
**Response to the Australian Law Reform Commission
Discussion Paper 86 – October 2018**



Family Law Reform Coalition

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**Family separation is a societal problem needing supportive,
educational solutions, not an adversarial process.**

**Decisions involving children are urgent. A delay of even a few weeks
can cause life-long damage to a child.**

**Children should not be removed (or allowed to be kept)
from a parent who has not been proven unfit.**

Family separation must be affordable to all; anything else is morally unacceptable.

Incentives for harmful parental behaviour must be eliminated.

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Introduction

The Family Law Reform Coalition (FLRC) is a coalition of individuals and organisations who believe the current system of Family Law in Australia is damaging to almost everyone who interacts with it. Exposure to lawyers and the legal system early in a separation encourages the parties to adopt polarized, entrenched positions, which leads to children sustaining life-long harm.

The FLRC believes a fundamental change needs to occur in how families separate. The changes needed are far greater than just modifying existing laws. The existing system, or indeed the changes proposed by the ALRC, will not prevent children from carrying the scars of family law for the rest of their lives.

The terms of reference for the ALRC review are too limited in scope to be able to offer the fundamental changes that are required to protect children during family separation. Whilst the ALRC should have input into how laws might need to be changed to support family separation policy, the FLRC believes any investigation into how parents, children and community members are impacted by family separation should be focused on a health and welfare perspective. For this reason, we believe that it is not possible to carry out a comprehensive analysis of what's best for children under the auspices of a Law Reform Commission and a process dominated by those with legal, rather than medical, health or scientific training.

Our Specific Recommendations

- We call on the Government to undertake a radical shift in policy by making the Health system the first or primary point of contact for separating families as opposed to a system of Family Law. Issues relating to child residence which cannot be resolved within a health-focused environment (including such initiatives as Medicare-supported counselling) should be referred to an enhanced mediation system, incorporating a personal coaching component, before being referred, where necessary, to a mandatory arbitration system. These systems should not be considered “alternatives” to the family law system, but the primary mechanisms or interventions for resolving family separations - ideally under the auspices of a federal Minister for Children – with the family court truly a last resort.

The arbitration system should be responsible for implementing binding measures to ensure children have ongoing relationships with both parents until arbitration is complete or until/unless one or both parents has been proven unfit. Decisions at arbitration should be binding. This entire process should be publicly funded. Decisions made during arbitration should be appealable to a federal court, at which point litigants should be required to fund their litigation.

- We believe that issues arising during family separation relating to alleged criminal activity, such as domestic violence and perjury, should be referred to a criminal court and assessed using proper Rules of Evidence.
- We believe that the current system has inbuilt incentives that frequently allow financial issues (including both income, as determined by the Child Support Agency, and division of assets, as determined in general by family courts) to substantially delay settlements on child-residence issues to the great detriment of children involved. These “irresistible incentives” are frequently the cause of litigants not acting in children’s best interests.
- We believe the idea of a Universal Child Support income should be considered by the Government to replace the Child Support Agency and the Family Tax Benefit system. The Universal Child Support Income should be the only amount of money tied to the residence of the child. This would result in far fewer cases reaching the family courts if there were no financial incentives to argue over children’s residence.
- We acknowledge the limited scope of the ALRC review, which prohibits discussion related to child support. We see this as a major failure of the review process. Accordingly, we believe a Royal Commission into family separation is a necessary step to obtaining true reform.

Response to the ALRC Discussion Paper

Positive Recommendations by the ALRC

Education Campaigns and a Families Hub

The FLRC supports the concepts of education campaigns and the introduction of Families Hubs, with the proviso that Families Hubs be focused on health and welfare, with links to legal support assistance. These Hubs should operate under the auspices of the Department of Health, integrated into the Medicare system. In order to fund these new Hubs, consideration should be given to allowing private providers to utilize the Medicare system in order to provide services.

Triage Processing

Put simply, triaging cases that come into Family Courts is a no-brainer. A referral on day 1 for a case conciliation conference in 5 or 6 weeks is simply not good enough; life-long damage to children can occur in this time.

The FLRC believes actual judicial action on day 1, as opposed to judicial scheduling activities, could resolve many issues and significantly reduce court case loads. International models of much more effective judicial practices are available.

Accreditation of Professionals within Family Law

All professionals working with children need to have professional accreditation at the highest possible levels. The FLRC believe those with judicial oversight should work with universities to develop accreditation programs for anyone who:

- writes a report for a court
- interacts with a child in any way
- makes any decision regarding a child's future

Simplification of Legislation

The FLRC supports replacing the Family Law Act 1975 with simpler legislation. We believe a working group needs to be established to review and rewrite s60CC in particular. Despite prior attempts to clarify definitions, the language is vague in the extreme and subject to interpretation. This results in judgements that often leave a reader struggling to understand how a judge has arrived at a decision.

The FLRC believes that any judgement provided in a case that either 1. restricts access between a child and a parent or 2. takes no meaningful action to ensure a child maintains a relationship with a parent, should be required to detail why each factor has or has not been considered in a judgment.

Contentious Recommendations by the ALRC

Family Violence

What constitutes Family Violence has been a contentious topic for many years. The discussion paper links family violence into many of its recommendations, without ever producing a usable definition of Family Violence. A definition by way of a list of examples produces a weak, subjective definition, which provides fertile ground for prolonged legal argument.

The discussion paper is mute on what should be considered to be psychological violence enacted on a child, despite widespread acceptance that psychological violence is both the most widespread and the most harmful component of violence.

The ALRC should endorse the position, as indicated in the current definition of family violence, that “unreasonably denying a child a relationship with a loving parent is a form of family violence.”

The ALRC should further consider that interrupting the relationship between a child and a parent, based on an allegation of violence, can do as much, and if not more, damage to a child as actual physical violence. The idea that ‘the system’ should ‘play it safe’ and restrict access until allegations of violence have been tested, can cause irreparable damage to a child’s development. Wrongfully removing a child from a loving parent should be considered as great a risk to the welfare of a child as wrongly leaving a child in an environment that may be abusive. Doing both at the same time, on the basis of untested allegations, represents the most extreme risk of all.

The FLRC believes the longer allegations of violence remain untested the more damage is ultimately done to children. We believe the only way to reduce harm to children when violence is alleged is for State and Territory courts to swiftly deal with allegations of violence in a criminal jurisdiction using criminal standards of evidence. If violence is found to have occurred, then the Family Courts have a basis to restrict or control access between a parent and a child.

The idea that a greater percentage of cases now involve allegations of Family Violence than they did 40 years ago should give pause for thought – are levels of family violence in 2018 greater than in 1975? What empirical evidence exists to support this? Or has the system itself created incentives for claiming family violence that are so extreme that it is the system itself that has led to significant increases in the number of family violence claims?

Gendered References

It is concerning to see gendered references, e.g. “specialist programs for fathers”, within the ALRC paper. This suggests that Committee may be allowing ideological biases rather than scientific evidence to influence its judgment.

Areas the ALRC fails to Consider

Arbitration

The FLRC believes arbitration could be used to resolve the majority of parenting disputes where courts are used today. With arbitration systems in place the Family Court (or a division of the Federal Court) would still exist for parenting issues but would perhaps need to become involved in a small fraction of the current case-loads.

Cost Limitation Strategies

The ALRC has made no recommendations on limiting the fees a family court lawyer can charge. Allowing lawyers to charge thousands of dollars to produce and file an initial application and supporting Case Information Affidavit is simply unconscionable. The FLRC can supply, on request, billing details of multiple cases to substantiate this practice.

At a bare minimum there need to be legislated constraints on the cost of legal representation, whether by actual amount spent or by percentage of available asset pool. Similarly, there need to be constraints on the fees charged by court 'experts' where, at present, excessive fees cannot be challenged.

Removing Incentives to withhold Shared Parenting

The current Family Law system provides financial incentives for parents not to do what is best for children. While the ALRC has stated that child support systems are not part of this review, to ignore their impact is to produce a less than useful report. The link between Family Law and Child Support must be examined. The FLRC believe the ALRC should seek to extend the terms of reference on this enquiry so they can report on how child support decisions impact upon family law. Failure to achieve this will lead to further calls for a Royal Commission into Family Separation.

This discussion paper also links asset division with findings of domestic violence. The FLRC predicts that this will lead to an increase in the number of cases entering family courts containing allegations of family violence.

Appeals Processing

The current appeals process is designed so that the majority of appeals are deemed to be abandoned and removed from the system. For many, the right to appeal exists as a concept only.

In the electronic age it is farcical that for an appeal to progress, a litigant must produce ten printed copies of an Appeal Book for a panel of three judges to review. Within these appeal books a litigant must also produce written transcripts of trial, sourced from an external provider at their own cost. So even if an applicant is excluded from the requirement to pay an application fee for an appeal, there still exists a financial barrier to allowing an appeal to occur.

These archaic requirements render the appeals process unusable to many people and constitute a denial of access to justice.

Conclusion

The proposals presented in the ALRC discussion paper are based on the predetermined view that solutions to issues need to be centered on the law. In her August 2018 speech to the AIFS, Professor Helen Rhoads talked of the ALRC review “re-imagining the family law system in a way that better supports the range of contemporary needs of separating families and their children.” Instead of “re-imagining the family law system” what is needed is to “re-imagine family separation.” Not all solutions require a legal framework.

The FLRC believes that, notwithstanding the recommendations by the ALRC, current family law is full of incentives for all parties not to act in the best interests of children.

Given the review expressly excludes discussion about child support implementation, the FLRC believes that true reform and “re-imagining” of family law or family separation, cannot occur within the guidelines of the ALRC review.

For this reason, the FLRC calls on the ALRC to support the establishment of a Royal Commission into the lifelong harm enacted on children by family law in Australia.

Extended Response to ALRC Proposals and Further Questions

Education, Awareness and Information

Proposal 2-1

An educational campaign is important and necessary, but it should not focus narrowly on the family law system. Its primary purpose should be to help families resolve family breakdown without involving lawyers and courts. Currently, couples who separate in less than amicable conditions, in the main, choose a lawyer as their first port of call. This is a somewhat ingrained idea in society that you need to protect yourself, your assets and your children at the point of separation, and that the only way to do this is via a legal approach.

Proposal 2-2

The FLRC does not have a prescribed position related to including Aboriginal & Torres Strait Islander, LGBTIQ and disability organisations within discussions related to family separation. We believe the bond between a child and a loving parent, and between a child and extended family (whether biological or not), transcends race and culture.

Proposal 2-3

All levels of government should work together to facilitate public education and awareness around rights and responsibilities when it comes to family separation. Safeguards need to be included in this process to prevent it being hijacked by special interest groups with agendas that are not child focused.

Proposal 2-4

This proposal assumes the Families Hub should primarily be a family law service. The FLRC disagrees. We believe the Families Hub should be implemented primarily as a health and welfare service first and foremost and that a variety of private sector initiatives, including the incentivisation of medical and health services to expand into providing support for separating families, should be promoted through this education campaign.

Proposal 2-5

Any working group developed by the Australian Government to review proposed information packages MUST include the views of young adults whose lives were impacted as children by decision made within the family law system.

Simpler and Clearer Legislation

Proposal 3-1

The FLRC endorses this proposal to simplify existing legislation. We believe this should be extended to encompass simplification (and perhaps removal) of the Family Court Rules (2004). Many parties in Family Court cases cannot afford legal representation. As such they

are severely disadvantaged by having to understand and follow archaic legal practices. By way of example, a self-represented litigant with marginal levels of literacy is disadvantaged in having to submit evidence in Family Court by way of affidavit when evidence given orally is a simple and cheap alternative.

Proposal 3-3

The ALRC needs to review this proposal in depth. This proposal simply replaces unclear wording with new wording that is no less clear.

There is no clear definition within current legislation for exactly what the best interests of a children are. Once sufficient thought and analysis has been put into clarifying what the 'best interests' of a child are then it may be wise to consider adding to the definition.

The idea of adding the word 'safety' to this clause is simplistic at best. To an uninformed reader, the word 'safety' would mean physical safety. The FLRC is strongly of the view that psychological safety, where a child can grow and develop, free from undue psychological influence, is just as important as physical safety.

Proposal 3-4

This proposal needs a much greater level of in-depth study. Like the previous proposal, it replaces existing unclear language with new, unclear language. In particular, 'harmful levels of conflict' makes no legal sense and scientific research demonstrates, for instance, that this should NOT be used as a criterion for determinations with respect to co-parenting (as this proposal implies it should). There is no existing definition within either Law or Psychology, as to how much exposure to conflict is harmful. Part of a child's learning and development is to observe conflict. Unless there is a clear definition of the word 'harmful' this proposal will generate further uncertainty in the application of law. More importantly, the inclusion of 'conflict' as a criterion for determining future parenting arrangements is contra-indicated by scientific/medical research (i.e. it will result in greater harm to children).

The FLRC supports the inclusion of references to the relevant UN conventions.

Proposal 3-5

Section 60CC of the existing act is probably the most contentious part of the entire Act. It is open to interpretation in a multitude of ways. It needs extensive review and re-drafting.

Proposal 3-6

This proposal is valid for all children, not just Aboriginal and Torres Strait Islander children.

Proposal 3-11

This proposal is dangerous in the extreme. There is already significant community debate as to how much of the claimed violence in family court cases is actual violence and how much is alleged violence to obtain a better negotiating position. Implementing this proposal would provide incentive for a parent to claim to be a victim of violence.

As stated elsewhere in this response the FLRC believes establishing whether violence has occurred should be tested within a Magistrate's Court using appropriate rules of evidence.

Question 3-1

When parents separate and one or both parties refuse to communicate in a manner that is supportive of the children of the relationship they should be ordered to communicate using an appropriate tool or app, such as Our Family Wizard, or other such approved tools, which can provide logs of communication that can be reviewed. This allows for the implementation of coaching of parents, to improve their skills, while also providing a safety net device in the form of an audit trail, should further legal action be necessary.

Question 3-2

Existing superannuation hardship provisions allow partial access to superannuation in most circumstances.

Getting Advice and Support

Proposal 4-1, 4-2, 4-3

The concept of a Families Hub is an extremely positive idea. The current prevailing attitude within the community is one of "I'm about to separate – I need a lawyer." In general, the FLRC believes contacting a lawyer should be a last resort instead of the first action taken.

The Families Hub needs to have a primary focus on health and welfare. Initial contact with a Family Hub should be integrated within the Medicare system, using a suitable scheduled fee, with the ability to bulk bill if a client is unable to afford a service.

There is no reason a Families Hub needs to be a Govt run enterprise. With the availability of integrated Medicare functionality, private enterprise could easily work in this space, with the long-term future of this system being self-supporting.

The model presented in these proposals portrays a focus on violence. Proposal 4-3 even explicitly refers to a program for fathers. This clearly demonstrates a gendered view of separation that is not warranted or appropriate.

Proposal 4-5

Family violence is a serious issue. Perpetrators of violence should be prosecuted to the fullest extent of the law.

Being accused of being violent is also a serious issue with life-long ramifications.

This proposal again focuses on family violence and specialist legal and support services in relation to family violence. The FLRC is aware of many cases where Family Court has used the

allegation of violence by a parent as a primary reason to deny a child access to a parent. The standard model appears to be that the Family Court acts on the allegation by refusing contact or allowing contact only under ‘supervised’ conditions, which inherently puts a child on a position of being fearful – “mum or dad isn’t allowed to see me on my own so there is something I need to be worried about.”

Public perception is that Magistrate’s courts deal with the substance of an abuse allegation at the initial hearing. There is little understanding that delays of up to 1 year are common in dealing with these allegations, by which time loving relationships between parents and children are destroyed.

To highlight this issue, consider the following two cases (the FLRC is happy to provide specific details on request):

1. An allegation of violence was made against a parent in February 2015 and a restraining order was issued. This allegation prevented a parent from seeing their 9-year-old daughter, not because she was listed on the restraining order, but because the parent was afforded no avenue to communicate with her.

The case entered Family Court in April 2015.

In December 2015 a magistrate issued a written decision regarding the allegation of violence finding that the parent who sought the order was, on the balance of probabilities, neither ‘credible nor believable.’

By then the damage to the relationship between parent and daughter was done.

2. In March 2018 a parent was the subject of allegations of violence from their partner. The restraining order application included children as protected parties.

Before the initial hearing the alleged violent partner received multiple phone calls and text messages from their partner trying to arrange ‘play dates’ with the children.

At the hearing the alleged violent partner asked for the children to be removed from the order and provided details of the multiple contacts from the other parent.

The magistrate, in possession of this knowledge, still granted the application and provided a hearing date in March 2019, some 50 weeks into the future.

These two sample cases highlight that unless there is a coordinated effort between state and federal courts to deal with the substance of allegations in a timely manner then it will not matter what services are offered by a Families Hub.

Dispute Resolution

The FLRC is disappointed with this section of the proposals recommended by the ALRC. It is focused almost entirely on financial issues and fails to deal with dispute resolution as a means

of resolving parenting arrangements. As with previous sections of this discussion paper it also ties in family violence with dispute resolution.

To restate the position of the FLRC: family violence is a criminal act and should be dealt with in a criminal court.

Strangely absent from this discussion is the ease with which all steps involving mediation and dispute resolution can be bypassed. A claim of family violence often leads to a counter claim of violence or child neglect; suddenly the case is fast tracked into the Family Court system, only to be put onto a list and wait for a year or two (or more) before any substantive action occurs.

To make the system effective, loopholes used to bypass steps in the process need to be eliminated. This includes allegations of violence, neglect and financial impropriety. Any process that gives the parties reason NOT to engage (in a safe environment) is a process that will lead to poorer outcomes for children.

An allegation of violence is likely one of the biggest contributing factors to poor outcomes for children, regardless of whether it is true or not. Until a timely method of assessing and dealing with family violence allegations is implemented (and we believe that should be in a Magistrate's Court using a criminal standard of evidence) children are more likely than not to lose a relationship with a loving parent and possibly half of their family.

Reshaping the Adjudication Landscape

Proposal 6-1, 6-2

Implementing a triage process is something that Family Courts already should be doing, regardless of what reviews are taking place.

Many cases that drag on in Family Court's for multiple years could be eliminated simply by spending a small amount of time investigating the circumstances of a case as soon as it reaches Family Court. The current process of assigning a case to a specified track – judge, magistrate or registrar, for example, is not nearly enough. This is simply an administrative step and does nothing for the parties involved. The FLRC believe a full day initial hearing, listening to substantive issues, and then providing judicial direction, could save hundreds of future hours of judicial and administrative time.

Family Consultants within the system are seen by many end users as ineffective. It is common for a Family Consultant to see the parties for a single session, and then provide no further input into a case. The FLRC believe the role of the Family Consultant and that of an appointed Single Expert should be a single role – thereby ensuring at least one person has been with the parties from the beginning of litigation and has oversight into how the parties are navigating the process.

Proposal 6-3

The idea of a simplified small property claims process has merit. There is no reason this process needs to remain within the Family Court. It could easily be achieved via arbitration using a referral to a small claims tribunal.

The FLRC believe a specialist pathway for an Indigenous List is not necessary. Children are children, regardless of their ethnic or cultural background.

The idea of a specialist family violence list should only apply to cases where allegations of violence have already been tested in law (see our responses to proposals 4-1, 4-2, 4-3). The family court is not the correct place to test these allegations. Unless this step is taken, the family violence list will quickly become the default list.

Proposal 6-4, 6-5, 6-6

These proposals become redundant if cases involving small financial pools are referred to arbitration.

Proposal 6-7

A specialist family violence list should only exist to oversee cases where family violence has been proved in a lower court. An allegation of violence and the issuance of a restraining order is not enough evidence to deduce a case should be treated as a family violence case. The FLRC has enough collected evidence to show a Restraining Order can be obtained in some jurisdictions simply by filling out 1 form, writing one short affidavit, and then appearing before a local magistrate for less than 5 minutes. The entire process can be achieved in less than 6 hours. The restrained person is then treated within the court processes as a violent offender, despite no evidence having been tested in law, and perhaps will not be tested for up to a year.

If a family violence list is established, then a registrar is not the correct person to triage matters. There should be immediate and binding input from psychology professionals at this point.

Proposal 6-8

It really does not matter whether state and federal judicial officers are co-located. What matters is that allegations of violence are dealt with, in a timely manner, by the criminal justice system. Violence is violence, regardless of whether the victim is known to the offender or not. There is no reason to treat cases any differently.

Proposal 6-9

Currently if a Family Court Judge rules that a child should be denied access to a parent there is no further judicial input – the case is simply closed. This gives rise to the obvious question – how does a judge know if the ruling they made was beneficial to the child or not? The FLRC believes that any ruling denying a child a relationship with a parent should be automatically reviewed, on at least an annual basis, to determine if the ruling is still valid (without parties having to satisfy a Rice v Asplund test).

Question 6-1

The only useful criteria to determine if a case involves family violence is a judicial ruling from a lower court or, at least, a finding of fact in a court of law.

Question 6-2

The FLRC is somewhat astounded that the ALRC is even asking this question. Early intervention is critical to any dispute. To suggest that early intervention or fact-finding in a case might pose risks is, quite simply, remarkable.

Question 6-3, 6-4

The stated position of the FLRC is that an arbitration model would best serve children. As per our original submission to this inquiry, we believe a Family Commission should arbitrate in the first instance, with the Family Courts only being involved in cases where arbitration has failed.

These questions appear to be written using the assumption that the Family Courts provide a problem-solving mechanism to the parties. This is not the case. Family Courts impose roadblocks to solutions by imposing complex navigation pathways and forcing the use of outdated legal processes.

Children in the Family Law System

Proposal 7-1, 7-2

Children should be kept informed about parental separation by a person who is NOT a legal professional. The FLRC is aware of children as young as nine simply being given a phone number of an independent Children's Lawyer as their only ongoing support.

Proposal 7-3, 7-4

A legal professional is not an appropriate person to listen to the views expressed by a child. They do not have appropriate training in analysing thoughts expressed by children and adolescents. Any thoughts of the child should be provided to the decision maker via a specialist professional, such as a child psychologist.

There are very good reasons children are not allowed to vote, engage in sexual activity, join the military or be held responsible for criminal actions. Their psychological development is not yet complete. For a decision maker to hear a child's views without understanding the substance and formation of those views can easily put a child at risk.

As adults in society it is our role to help children by making appropriate decisions for them.

Proposal 7-8

The FLRC agrees a children's advocate needs to be appointed in cases where custody and residence is in dispute.

Proposal 7-10

This proposal appears to be an endorsement of the current process of appointing an Independent Children's Lawyer.

Proposal 7-11

This proposal is simply dangerous. Children should not be meeting with the judicial officer. To allow this would be akin to treating children as adults, notwithstanding that they do not possess adult minds and thought processes.

The only report the judicial officer should see regarding the child's wishes should be via a trained child psychologist.

Question 7-1

A separate legal representative should *never* be appointed for children. The Judge is the judicial officer whose job it is to represent the children in a dispute. Children should be represented by a child psychologist only.

Question 7-2, 7-3

It would appear from these questions the legal professional is unable to grasp the idea that cases may resolve more quickly if legal process is reduced. The concept surrounding whether a child's advocate may be a witness in a matter demonstrates that the author of this question is more concerned with legal practice than with outcomes for a child. Quite simply, any adult with the ability to provide useful information or insight into a matter should be heard by a decision maker.

Reducing Harm

Proposal 8-1, 8-2

The FLRC is of the view that *violence is violence*. The concept of building a definition of family violence, by way of a list of far from exhaustive examples, does more harm than good to the process of people separating.

The definitions associated with family violence have been amended multiple times previously. The current definition of family violence is so inclusive that it is easy to make a case that nearly every couple in the country could be found to have been exposed to family

violence. Any argument where voices were raised, or a partner refusing to speak to a spouse after an argument are clearly acts of Family Violence using current definitions.

There are two predominant types of violence that may occur in a relationship – physical and psychological. Most people would be comfortable being able to define physical violence. On the other hand, defining psychological violence is a much more subjective task. This is where the definitions of violence become less than useful. *The allegation that a partner is violent, when not substantiated by evidence, is itself a form of psychological violence.*

Proposal 8-3, 8-4

This proposal demonstrates clearly the inability of the legal profession to take a step back and look at how it impacts litigants. Making a process available to a litigant and them deciding they are violent for using that process, is an absurdity.

If a process can be used in a way that is deemed to be violent then quite clearly the process is at fault and needs to be reviewed.

Proposal 8-5

Language referring to a *main caregiver* is both judgmental and archaic. In the modern world many parents are 50/50 hands on with children. When a case gets near a family court, the concept of a main or primary caregiver, begins to emerge. It is not helpful to children to consider parents in this way.

Proposal 8-6, 8-7

This proposal is ill-conceived and not in the best interests of children. It is supremely subjective, with loose definitions such as shame and humiliation. Many psychologists do not agree the definitions of these concepts so how is a legal professional supposed to make these determinations?

In general, these proposals appear to be instituting roadblocks to the truth and are more concerned with adult outcomes than they are with the best interests of children.

Question 8-4

Any changes to the apportioning of costs would matter little, given that the judiciary in practice is reluctant to even consider the matter of costs.

A more appropriate question here is “should the legislation be amended to place a cap on costs in a family law matter?”

Additional Legislative Issues

The FLRC does not see any of the proposal in this section as being critical to the operation of Family Law within Australia. Rights for people with disabilities are already enshrined in law. We see no reason to further complicate existing legislation.

A Skilled and Supported Workforce

Proposals 10-1, 10-2, 10-3, 10-4

The FLRC agrees that any professional that has contact with, and input to, family law cases, needs to have specialist accreditation. Proposal 10-3 is poorly written. As with the definition of Family Violence, this proposal tries to define what is needed by way of a list. It poses more questions than it answers, like “What *is* an understanding of family violence? Or child abuse? Or trauma informed practice? Or an understanding of exposure to conflict?”

Accreditation of professionals should be left to professional bodies.

Proposal 10-6

Unless the ALRC defines what a ‘unit of family violence training’ looks like this proposal is meaningless.

Proposal 10-7

This proposal assumes a Children’s Contact Service is a necessary device.

Given that people working in such centres often write reports for the court, these people need far greater accreditation than WWC cards. These people need to be trained professionals.

Proposal 10-8

How does the ALRC define a person’s aptitude in relation to family violence?

Proposal 10-9, 10-10, 10-11, 10-12

There should be no role within the system for a ‘report writer.’ At a minimum, a person providing input to the court needs to be a trained psychologist.

The only information that should be provided to the psychologist ahead of meeting the family is the nature of the dispute. The court should not be dictating to the psychologist how the family should be reviewed. It should be the role of the psychologist to provide the court an opinion on what would constitute the best outcome for children.

Question 10-1

The ALRC has made proposals about what competencies a family law professional should have without even considering that people working in this area need to understand child psychological development.

Another critical competency is the ability to understand the impact to a child growing up without access to a parent when that parent is ready, willing and able to be a well-functioning parent to the child.

Question 10-3

Anyone tasked with writing a report for a court needs to be a professionally qualified person. People with Cert IV and/or Diploma qualifications do not have sufficient understanding of psychological development to be providing life altering reports to a court.

Information Sharing

Proposals 11-1 to 11-12

These proposals relate to the sharing of information between state and federal jurisdictions. The FLRC believe there should be no secrets when deciding a child's future. As such, we support making available whatever information is necessary to ensure the most appropriate decisions affecting a child's future are made.

Question 11-2

Where abuse or neglect of children is alleged the child's full health records need to be available.

Parent health records may also need to be made available. However there needs to be a fundamental improvement in the way lawyers use those records. Members of the FLRC have seen multiple cases where a parent has engaged with a psychologist to seek assistance with stress related to family court proceedings, only to have those records used by less than scrupulous lawyers to suggest to the court that as the parent needs a psychologist there is a deficit in their parenting ability.

Question 11-5

As previously advised, the FLRC believe the Families Hub should have a health and wellbeing focus. The concept of a legal framework around document sharing in this context would simply destroy any value created by having a Families Hub.

System Oversight and Reform Evaluation

Proposals 12-1 to 12-10

A body with oversight into the effective operation of a family law system is a positive concept. However, the suggested implementation of such a system leaves much to be desired.

The biggest impact to a positive public perception would be a continuing review process of judicial decisions. In the current system, once a judicial decision is made the parties are simply discarded and left to their own devices. There is no ongoing review to assess whether a judicial decision positively impacted the life of a child. This was confirmed some time ago in Senate Estimates by the former CEO of the Family Court.

Ongoing review should be the primary focus of any oversight body. The public simply has no confidence in an organization that does not review the impacts of decisions that it makes.

The FLRC agrees an oversight body is needed to accept responsibility for accreditation of family law professionals. We believe this body should co-ordinate accreditation of professionals but that it should not be the body to develop the rules. Accreditation rules should be managed and maintained by the relevant professional bodies (such as the Australian Psychological Association) working with universities to develop and deliver a syllabus leading to recognised qualifications.

Proposal 12-11

Section 121 of the Family Law act is one of the least well understood and most dangerous parts of the Family Law Act.

While the conceptual idea behind s121 of the act is to protect children, the reality is that this section of the act is used to protect professionals working within the system. Enshrined within s121 is the immunity from scrutiny of professionals within the system. By way of example, a psychologist who discloses information about a case to a third party, gains immunity under s121 of the act from being referred to AHPRA.

Notably, litigants almost always discuss their cases with family and close friends, which has a greater potential to harm children interacting with those close friends and family, than would a random post on a social media site. In application, the law is silent on these breaches of the act. The application of s121 leads a lay person to believe the courts are more concerned with the exposure of their practices than they are with potential damage done to a child.

The provisions of s121 extend well beyond the life of a judicial decision without any justification. When a child, subjected to a Family Court decision, reaches maturity they should be free to disseminate any information they see fit, providing any siblings affected by the same decision have also reached adulthood. Under current provisions a child reaching maturity, and discussing how the Family Court impacted their life, could be prosecuted.

Question 12-1

The privacy provisions within s121 are a driving factor in litigants emerging from the Family Court processes with a sense of hopelessness. People need to be able to share their feelings and emotions in a safe way. Consideration also needs to be given to allowing litigants to heal. In many cases litigants who cannot afford representation, or the cost of psychological support are, in effect, gagged by provisions within s121 of the act. Seeking help or assistance by other means, whether online or not, should not be considered to be a criminal act.

Question 12-2

A judicial oversight body needs to be established. It should:

- coordinate accreditation of professionals with the relevant professional organisations
- research and publish outcomes on the future welfare of children subjected to decisions of Family Courts.