

AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF THE FAMILY LAW SYSTEM

Response to Discussion Paper released on 2 October 2018

Submission from Family Life Limited

Introduction

Family Life Limited (Family Life) welcomes the proposals set out in the Discussion Paper on the Review of the Family Law System (the Discussion Paper) and thanks the Australian Law Reform Commission for the opportunity to respond to the proposals.

Family Life has operated the Frankston Family Relationships Centre (FRC) and related relationship, child and parent services in across the southern and metropolitan regions of Melbourne for 12 years. Our first services for Men and Family Relationships commenced in 2000. Family Life is a founding member of Partnerships for Victoria Family Relationships Centres (PVFRC), a collaboration of the 15 FRCs that operate in Victoria. This response is intended to complement PVFRC's response, to which Family Life has also contributed.

Family Life broadly agrees with the proposals set out in the Discussion Paper and commends the Australian Law Reform Commission (ALRC) for undertaking such a comprehensive review. Family Life does not provide detailed comment in relation to every recommendation and question, but has focused on those most pertinent and relevant to our expertise and where particular opportunities exist to support the reform directions through our services in Victoria.

Part 3 - Simpler and Clearer Legislation

Family Life broadly supports the ALRC's proposals and provides responses to the following questions:

Question 3-1 *How should confusion about what matters require consultation between parents be resolved?*

Family Life suggests the *Family Law Act 1975* specifies that 'shared decision-making' covers issues such as religion, culture, education, health and wellbeing, as well as any other long-term decisions about the child's life which the parents agree to discuss.

Question 3-2 *Should provision be made for early release of superannuation to assist a party experiencing hardship as a result of separation? If so, what limitations should be placed on the ability to access superannuation in this way? How should this relate to superannuation splitting provisions?*

Family Life agrees that a provision should be made for early release of superannuation to assist a party experiencing financial hardship or family violence. Evidence of financial hardship and/or family violence would be required before a party could gain early access to

superannuation for this purpose. A new splitting provision would need to be introduced to cover early splitting and release of superannuation. Ideally this would occur in conjunction with expert financial advice to support current and future financial security and wellbeing. Particular attention should be paid to the evidence of increasing financial stress for women post separation and as they age. Efforts should be made at the time of separation to prevent this future instability and risks for homelessness and poverty.

Question 3–3 Which, if any, of the following approaches should be adopted to reform provisions about financial agreements in the Family Law Act 1975 (Cth):

- **amendments to increase certainty about when financial agreements are binding;**
- **amendments to broaden the scope for setting aside an agreement where it is unjust to enforce the agreement, for example, because there has been family violence, or a change of circumstances that was unforeseen when the agreement was entered into;**
- **replacing existing provisions about financial agreements with an ability to make court-approved agreements; or**
- **removing the ability to make binding prenuptial financial agreements from family law legislation, and preserving the operation of any existing valid agreements?**

Family Life suggests that all approaches except removing the ability to make binding prenuptial financial agreements from family law legislation and preserving the operation of any existing valid agreements should be adopted to reform provisions. This is because current legislative provisions, which allow for the making of binding prenuptial financial agreements, enable parties to protect their financial interests prior to entering into marriage. This assists both parties to clarify and quantify their financial status at that point in time, while also aiming to reduce any future conflict (and consequent burden on the Court) over a property settlement in the event of separation between the parties. These provisions provide parties with a significant degree of self-determination regarding any future property settlement, which should be encouraged.

Question 3–4 What options should be pursued to improve the accessibility of spousal maintenance to individuals in need of income support?

Family Life advises that consideration should be given to greater use of registrars to consider urgent applications for interim spousal maintenance. This is because the larger number of registrars (as opposed to judges) could be usefully engaged in hearing more urgent applications for interim spousal maintenance. This would provide ongoing financial support for parties who are experiencing financial hardship or family violence. This early/interim access to funds would help alleviate financial stress on parties throughout the ongoing property dispute process. Also, such urgent applications could be issued at family law registries which may become co-located with local and state courts, thus broadening the accessibility to interim financial relief for parties.

A possible configuration could be to develop an adjunct to the Child Support Agency, such as the Spousal Support Agency.

Part 4 - Getting Advice and Support

Family Life provides the following comments about Proposals under Part 4:

Proposal 4-1 - Families Hub

Family Life firmly supports the ALRC in its proposal to establish community-based Families Hubs to provide an entry point for families seeking legal and support services. Family Life strongly believes that in the state of Victoria, these Families Hubs should be integrated as part of Victoria's 'Orange Door' Support and Safety Hub which has integrated Family Violence and former Child FIRST entry points.

As we are all aware, a key driver for family conflict and separation is Family Violence. Anecdotally, in 2017/18 70% of the total cohort of families that Family Life has supported through the service were affected by Family Violence.

The reality is that a large number of families seeking legal support services will also be seeking support from State-funded Family Violence and Integrated Family Services. Rather than create two separate entry points which requires families to repeat their stories on multiple occasions, Family Life recommends the full integration of these Hubs to allow comprehensive access to families. Family Life is aware that this will require information sharing principles to be established and suggests that further consideration be given to integration of the Commonwealth approach with that of the Multi-Agency Risk Assessment and Management (MARAM) Framework and the Child Information Sharing Scheme in Victoria.

As an organisation that currently delivers Commonwealth and State funded services from one location, Family Life can attest to the benefits of a co-located model to facilitating integrated service delivery. We also urge governments to consider the opportunities created by new technologies to support data informed practice and policy and achieve efficiencies and effectiveness as is well progressed in other industries. (See Swinburne Society 4.0 forum 8,9 November 2018 and the work of the Swinburne Social Innovation Research Institute)

The new Family Life Frankston/Mornington Peninsula FRC has an enhanced range of services tailored to meet the needs of families at one central location. The FRC provides child inclusive family dispute resolution (FDR), counselling, and post separation parenting education groups.

In addition, the service is co-located with the Commonwealth funded Children's Contact Service (CCS), Parenting Orders Program (POP) and the Family and Relationship Services (FaRS) as well as State-funded Cradle to Kinder (a service which provides intensive parenting support to mothers aged up to 25 years with their children aged 0-4 years) and the Therapeutic Family Violence Demonstration Project 'Strength 2 Strength'.

State and Commonwealth funded Specialist Family Violence services are on site to provide safe, timely support to separating families. These services include Men's Behaviour Change Programs, Women and Children's Counselling services, victim survivor women's support group and the 'Dad's in Focus' program that seeks to reduce violent behaviour in male respondents and support men to become better fathers. The Frankston FRC is also co-located with the State-funded 'Orange Door' Family Violence Support and Safety Hub which provides a single entry point to access the suite of Family Violence support services and Integrated Family Services offered at Family Life (as well as other providers of these services across the Bayside Peninsula Area).

The Peninsula Community Centre (PCLC) and Victoria Legal Aid (VLA) have continued to work closely with the FRC to support separating families. PCLC lawyers provide parents using FRC services with information and education as part of the FRC parenting education sessions. Both PCLC and VLA provide families at the FRC service with timely legal advice, and specialist support for families experiencing family violence.

The FRC, CCS, FaRS and POP practitioners liaise with the legal and support services at the the Family Court and Federal Circuit Court (FCFCC) to support better outcomes for separating families experiencing family violence. These practitioners refer families to the Family and Advocacy Support Service (FASS). They also consult with barristers, family lawyers, family consultants, psychiatrists, psychologists, General Practitioners and Independent Children's Lawyers where appropriate.

An integrated approach to service delivery allows true wrap around support to be provided to families with multiple and complex needs. FRC, CCS and POP staff are available to consult with the Orange Door staff if there are clients requiring Family Law Services. Through co-location of State and Commonwealth-funded services, Family Life has bridged the gap between siloed systems and allowed families to be provided with support that is tailored to their needs.

In considering the opportunities for more seamless services we encourage the ALRC to also consider the additional workforce planning which is required to enable practitioners to cover such a wide span of services. In addition to the specialist expertise, new technology enabled processes are required in recognition of the complexity of families needs and the work required to align service systems around those needs.

Proposal 4-2 - Digital Technology

The Frankston FRC uses digital technologies to deliver FDR services to families across Australia. Separated families often request telephone dispute resolution (TDRS) when parents live long distances from one another. Mediation sessions between FRCs are arranged following consultation between FRC managers and parents are supported to reach agreements via teleconferencing. The 15 Partnerships Victoria FRCs have created geographic protocols to make the process more seamless.

Where safe to do so, Family Life's CCS uses Skype to connect children with their parents when they live in different states. Children are supported by CCS practitioners as they gradually reconnect with a parent online. This supports the safety needs of children as it allows for a 'quick exit' from the session if needed.

Part 5 - Dispute Resolution

Family Life broadly accepts the recommendations the ALRC has made and provides responses to the following questions:

Question 5-1 *Should the requirement in the Family Law Act 1975 (Cth) 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?*

Family Life suggests that these timeframes need to be lengthened to allow time for the FDR process to take place in property and financial matters prior to any proceedings being issued.

Question 5–2 *Should the provisions in the Family Law Act 1975 (Cth) setting out disclosure duties be supported by civil or criminal penalties for non-disclosure?*

Family Life advises that criminal penalties should support the *Family Law Act 1975* as this would act as a significant deterrent to non-disclosure.

Question 5–3 *Is there a need to review the process for showing that the legal requirement to attempt family dispute resolution 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?*

Family Life suggests that there is a need to review these processes mainly to restrict lawyers in their ability to seek exceptions to FDR mediation. Lawyers should be discouraged from advising their clients to approach to the local FRC to 'get a certificate'.

Family Life agrees that the process should be aligned with the process proposed for property and financial matters, as s.60I adequately covers the legal requirement that an attempt at FDR has been satisfied. This system could also be used in property and financial matters.

Section 6 - Reshaping the Adjudication Landscape

Family Life broadly supports the ALRC's recommendations and provides responses to the following questions:

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

Family Life proposes that the existence of a current Intervention Order (IVO) between the parties, or other evidence supporting the allegation of family violence (for example, reports to police or other family violence support services, accounts from witnesses) should be used as criteria to establish eligibility for the family violence list. In addition, if Families Hubs were to be integrated with the State-based Orange Door Support and Safety Hubs, a referral to the Orange Door for Family Violence support could also establish eligibility for the family violence list. In Victoria, the Orange Door receives L17 reports from police (advising that police have attended a family violence incident), referrals from Child Protection, community and professionals from the primary and secondary services.

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?*

Family Life suggests that an early fact finding hearing could enable interim orders for spousal maintenance to be paid to parties experiencing financial hardship or family violence.

Question 6–4 *What other ways of developing a less adversarial decision making process for children's matters should be considered?*

Family Life suggests that Court-ordered Family Reports at the initial stage would result in children's earlier involvement in the process. In addition, where the child shows a certain level of maturity, giving more weight to any wishes expressed by that child is recommended.

If children's voices are heard earlier and their feedback, wishes and concerns are provided to the parents in a supportive way, this may help the parents to reconsider their actions and become more child-focused. Family Life also recommends that technology can support engagement with children by streamlining the process and reducing costs and time delays that result due to current requirements for in-person attendance.

Part 7 - Children in the Family Law System

Family Life supports the increased focus on ensuring the child's voice is heard in Family Dispute Resolution; however caution is also needed as this may not always be in the child's best interests. Assessing whether a child has the capacity to share personal information requires a high level of skill and knowledge of the biopsychosocial needs of children, as well as a trauma informed approach to ensure practice is appropriate to the child's needs and developmental requirements. Not all children will be able to participate, and so the process of capturing the child's voice needs to allow for this. Many children are expected to share the details of the family separation with extended family, teachers, school counsellors, psychologists, General Practitioners, Independent Children's Lawyers and a variety of other professionals. If a child is required to repeat their story multiple times, it can impact on their wellbeing. As such, this needs to be taken into account to avoid harm. There are also some Family Law Services professionals who have not had child interviewing training. It is important that this is addressed if they are to be involved in capturing the child's voice.

Further to this, Family Life provides responses to the following questions:

Question 7–1 *In what circumstances should a separate legal representative for a child be appointed in addition to a children's advocate?*

Family Life suggests:

- when a fact-finding/evidence-gathering approach is required to ascertain what is in the best interests of the child
- where the child has experienced trauma and additional attention is required to ensure the intervention does not exacerbate harm to the child's wellbeing and development.
- in complex cases where a more thorough gathering of evidence is required; and
- where POP (or similar) is involved with the child and their parents, as there may be a need for communication between the program and the Independent Children's Lawyer to maintain a collaborative approach and ensure the safety and wellbeing of the child.

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?*

Family Life considers that Legal Aid could oversee such appointments upon an Court Order being made at the initial stage of proceedings, with Legal Aid also providing and managing funding.

Question 7–3 *What approach should be taken to forensic issues relating to the role of the children’s advocate, including:*

- *admissibility of communications between the children’s advocate and a child; and*
- *whether the children’s advocate may become a witness in a matter?*

Family Life recommends the approach revolve around a discussion of the privileged nature of confidential disclosures the child makes to the Child’s Advocate, as opposed to communications which the child does not seek to be kept confidential. If the Child’s Advocate was to become a witness, such privileged disclosures should be out-of-bounds for any interrogation or cross-examination.

Part 8 - Reducing Harm

Family Life broadly supports the ALRC’s recommendations and provides the responses to the following questions:

Question 8–1 *What are the strengths and limitations of the present format of the family violence definition?*

Family Life advises that the present format does not cover the full ambit of family violence modalities. Therefore, inclusion of terms suggested in **Proposal 8-1** are essential.

Question 8–2 *Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?*

While **Proposal 8-1** refers to ‘technology-facilitated abuse’, Family Life recommends extending this provision to ‘including image-based abuse’, due to the prevalence of such matters.

Part 10 - A Skilled and Supported Workforce

Family Life broadly supports the ALRC’s recommendations and provides the responses to the following questions:

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

Family Life recommends that mental health and alcohol and other drug (AOD) training be included as a core competency. Many parents and children present at Family Law Services

with diagnosed and undiagnosed mental health issues and/or may be AOD affected. In particular, presentations of anxiety and depression are commonplace and can be exacerbated by the stress of engaging in the family law process. Knowing how to support a person experiencing mental health and AOD issues can assist with the development of a sustainable parenting plan, or court order.

This core competency could assist practitioners in Family Law Services to have greater insight into how best to support parents and children where mental illness is impacting on their family. This would lead to better outcomes for those living with the challenges of both separation and psychological distress. Practitioners within Family Law Services should also be supported to maintain good mental health and training in this area may assist.

Consideration could also be given to understanding how new technologies and related competencies need to be core skills for the workforce, for application to enable relationships, improve work processes, as well as understanding the impact on the development of children and requirements for privacy and data protection.

Question 10–3 *Should people who work at Children’s Contact Services be required to hold other qualifications, such as a Certificate IV in Community Services or a Diploma of Community Services?*

Family Life advises that the CCS predominantly supports court ordered families that have high levels of need. The parents and children are often caught up in ongoing, high conflict. In order to meet these complex needs the minimum level of training should be set at degree level with specialist training provided in the areas of family violence, trauma, conflict reduction, communication skills, mental health, developmental needs of children, homelessness, gambling, alcohol and other drugs. However, Family Life acknowledges that additional funding is required to allow for appropriate remuneration of these staff.

In addition, privately operated CCSs should require accreditation (with an authorised registration mark able to be recognised by the public) and be held to the same stringent standards as the government funded CCSs.

Question 10–6 *Should cultural reports be mandatory in all parenting proceedings involving an Aboriginal or Torres Strait Islander child?*

Family Life suggests that families from the Aboriginal and Torres Strait Islander communities have very specific needs that can only be fully supported if families culturally inform parenting proceedings.

Part 11 - Information Sharing

Family Life broadly supports the ALRC’s recommendations and provides responses to the following questions:

Question 11–2 *Should the information sharing framework include health records? If so, what health records should be shared?*

Family Life considers that the information sharing framework should include health records where appropriate. Health records that are current and relevant to the issues that need resolving could be shared. The risk is if the sensitive content of private health records are used as part of an adversarial process, this further impacts on a client's health and wellbeing.

However, we also encourage the ALRC to consider the findings and recommendations related to understanding filicide. There are opportunities to increase a prevention and public health approach by engaging primary health providers to have a greater awareness of the impact of separation on the physical and mental health of parents. This includes being proactive in considering when they could be consulting with and referring to family support and family law services and promoting front line practitioner thinking and actions for sharing information in the best interests of children and families, even when such sharing is not compelled.

Question 11–3 *Should records be shared with family relationships services such as family dispute resolution services, Children's Contact Services, and parenting order program services?*

Family Life suggests that information pertaining to risk, would assist these services to assess and manage safety and provide a service which best meets the individual client need. Current, relevant records that provide the family relationships services with deeper insight in to the complex issues families face can be used to inform practice. This information can greatly assist professionals when creating support services plans for parents and children.

Question 11–4 *If a child protection agency has referred a parent to the family courts to obtain parenting orders, what, if any, evidence should they provide the courts? For example, should they provide the courts with any recommendations they may have in relation to the care arrangements of the children?*

Family Life recommends that Child Protection provide a report to the Family Law Court which contains relevant family information, the current situation, any concerns they have and whether they have consulted with the child. Recommendations could be made about arrangements for the child and any evidence or reasons for this.

Question 11–5 *What information should be shared between the Families Hubs (Proposals 4–1 to 4–4) and the family courts, and what safeguards should be put in place to protect privacy? For example:*

- ***Should all the information about services within the Families Hubs that were accessed by parties be able to be shared freely with the family courts?***

Family Life does not believe that all information should be shared with the family courts. There needs to be clear guidelines as to what information is necessary to be shared and with whom. For example, a victim survivor of family violence may not wish to share the deeply personal disclosures made during counselling sessions during cross examination in court when the former partner is present.

- ***What information should the family courts receive (ie services accessed, number of times accessed, or more detailed information about treatment plans etc)?***

Family Life considers that relevant information includes services accessed, the chronology of service involvement and number of appointments attended. Mental health treatment plans could be subpoenaed on a case by case basis.

- ***Should client consent be needed to share this information?***

Family Life considers it is good practice to obtain client consent before any information sharing occurs. The exception to this would be where there is a threat of harm to self or others, or where a child's safety is at risk.

- ***Who would have access to the information at the family courts?***

Family Life recommends that access could be provided to professionals who require this information as part of their case assessment process. These professionals would need to be fully trained in the ethical management of highly sensitive client information.

- ***Would the other party get access to any information provided by the Families Hubs services to the family courts?***

Family Life suggests that a request for information could be made by the other, but it would need to be considered on a case by case basis. Of course, the child's best interests would need to be taken into account as well as any safety concerns due to Family Violence.

- ***Should there be capacity for services provided through the Families Hubs to provide written or verbal evidence to the family courts?***

Family Life advises that it is important that particular services within the Families Hubs have the capacity to provide written or verbal evidence. The exception to this would be where client files such as FDR, Family Counselling and POP are not admissible in court.

Part 12 - System Oversight and Reform Evaluation

Family Life broadly supports the ALRC's recommendations and provides responses to the following question:

Question 12–1 Should privacy provisions in the Family Law Act 1975 (Cth) be amended explicitly to apply to parties who disseminate identifying information about family law proceedings on social media or other internet-based media?

Family Life recommends that privacy provisions be amended as parents, extended family members and friends of parents engaged in family law proceedings can increase conflict and cause harm to children by disseminating identifying information.

In addition, media outlets that disclose detailed information about families who are currently going through a separation or divorce also need to keep the best interests of the children paramount.