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PO Box 1146  
Adelaide, SA 5001  
(08) 8226 3355

Professor Helen Rhoades (\*Commissioner in Charge)  
Australian Law Reform Commission  
PO Box 1046  
George Street  
QLD 4003

[CommissionerCYP@sa.gov.au](mailto:CommissionerCYP@sa.gov.au)

Via email: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)

Dear Professor Rhoades,

**ALRC Review of the Family Law System Discussion Paper Submission**

As South Australia's Commissioner for Children and Young People my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (the Act) is to advocate for the rights, interests and wellbeing of all South Australian children and young people.

It is also my role to ensure that the State at all levels satisfies its international obligations under the United Nations Convention on the Rights of the Child (CRC). Under the Act the State must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out in the CRC.

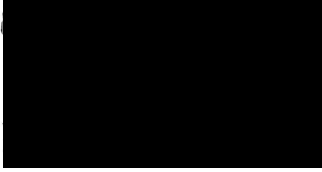
I am writing to you regarding the Australian Law Reform Commission's (ALRC) *Review of the Family Law System Discussion Paper* (the paper) published in October. I have attached some detailed feedback regarding some of the paper's proposals and questions relevant to children and young people in South Australia.

Through the conversations that I have had with children and young people, including those that contributed to our report on '*What children and young people think should happen when families separate*', children and young people told me what they believe needs to change in the family law system. They are the experts in their own lives and have meaningful opinions and contributions to make to improve our systems for themselves and for others.

I am pleased that the paper addresses many of the things that children and young people have told me are important to change. The Discussion Paper supports Article 3 of the UN Convention on the Rights of the Child (CRC) and is a great reminder to policy and law makers that the paramount focus of the *Family Law Act* should be on the welfare of children and young people. I support in principle the proposals contained within the discussion paper to the extent that they provide a system that is better able to cater for the interests and wellbeing of our children and young people.

I trust the feedback contained within this submission will help to lead to some meaningful improvements so that we are able to achieve the best possible outcome for our children and young people.

Yours sincerely,



**Helen Connolly**

Commissioner for Children and Young People



## *Feedback on Proposals*

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### Further spaces for children and young people (Proposals: 4-1 to 4-3 and 6-12)

I support the establishment of Families Hubs (proposal 4-1) to provide separating families and children an access point for a range of legal and support services. Families Hubs spaces should be co-designed with children and young people to limit and minimise any potential for adverse experiences when they accompany parents or are seeking services there themselves. Thought should also be given about where they will be located as they should be close to facilities where children are, such as schools or libraries. The process of separation can be highly burdensome and stressful; as such the spaces where services will be offered should not further contribute to a difficult period.

Similarly spaces in family courts should be designed to minimise the potential for discomfort for children and young people from the moment they enter. The proposal to include child-friendly spaces and waiting rooms should include separate safe spaces that are away from other parties and the pressures of the court environment and also be co-designed by children and young people.

### A Child's Right to be heard (Proposal 7-3 to 7-4)

I commend the discussion paper for encompassing a range of proposals to better assist children in the family law system to have their voices heard and the promotion of compliance with the CRC. To do this the *Family Law Act* should give effect to Articles 12 and 13 of the CRC. Children and young people have repeatedly told me that they want their voices heard by decision makers. Given the child-centred intent of the *Family Law Act*, it should be one of the leading pieces of legislation incorporating their right to be heard. This is also especially important given that family law decisions can have a very significant impact on children and young people's lives.

Incorporating the CRC would also assist to ensure that in other parts of the family law system, such as with the proposed Legally Assisted Dispute Resolution (LADR) (proposal 5-10) that children are given the proper opportunity to have their voices heard. Incorporating these Articles would also support the proposal that children have a right to be heard in all decisions that affect them in a way which is suitable for them (proposal 7-11).

### Supporting children's participation (Proposals 7-9 to 7-12)

I am pleased that the report seeks to establish a new model for supporting children and young people in the family law system, and I commend the proposal for a children's advocate to support their voices to be heard. In situations where children are not allocated a child advocate there still needs to be a mechanism about how they can make their views heard. It is important that the child has a right to seek to have their voice heard and a mechanism to address this where they feel they have not been adequately supported.

Children and young people told me that they have not felt supported by the family law system. The appointment of a children's advocate is an important step and should be kept as independent as possible. The independence of the position will ensure that children's voices are not influenced by other factors. For this reason, and in answer to question 7-2, it is not appropriate that the advocate is a part of a multidisciplinary team or linked to the court as both these risk influencing the practice

of the advocate. The role is most suited to operate out of an independent statutory body where children and young people feel most comfortable expressing their views to their advocate, and are able to build trust and rapport with the advocate. Further, these advocates should talk to the children first, before any other information is given. This would better ensure there is no previous bias based on the adults' views in the case.

This independent body and the people working within the organisation should also have continued training on working with children and young people, especially vulnerable children. There should also be some sort of mechanism so that children and young people are able to provide feedback on their experience with this independent statutory body.

I agree with proposal 7-11, but this should be widened to include children and young people having the opportunity to express their views directly, including talking to judges, writing a letter or drawing.

As per proposal 7-12, there should be guidance for judicial officers that includes ongoing and regular education on best practice with children and young people, as well as the impact of trauma and family violence. This is important in ensuring that children's opinions should also be supported from practice within the system and that it respects their right to be heard and the contributions that they make on decisions that will impact them.

#### Facilitating system change (Proposals 10-9 and 10-14)

National accreditation with minimum standards for private report writers should incorporate competencies that are specific to working with and understanding children. These competencies should also extend to and incorporate an understanding of the impact of trauma and conflict on children and young people. I support the proposal to introduce standards that would ensure that services are delivered consistently across the system and that the engagement of private report writers does not contribute to any adverse experience of the system for children and young people.

A whole system approach is needed to incorporate and facilitate change and better practices in the family law system. I commend the inclusion of a wide range of measure to better support the workforce of the family law system to deliver these outcomes. These changes should extend to anyone that has contact with the system particularly in reference to children and young people.

The family law system should also take into consideration a cultural plan as a part of the process for all children. I support this in regards to children and young people from Aboriginal and Torres Strait Islander backgrounds, and believe that this cultural understanding should also extend to children from other backgrounds. This will ensure that all children and young people that come from a cultural diverse background will be afforded a connection to their culture and kinship and that nuances that may otherwise be missed by the court could be incorporated.

#### Information Sharing (Chapter 11 proposals)

Article 16 of the CRC gives children the right to privacy; therefore any information sharing should be to protect the safety and wellbeing of children (and their families). Further, this should be supported by adequate safeguards that protect the right to privacy for children and young people and their families.

Information sharing needs to also be accompanied however by adequate controls to ensure that it does not further expose families to family violence or put them at further risk. In particular the type of information that will be shared with third parties should also be clarified along with any controls and how it will be handled to ensure that these groups are held to the same accountability as others in the system.

Further, there should be better communication and cross-over between different jurisdictions, in particular, family violence, child protection and the police.

#### Monitoring of the system (Proposal 12)

The Family Law Commission should also be tasked with monitoring the extent to which the system is meeting the needs of children and young people. I support the establishment of the Family Law Commission to monitor the performance of the family law system. An important part of the proposed Commission is the establishment of the Children and Young People's advisory board (Proposal 7-13), however this board should also accompany a mechanism for which children and young people are able to provide feedback on the system so that it is better able to respond to actual outcomes as well as perceived challenges.