paper*, for excluding protected confidences seem appropriate, particularly in relation to the safety and best interests of children. Resolution Institute considers that appropriate caution be taken to balance the benefits and risks associated with confidences.

### *Proposal 8.7 Sensitive records*

#### **Supported**

Resolution Institute supports a working group being convened. Resolution Institute considers that the perspective of private FDRPs should be included. Resolution Institute would be pleased to nominate a person to represent the private FDRP perspective.

## Additional Legislative Issues (Chapter 9)

---

### *Proposals 9.1 to 9.2 Supported decision making for people with disabilities*

#### **Supported**

Resolution Institute is in favour of the Family Law Act including a supported decision-making framework for people with disability to recognise they have the right to make choices for themselves.

### *Proposals 9.6 to 9.7 Support for people with disabilities*

#### **Supported**

Resolution Institute strongly supports these proposals to provide better access for people with disability to the family law system. In particular, we consider that people with disability should be supported in making their own decisions wherever possible and appropriate.

### *Proposals 9.8 Definition of family member*

#### **Supported**

Resolution Institute agrees with this proposal to amend the Family Law Act to include Aboriginal and Torres Strait Islander concepts of family.

## A Skilled and Supported Workforce (Chapter 10)

---

### *Proposals 10.1 to 10.2 Workforce capability plan*

#### **Supported**

Resolution Institute supports these proposals for developing workforce capability. We note that Proposal 10.1 identifies that the Australian Government should work with relevant non-government organisations and key professional bodies. Resolution Institute is both a non-government organisation and the largest professional body for dispute resolvers across Australia and New Zealand. Resolution Institute provides approximately 15 mediation courses per year that meet the training requirements of the National Mediator Accreditation System, 150 continuing professional development seminar events and more than 30 webinars across Australia and New Zealand. We have particular expertise in understanding the challenges of Dispute Resolvers in private practice, including FDRPs.

Resolution Institute would value be included in consultations with the Australian Government on workforce capability planning.

### *Proposal 10.3 Competencies for family law workforce planning*

#### **Supported**

Resolution Institute considers the list of core competencies is a strong starting point. Resolution Institute favours regular review of core competencies.

*Question 10-1 Are there any additional core competencies that should be considered in the workforce capability plan for the family law system?*

Based on commentary from member FDRPs who engaged in the consultation process, Resolution Institute adds to the core competencies, mediation training that meets the threshold training requirements of NMAS, and an understanding of mental health issues and substance abuse.

Member FDRPs suggested that co-mediation and observation of other practitioners boosts skills particularly early in an FDRP career. They also noted that supervision (face to face or online) and peer coaching and/or mentoring are critical to good practice

*Proposal 10.4 Family Law Commission*

See our comments under 12.1.

*Proposal 10.5 FDRPs and property matters*

**Supported**

Resolution Institute considers that this is an appropriate extension of the skills and service offered by FDRPs. Resolution Institute also considers that at least some parties may prefer to address all aspects of their dispute mediated by the same person. Resolution Institute also supports additional training in property and financial matters for FDRPs.

*Question 10.2 What qualifications and training should be required for family dispute resolution practitioners in relation to family law disputes involving property and financial issues?*

Member FDRPs who engaged in the consultation process suggested that there be specific property and financial matters mediation training, including in issues of power relation to property and finances, as an extension to the Graduate Diploma of FDR. They also suggested that a suite of templates would assist and that parties be encouraged to seek independent financial and legal advice in their preparation for FDR.

*Proposals 10.6 to 10.7 CPD and WWCC*

**Supported**

Resolution Institute supports both of these proposals.

*Proposals 10.9 to 10.10 Accrediting private family report writers*

**Supported**

Resolution Institute supports both of these proposals.

*Proposal 10-15 Professional well-being*

**Supported**

As a matter of principle, Resolution Institute supports this proposal.

# Information Sharing (Chapter 11)

---

## *Proposal 11-1 Legislative reform for information sharing*

### **Supported**

Resolution Institute supports this proposal while still emphasising the importance of confidentiality in FDR. Member FDRPs who engaged in the consultation process reiterated that the safety of the child must be paramount and were in favour of sharing information that can keep children and carers safe.

## *Proposal 11-2 to 11.3 Information sharing framework*

### **Supported**

Resolution Institute agrees with an appropriate framework being developed.

## *Proposal 11-10 Information sharing framework*

### **Supported**

Resolution Institute agrees with an appropriate framework being developed. and considers that private FDRPs should be included within the framework.

# System Oversight and Reform Evaluation (Chapter 12)

---

## *Proposal 12.1 to 12.2 Family Law Commission*

### **Partially supported**

Resolution Institute considers there may be some value in establishing a Family Law Commission. We consider that the functions listed will lead to overall improved monitoring and performance of the family law system.

Resolution Institute supports the Commission establishing an accreditation system by working consultatively with professional membership organisations, key FDR organisations, the Mediator Standards Board and FDRPs themselves. Resolution Institute would favour that the implementation of the accreditation and renewal of accreditation system be managed by professional member organisations rather than by the Commission. This is the model that has been established by the Mediator Standards Board. Resolution Institute (and other appropriate organisations) manages the accreditation and renewal of accreditation of more than 1000 NMAS accredited mediators. Large numbers of NMAS accredited mediators are also FDRPs. Resolution Institute anticipates efficiency gains in the different types of accreditations being managed together. As well, as already described earlier, Resolution Institute provides a program of CPD events including seminars, conferences and webinars which include topics of relevance to FDRPs and contributes to them maintaining CPD. With responsibility for the accreditation and renewal of accreditation system, Resolution Institute could further develop the CPD offerings consistent with an FDR curriculum. Further, FDRPs are able to access more experienced FDRPs for professional supervision and coaching through

Resolution Institute. Resolution Institute also has the capacity to develop systems and products for professional supervision and coaching. A current example is online small group supervision, a cost-effective way of delivering supervision to a small group of 6, drawn from across Australia and New Zealand.

Resolution Institute considers that it is appropriate that the Family Law Commission provides a complaints handling service as this would encourage confidence in the independence and impartiality of the service. It would also provide consistency in the way that complaints are addressed and enable the reasons for complaints to be monitored and to inform the development of the core competency requirements for professionals engaged in the family law system.

#### *Proposals 12.3 to 12.11 Functions of Family Law Commission*

##### **Broadly supported**

Resolution Institute is broadly supportive of the functions described.

## Conclusion

---

As indicated in the section titled *About this Response* on page 4, we indicated that our *Response* was primarily a collation of comments and suggestions from those of our members who responded to the survey Resolution Institute prepared. Resolution Institute considers that these comments may provide valuable insights as they are from Resolution Institute members who work within the family law system, primarily as Family Dispute Resolution Practitioners.

You will see that overwhelmingly, from the survey results, those Resolution Institute survey participants were in support of the reform proposals in the *Discussion Paper*.

Resolution Institute is excited to be part of such a major reform of the FLA and the family law system.

Resolution Institute is pleased to discuss the comments included in this *Response* to assist the ALRC further.

We look forward to the *Final Report* expected in March 2019.

Contact details:

Fiona Hollier  
Chief Executive Officer  
Resolution Institute  
Level 2, 13-15 Bridge Street,  
Sydney NSW 2000

[fiona.hollier@resolution.institute](mailto:fiona.hollier@resolution.institute)