



LEADERSHIP IN FAMILY LAW

13 November 2018

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

By Email: info@alrc.gov.au and familylaw@alrc.gov.au

Dear Executive Director

RE: SUBMISSIONS INTO REVIEW OF THE FAMILY LAW SYSTEM – DISCUSSION PAPER

I write in my capacity as President of the Family Law Practitioners Association of Queensland ("FLPA").

FLPA is an organisation of nearly 1,000 members comprising family lawyers, family consultants, social scientists and other allied professionals working in the family law system.

FLPA has had the opportunity to meet with ALRC Part Time Commissioner Geoffrey Sinclair, and attended forums held by the Family Law Section of the Law Council of Australia ("FLS").

FLPA unreservedly supports the FLS submission. Given the extensive and considered submissions made by the FLS, FLPA does not propose to make a detailed submission to the ALRC, but makes brief further comments as outlined below.

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Proposal 3.2

FLPA agrees that the family law system's forms should be comprehensively reviewed to improve usability. However, FLPA notes that it is important to ensure that sufficient information is captured to enable appropriate statistics to be kept. Such information is vital to ensuring that future family law services are properly tailored to meet the needs of the community.

Proposal 3.3 and 3.7

FLPA does not support the proposed changes to the Family Law Act 1975 ("the Act") set out in these proposals. "*Parental responsibility*" and "*best interests*" are terms that are understood by users of the family law system. To replace these terms would lead to further litigation about the interpretation of the terms and create further uncertainty in parenting matters. The "*best interests*" of a child encompasses safety issues in FLPA's view.

Question 3.3

FLPA strongly agrees with the submission made by the FLS that the provisions in the Act with regard to Financial Agreements should be amended to increase certainty about when such Agreements are binding. FLPA considers that parties wishing to reach their own agreements, after receiving appropriate legal advice, should be able to do so. Confidence in Financial Agreements will also relieve some of the current pressures on the family law system.

Question 3.4

FLPA supports greater use of Registrars to consider applications for interim spousal maintenance. In the case management practices of the Family Court used in the early 2000's, applications for interim spouse maintenance (and in fact a variety of interim property and parenting applications) were determined by Registrars. The system was efficient and effective. The system also provided a cost effective option for the Court to deal with interim matters, alleviating the necessity for judges to determine such matters.

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FLPA does not support a system of administrative assessment of spouse maintenance, as is in place for assessment of child support. Unlike child support, spouse maintenance is discretionary and requires judicial consideration.

Proposal 3.11

FLPA does not support the codification of *Kennon* in property settlement or spouse maintenance matters. FLPA supports a simplification of the Act. FLPA does not consider that the codification of factors, which are already taken into consideration when determining property settlement or spouse maintenance matters, is necessary or appropriate.

Proposal 5.3

FLPA agrees with the general proposition that pre-filing family dispute resolution should be extended to include property matters. FLPA's agreement to this general proposition is conditional upon:

- appropriately qualified practitioners facilitating the family dispute resolution;
- the requirement for disclosure to be undertaken prior to the FDR (and non-disclosure as an exclusion to the compulsory FDR); and
- parties being afforded the opportunity of legal representation at their FDR.

The use of private mediation in financial matters in Queensland prior to the commencement of court proceedings is widespread and is one of the key processes used by family law professionals to assist parties to resolve their matters expeditiously and without recourse to the Courts.

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Proposal 4.3 and Proposal 6.1

FLPA is concerned that proposal 4.3 with regard to the use of “family hubs” and proposal 6.1 with regard to the “triage process” overlap. If both services are going to be offered, FLPA suggests that clear delineation of the roles between the services would be required. FLPA is also concerned that the potentially overlapping services provided by the proposals would further complicate the family law system for users and drain vital monies from the system that could be spent elsewhere more effectively. It is noted that the Family Court previously had a triage process that worked efficiently and effectively, however, those services have been scaled back as a result of a lack of funding for the Court.

Question 10.2

In order to qualify as a family dispute resolution practitioner for family law disputes regarding property and financial issues, the applicant should hold the following qualifications:

- the applicant should be a legal practitioner;
- the applicant should have undertaken formal mediation training; and
- the applicant, should be a person, by reason of training, experience and personality, suitable to deal with matters of family law. An indication of such attributes could be the number of year’s experience, the amount of the practitioner’s practice dedicated to family law and whether the practitioner holds specialist accreditation in family law.

Proposal 10.8 and Question 10.4

FLPA strongly advocates for all judicial officers practising in the area of family law to be persons who by reason of training, experience and personality, are suitable persons to deal with family law matters. Family violence is one aspect of the skillset described.

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Proposal 12.1

FLPA is strongly opposed to the establishment of an independent statutory body, "the family law commission" and supports the submission made by FLS in this regard.

The role of the commission would overlap with the role of many already existing societies and bodies. For example, specialist accreditation is already offered to legal practitioners through the state based providers, such as the Queensland Law Society.

Such a commission would also segregate family law practitioners (being family lawyers, family consultants, social scientists and other allied professionals) from other colleagues in their respective professions. Such an outcome is undesirable from a public policy perspective.

It is a concern of FLPA that the establishment of such a commission would lead some highly qualified and skilled family law practitioners to cease working in the family law system altogether. This is particularly the case with regard to social scientists.

Further, it is not considered that another layer of bureaucracy and governance will assist the family law system in being more efficient and effective for its users.

FLPA's endorsement of the approach and submissions made by the FLS serves to confirm the consistency of approach within the united family law profession.

Please do not hesitate to contact me directly by email: James.Steel@bnlaw.com.au or ph. 07 3231 6384 if you have any queries.

Yours sincerely


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President

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