



13 November 2018

Australian Law Reform Commission
Review of the Family Law System
By email: familylaw@alrc.gov.au

Dear Australian Law Reform Commission,

Thank you for providing the Australian Human Rights Commission with the opportunity to make submissions to the Australian Law Reform Commission (ALRC) Review of the Family Law System.

The Commission made a comprehensive submission to the ALRC in May 2018, in response to the *Issues Paper*, focusing on particular human rights issues relevant to the family law system that have been raised with us. I refer the ALRC to this submission for detail on a broad range of human rights consideration, noting that the ALRC addresses many of these concerns in its Discussion Paper.

As National Children's Commissioner, I particularly welcome the ALRC's proposal to amend the Family Law Act so that an affected child is given an opportunity, as far as practicable, to express their views in court proceedings and family dispute resolution processes. Also, the proposal that a child can express these views in a variety of ways, including through a report prepared by a children's advocate. As discussed in the Commission's submission to the *Issues Paper*, one of the primary means of protecting children's rights is ensuring children are able to express their views and have these taken into account by decision-makers. However, there are numerous barriers inhibiting child participation in the family law system.

The Commission has also raised the issue of children's views in a recent submission to the United Nations Committee on the Rights of the Child (UN Committee) concerning Australia's progress on implementing the *Convention on the Rights of the Child*. In the submission, we recommend that the Australian Government amends the *Family Law Act 1975* (Cth) to require that children are provided with an opportunity to express their views in all matters that affect their rights or interests. The UN Committee's pre-sessional working group in

February 2019 provides another opportunity to raise this issue. The Commission's submission to the UN Committee is available on our website at <https://www.humanrights.gov.au/publications-home/all>.

A number of other proposals canvassed in the ALRC paper recognise children as primary clients of a system that should be accountable to them, and, if implemented, are likely to advance children's rights. These include:

- supporting children to express their views through a children's advocate who can explain to the child their options, facilitate the expression of their views, and inform the child of progress and outcomes of a matter
- providing guidance for judicial officers where children seek to meet with them or otherwise participate in proceedings
- providing information to children in accessible, age-appropriate and culturally appropriate formats about the process, how their views have been taken into account, and any decisions made
- removing the distinction between primary and secondary considerations for determining the best interests of the child in parenting matters, and simplifying the list of issues for consideration
- making safety a paramount consideration
- establishing community-based Families Hubs to support separating families, including specialist family violence legal assistance services
- defining parentage in legislation
- developing best practice guidance on child-inclusive practice family dispute resolution for the family relationships services sector
- expanding the Family Advocacy and Support Service in each state and territory to include specialist family violence support
- improving the family law system workforce, including by developing a workforce capability plan that identifies the core competencies required for family law system professionals, such as an understanding of: child development, child abuse and trauma; risks and impacts on children; cultural competency; disability awareness; family violence; and child protection systems.

I look forward to the ALRC's report of the Review in March 2019.

Yours sincerely,



Megan Mitchell
National Children's Commissioner