

# Portable Submission

## Review of the Family Law System

### ALRC (DP 86) October 2018

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#### About us

Portable is a design and technology company that tackles complex problems with government and for-purpose organisations. We are a team of 30 constantly-curious individuals with a strong interest in how policy and service design can improve access to justice.

We have worked with clients across the sector—including the Legal Services Commission (SA), the Office of Public Prosecutions (VIC), Legal Aid NSW, and the Neighbourhood Justice Centre—to research and design new and innovative ways to improve the experience of people engaging with the justice system.

This work has included the development of an [Online Dispute Resolution tool](#) to enable separated couples to reach property settlement agreements, [Courtsight](#), a court ticketing and wayfinding application, and a web application called [YourCase](#) that provides guidance to people applying for Family Violence Intervention Orders.

## 2. Education, Awareness and Information

### Proposal 2–1

Portable strongly supports efforts to improve community understanding of the family law system. This should extend beyond simply an awareness raising campaign and include the provision of simple, accessible and tailored information for all family court users.

As part of a project called YourCase, we have conducted extensive user research with court users. This research clearly points to the need for information to demystify the court process. In interviews with people who had attended family court, interviewees spoke of needing information about what to expect, their responsibilities and potential

outcomes. They also wanted practical information about the day of court, like parking and transport options, what to wear and how to address the judge.

While information is currently available on the current family court website, it is difficult to navigate and unnecessarily complicated. This content should be reviewed in consultation with users (see Proposal 2-2).

## **Proposal 2–2**

Portable strongly supports the engagement of Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations. In line with our human-centred approach, we believe these groups should be actively involved in the co-design and testing of all content to ensure educational materials meet their needs.

## **3. Simpler and Clearer Legislation**

### **Proposal 3–2**

Court forms are incomprehensible for most people who have legal issues. They can be tedious and full of jargon. Even if people are able to complete forms on their own, they might need assistance with filing the form, as many of the submission processes rely on post or fax.

We worked to digitize the Family Violence Intervention Order in 2016 and have since then made form accessibility a priority, as we consider access to readable court forms a key access to justice issue.

### **Proposal 3–10**

The process courts use to determine the division of property is opaque, potentially leading to confusion and inconsistencies.

Court users we consulted as part of our ODR pilot were shocked to hear that there is no formula for dividing property. They expressed confusion over the factors that are considered as part of a property settlement.

Clearer guidance would help people reach agreements outside of court.

## Proposal 3–17

Portable supports efforts to develop tools to assist parties in creating their own superannuation splitting agreements. Superannuation is commonly a significant asset for someone and can impede the property settlement process if there isn't a process to resolve disputes and come to an agreement. Superannuation is also often an area that reflects imbalances between the parties, as a partner may give up their job to stay home to raise children and miss out on the opportunity to accrue superannuation.

A well-designed superannuation tool should be simple for users. They should be able to integrate their details from their superannuation into the tool and then have facilitated communication tools to assist them in splitting their superannuation and filing their orders.

## 5. Dispute Resolution

### Proposal 5-3

Portable supports the proposal to require suitable parties to attempt FDR before lodging a court application if this is implemented in a way that relieves the strain on court resources by allowing self-managed resolution. FDR can be a useful process for facilitating agreement between couples as long as there are adequate services available to allow couples to resolve disputes on their own terms.

Support and guidance should be offered for more complex issues but requiring a formal dispute resolution pathway for simple property matters may impede resolution due to increased cost and time delays. Informal or non-traditional pathways, such as online dispute resolution through a legal aid or FDR provider, should also be provided to ensure greater access to affordable dispute resolution services. Increasing the focus on informal dispute resolution for appropriate property and financial matters will lead to the development of more effective methods of resolving disputes, including through the expansion of online dispute resolution technologies to facilitate communication between couples engaging in FDR.

As part of our research for an ODR tool, we found that there is a desire, especially among amicable separated couples with relatively simple financial matters, to manage their own affairs through a collaborative online platform. Our user testing

participants with simple property or financial matters generally stated that they found legal involvement in their separation to be expensive, confusing, and disempowering.

That being said, one of the greatest difficulties with implementing ODR is determining whether there are power imbalances between the parties. Technology to detect aggressive or abusive language is in its early stages but will be useful in designing online dispute resolution products as it becomes more widely tested and developed. We support the proposal to include considering the parties' respective levels of knowledge of the matters in dispute (Proposal 5-2). Duty of disclosure and the requirement to negotiate in good faith are not sufficient to protect against power imbalances or other factors contained in the FDR regulations (Family Dispute Resolution Regulations 2008, reg 25.) More focus should be placed on determining parties' financial knowledge when negotiating property settlements.

## Proposal 5-9

Portable supports the proposal to further develop culturally appropriate and safe models of FDR for parenting and financial matters. Working with diverse groups and organisations will provide insight into the diverse challenges in delivering FDR services as well as a wealth of opportunities to enhance the family law system for a greater number of services.

In order to tailor dispute resolution services to the needs of these groups, it's vital to meaningfully engage with diverse groups of people when designing these services. We believe the Australian Government should include these groups in co-design processes to ensure their needs and individual circumstances are taken into account during policy and service design transformations.

## 6. Reshaping the Adjudication Landscape

### Proposal 6-6

Case management protocols are essential to provide cost-efficient pathways and transparent timelines for simple property settlement matters. As noted in Discussion Paper 86, there is "limited capacity for small property and financial matters to be resolved affordably" (6.12) in the current system, despite the majority of couples with property matters settling without legal help (3.94).

Removing the requirement to apply formal rules of evidence and procedure (proposal 6-4) for appropriate cases will allow for more people to resolve their disputes in a

cost-effective, efficient, and fair way. One significant improvement for parties with simple matters who are likely to settle outside of court is to implement on ODR for simple property matters, which we hope will empower users to resolve their own disputes in a guided pathway with optional legal assistance or intervention. This should be seriously considered in the Family Law reform process in order to determine the appropriate level of court involvement in simple matters.

## **Proposal 6–12**

Portable supports efforts to improve the accessibility, physical design, and wayfinding of court facilities. Our early legal design projects, Yourcase and Courtsite, arose from the need for court participants to reduce stress, feel safe, and be able to engage with their legal matter in a friendly and accessible way.

Our research with women who have experienced domestic violence while designing YourCase confirmed the need to provide the infrastructure for safe interactions and clear information on court facilities before attending.

Our wayfinding product, Courtsight, similarly arose from a need to provide up-to-date information and statuses to court attendees in order to reduce stress and provide a more human experience.

Portable supports this recommendation to ensure safe facilities, including through providing safe waiting rooms, private interview rooms, remote witness facilities, and clearer signage in all Family Court premises.