

Submission to ALRC Family Law Review

Fitzroy Legal Service and Darebin Community Legal Centre welcome the opportunity to contribute to this important review of the family law system in Australia.

We have reviewed the Australian Law Reform Commission (ALRC) Discussion Paper 86 'Review of the Family Law System'. We support the focus in the Discussion Paper on the needs of system users (families) and in particular, children. We endorse the Discussion Paper's acknowledgment of the need, throughout the implementation of reforms, to engage with communities and in particular people who identify as Aboriginal and Torres Strait Islander and LGBTIQ, people from culturally and linguistically diverse backgrounds and people with a disability.

1. About Us and our Family Law Practices

We refer you to our submission to the ALRC Issues Paper 48 for information about our organisations and family law practices.

2. Proposals and Questions

We have limited our comments on the Proposals and Questions to areas of particular relevance to the communities we serve.

Chapter 2. Education, Awareness and Information

We support the proposals in this chapter.

Chapter 3. Simpler and Clearer Legislation

We support the proposals in this chapter and also recommend that:

- 1) Family Law Act orders also be comprehensively reviewed to improve usability

Families often have a number of court orders, all of which must be read to understand parents' responsibilities. We propose that each Family Law Act order (interim and final) be a complete record of all operating orders at the time it is made.

- 2) Family Law Act orders / parenting plans and State orders

There is often confusion as to how Family Law Act orders / parenting plans and State orders (such as family violence intervention orders) operate together. By way of example, we provide the following case study:

Vincent and Mary had a parenting plan about their daughter, Sophie. The parenting plan said that Sophie lived with Vincent. Subsequent to the parenting plan, Mary applied for and was granted a Family Violence Intervention Order (FV IVO) against Vincent. The FV IVO did not permit any contact between Vincent and Sophie unless in accordance with the exceptions, which included the parenting plan. Victoria Police served Vincent with the FV IVO, took Sophie and told Mary to collect Sophie from the police station. Neither Vincent nor Mary knew what was happening because they do not speak English and interpreters were not used. Neither Mary nor Vincent showed Victoria Police the parenting plan because they thought Victoria Police would already know about it. Mary and Vincent both assumed Victoria Police had made a decision that Sophie had to live with Mary and that they had to follow that decision.

We propose that Family Law Act orders / parenting plans note and annex any State orders that operate in conjunction with the Family Law Act order /parenting plan and that State orders note and annex any Family Law Act orders /parenting plan that operate in conjunction with the State order. We suggest this would be made possible by proposal 6.8 and chapter 11 of the Discussion Paper.

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

We suggest that case managers (discussed below) assist families in these situations.

Question 3.4: What options should be pursued to improve the accessibility of spousal maintenance to individuals in need of income support?

We support investigation as to whether an administrative assessment of spousal maintenance would better assist parties to understand and acquire spousal maintenance entitlements.

Chapter 4. Getting Advice and Support

Our submission to the ALRC Issues Paper 48 recommended the establishment of problem-solving centres with an integrated court. We note that the Discussions Paper recommends the establishment of community-based Families Hubs without a court. In accordance with this recommendation, we suggest that it will be essential that there are strong connections between the Families Hubs and the family law courts. We propose that one mechanism to foster this connection would be case management of families from the Families Hubs to the family law courts. Our case management proposal is discussed further below.

The Families Hubs should be co-designed with community, for community, using a Human Centred Design process. Each Families Hub should be designed to service its community and as such, the Families Hubs should be different from one another. The location of each Families Hub should be decided in consultation with community. While we can see the benefits of locating Families Hubs in Magistrates' Courts, we do not believe Magistrates' Courts currently have the capacity to facilitate the effective functioning of the Families Hubs.

The Families Hubs will require staff employed by the Hubs to facilitate the effective collaboration of the various services co-located in the Hubs.

Chapter 5. Dispute Resolution

We strongly support the proposals to expand family dispute resolution, including to property and financial matters. We believe that successful property and financial matters dispute resolution will require disclosure obligations prior to mediation, the availability of lawyer assisted mediation and access to financial counsellors.

We would discourage limitations on the use of family dispute resolution. By way of example, Victoria Legal Aid's Family Dispute Resolution Service is limited to two mediation conferences (three conferences in exceptional circumstances). While we understand these limits are due to limited resourcing, they are arbitrary and force families to agree to inequitable resolutions or to initiate proceedings when it would be more appropriate for further mediation conferences to occur. We also strongly support the availability and promotion of litigation intervention mediation in appropriate cases.

Lastly, in order for families to have the benefit of enforceable agreements, we believe there will need to be simple processes for family dispute resolution agreements to be made into consent orders; on an interim and final basis.

Chapter 6. Reshaping the Adjudication Landscape

We note the proposal to establish a simplified small property claims list, specialist family violence list and Indigenous list. We also note that the Discussion Paper highlights the need to engage with other communities, such as people who identify as LGBTIQ, people from CALD backgrounds and people with a disability, and query why specialist lists for these communities have not been proposed.

We support the proposals regarding small property claims matters but suggest that the priority and emphasis should be on establishing dispute resolution for property and financial matters.

Question 6.1: What criteria should be used to establish eligibility for the family violence list?

Any criteria established should be drafted with reference to accepted risk assessment and management frameworks (such as Victoria's Multi-Agency Risk Assessment and Management Framework (MARAM)).

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?

We are concerned that early fact finding hearings will be inappropriate for family violence matters. In our experience, victim/survivors of family violence can experience immense difficulty in disclosing details of family violence and the process can take time. By way of example, some of our clients have not disclosed full details of the family violence they've suffered for months. Imposing strict timelines on disclosure by way of early fact finding hearings would be highly

prejudicial to victim/survivors of family violence, particularly in cases where they are responding to an application initiated by the perpetrator.

Chapter 7. Children in the Family Law System

We support the proposals in this chapter.

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

We suggest one circumstance in which the appointment of a separate legal representative and a children's advocate would be appropriate is where one or both parties are self-represented.

Chapter 8. Reducing Harm

Question 8.2: Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?

The definition should be expanded to include any other conduct that falls within a definition of family violence under State/Territory laws.

We support proposal 8.2 and suggest that research should also be conducted in relation to the experiences of people with a disability.

We support proposal 8.6 that courts have the power to exclude 'protected confidences'. In our experience, people with a mental health diagnosis can be reluctant to initiate proceedings in the family law courts due to fear of having their health records subpoenaed. This fear is well founded, as it is regular practice for mental health records to be subpoenaed and released without redaction. This is highly problematic as there is often much material in mental health records that is irrelevant to family law proceedings. Furthermore, the irreparable harm that can be caused to the therapeutic relationship through this process is contrary to a child's best interest of their parent engaging with mental health support services.

In our experience, health services are often not aware of their ability to object to releasing health records. In our view, it would be difficult to ensure that all health service providers were aware of this ability to object, due to the variety of health services in existence and the limited resources of some services to respond to subpoenas. We recommend reform in this area be based on giving courts the power to deal with release of these records rather than putting the onus of objecting on parents and health service providers.

Chapter 9. Additional Legislative Issues

It is beyond our expertise to comment on this chapter.

Chapter 10. A Skilled and Supported Workforce

Question 10.1: Are there any additional core competencies that should be considered in the workforce capability plan for the family law system?

Competence in risk assessment and management frameworks (such as Victoria's Multi-Agency Risk Assessment and Management Framework (MARAM)) and the skills required of a dispute resolution practitioner should also be considered.

Question 10.4: What, if any, changes should be made to the criteria for appointment of federal judicial officers exercising family law jurisdiction?

Consideration of the person's knowledge, experience and aptitude in relation to family law.

With reference to proposal 10.9, we suggest that a national accreditation system with minimum standards be developed for all family report writers. We also recommend that consideration be given to all family report interviews being recorded.

We support proposal 10.15 but suggest that the Australian Government should also ensure that funding is provided to enable 'not for profit' organisations providing family relationship services and family law legal assistance services to develop and implement wellbeing programs for their staff. If such funding is not provided, 'not for profit' organisations, such as community legal centres, may be precluded from receiving government funding to provide family law legal assistance due to their limited resources.

Chapter 11. Information Sharing

We support proposals that information be readily shared between State and family law courts. However, we suggest that a broader information sharing regime should be considered with caution and that existing information sharing regimes (such as Victoria's Family Violence Information Sharing and Child Information Sharing Schemes) be reviewed to discern what consent and disclosure requirements should be implemented in a family law system information sharing regime.

Chapter 12. System Oversight and Reform Evaluation

We generally support the proposals in this chapter.

3. Case Management

As noted above, we would recommend that case management be available to families engaging with the family law system. We are of the view that families who cannot resolve their matters through dispute resolution should be supported from the Families Hubs to the family law courts. We foresee that a case manager would be allocated to a family when they engage with the Families Hubs and, as far as possible, remain involved with the family until the conclusion of court proceedings. We also see that the case manager could play a role in the post-order parenting support service outlined in proposal 6.9.

Case managers would be professionals with high level interpersonal and negotiation skills. Case managers would be independent – not aligned to either party. Case managers would assist a family to navigate the family law system and assist the family law system to meet the needs of the family.

4. Conclusion

We understand that the reforms proposed in the Discussion Paper and set out in our submissions will come at a financial cost. However, it would be a mistake to focus on the monetary expense of reforming the Family Law System. This review has come about due to the inordinate costs the current system is occasioning to families and the government. It is undisputed that the current system must change.

There will be an expense in establishing a superior family law system but in our view, that cost will be significantly outweighed by the positive impact brought about by a system designed for its users. In the long term, a system that is designed to empower children, with a focus on early intervention and meeting the needs of families, will cost far less than the current system and will result in significantly less trauma to children and their carers.

We thank the ALRC for the opportunity to contribute to the Review and would be willing to provide further input as needed.

5. Contact details

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