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RE: REVIEW OF THE FAMILY LAW SYSTEM DISCUSSION PAPER 86

We welcome and appreciate the opportunity to make a submission in relation to the ALRC Discussion Paper 86 (“DP86”) prepared in response to the wide-ranging review of the Family Court system announced by the Federal Government. The Review offers an important opportunity to improve the accessibility of the courts, to strengthen the family dispute resolution process, and to rethink ways that the family law system could operate better, especially for Aboriginal and Torres Strait Islander parties.

We have addressed a number of the proposed reforms and questions as listed below but also wish to highlight questions around accessibility of the family law courts and family law services beyond the largest city centres, the need to ensure a sufficient number of Judges and relieving Judges, and the need for reform to improve the enforcement of Court orders and the protection of its processes when parties deliberately contravene post-parenting orders or misuse the court processes.

We note the proposals for increased information sharing and urge caution around the proper protection of information.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

OVERARCHING ISSUES

As noted by the former Attorney-General Senator Brandis QC, the issues prompting the review of the family law system under the current ALRC inquiry included *“the profound social changes and changes to the needs of families in Australia over the past 40 years”* since the commencement of the *Family Law Act 1975* in 1976 and *“the pressures, (including in particular, financial pressures) on courts exercising family law jurisdiction”*.¹ The nature and number of complex matters before the Family Court has changed dramatically in the last forty years. One matter deserving special

¹Senator the Hon George Brandis, Media Release, “First comprehensive review of the family law act” (27 September 2017) at: <http://pandora.nla.gov.au/pan/21248/20171220-1246/www.attorneygeneral.gov.au/Mediareleases/Pages/2017/ThirdQuarter/First-comprehensive-review-of-the-family-law-act-27-September-2017.html>.

attention in that review are the reforms needed to address families with complex needs, including where there is family violence, drug or alcohol addiction or serious mental illness.²

Resourcing of Judges

We note and agree with the statement that:

“Children would undoubtedly be much safer if through legal aid or otherwise the parties and the children were properly represented, and the number of judicial offices was such that each case could be given the attention it deserved, without causing unacceptable delays in the hearing of other cases.”³

For quite a few years the family law system has been under resourced for its workload and consequently additional delay and additional expense has been a feature of the functioning of the courts. The current lack of resourcing of the family law system has led to dissatisfaction from many parties that they feel that they are not being heard, that they get very little time in front of the judge, that judges don't have the time to read their material, that their matters take far too long to run and that the other party essentially gets away with contraventions during the proceedings when they ignore orders.

Significant delays affect not only the regular caseload of the courts but also the expedited hearings. For example, an expedited hearing sought in August 2017 was held in July 2018, some eleven months afterwards.

While many of the recommendations contained in DP86 offer many useful reviews and changes, we would note a concern about the number of bodies proposed, the duplication of functions such as accreditation, and the proposal for a number of new organisations rather than the extension or expansion of existing bodies or services. In our view it represents a threat of diffusing the limited pool of resources available for family law instead of focussing on the sufficiency of the number of judges available to handle the most complex cases in the family law system and to manage the long duty lists that they are regularly assigned.

Enforcement of Orders and the Misuse of the Family Court System

² Ibid. See also ALRC, *Review of the Family Law System*, Discussion Paper 86, October 2018, p. ii.

³ R. Chisholm, *Family Courts Violence Review*, (2009) available at <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Family%20Courts%20Violence%20Review.pdf>

Another factor impacting the effectiveness of the family law system has been the inability of the parties to enforce the orders of the family law courts in a timely manner. Thus the most important function of a court, which is the imposition of a fair solution through properly made orders, is lost, adding more time more expense and perceived unfairness to the otherwise complying party and often extended periods of loss of access to the child. This issue urgently needs addressing in any recommendations for reform.

Parties resorting to court proceedings in family law are almost inevitably hostile to each other, angry grieving and sometimes vengeful over the breakdown of the relationship. A common cause of breakdown of relationships is family violence, but there is also the challenge of false allegations of family violence or other wrong doing being made so as to achieve sole custody of the children.

While it is of paramount importance to ensure safety of the children and of the parties, the misuse of court proceedings in such a manner must also be addressed. We support the proposal to impose fines.

There should be an education campaign about the misuse of process through the courts' website, social media and other media so that parents, especially self-represented parents can be made aware of the courts attitude and the legislated position.

Limited Access to the Family Court System for Those in Rural and Remote Areas

A greater understanding of the barriers of travel and expense that exist for parties living in rural and remote areas, a significant number of whom are Aboriginal and Torres Strait Islander parties, needs to be factored into the family law system. Those who experience the most difficulty are on low incomes or social security. Repeated trips for mentions and family reports place an enormous burden on parties, distance, difficulty and expense of travel and other responsibilities (such as the care of other children) make participation in the court process very difficult unless permission to attend by phone is granted. Even where phone attendances are allowed for, our clients often have to travel significant distances to attend to where their lawyer is, however there is no prioritisation of phone appearances, leading to clients waiting for a considerable portion of the day on the end of a phone line.

With respect to the demographics of our clients, one quarter of Australia's Aboriginal population and over 60% of Australia's Torres Strait Islander population live in Queensland.⁴ In general, persons of Aboriginal

⁴ Queensland Supreme Court, Equal Treatment Benchbook page 60, available at https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/94054/s-etbb.pdf

and Torres Strait islander origin are more likely than other Australians to reside in remote areas as opposed to only 2.5% of the rest of the Australian population.⁵ Many of our clients are on low incomes or social security. 65% of Aboriginal and Torres Strait Islander persons participate in the labour force,⁶ with unemployment at a rate of 17% compare to 5% in the general population.⁷ In the 2006 census 25% of Aboriginal and Torres Strait Islander persons stated their occupation as being labourers and related workers. Income levels declined with increasing geographic remoteness. For Aboriginal or Torres Strait Islander persons income in the major cities and regional areas was equal to about 70% of the corresponding income for other persons. In remote areas this was equal to about 60%, and in very remote areas, 40%.⁸

Queensland is Australia's third most populated state,⁹ and it is Australia's most de-centralised state and the only state or territory where approximately half of its population of 4.7 million lives outside the capital,¹⁰ yet compared to the State Courts, the family law courts have very limited reach within the state of Queensland. The Family Court has registries at Brisbane, Rockhampton, Mackay, Townsville, and Cairns and the Federal Circuit Court operates at eleven locations.¹¹ The District Court in Queensland has permanent registries located in Brisbane, Rockhampton, Townsville, and Cairns, but also has other registries located in Beenleigh, Ipswich, Maroochydore, and Southport. The District Court circuits to almost three times the number of Federal Circuit locations, sitting at over twenty nine centres throughout Queensland and local magistrates court staff perform the registry duties at those times.¹² At time of writing there are 75 permanently staffed magistrates court registries and the magistrates circuit to approximately 80 locations to conduct court.¹³ Additional to those arrangements, five specialist domestic and family violence courts will be rolled out in Southport, Beenleigh, Townsville, Mt Isa, Palm Island. Those locations have been chosen because they have the highest volume of domestic and family violence matters and have the most disadvantaged Queenslanders. There are significant cost and logistical difficulties for parties seeking to access family law courts in the Far North and North Queensland, most notably for parties from Mount Isa,

⁵ Ibid, page 61.

⁶ Ibid, pages 69-70.

⁷ Ibid, page 69.

⁸ Ibid, page 70, citing Australian Bureau of Statistics, *4713.0 Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006* (2011)

⁹ Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians June 2011*.

¹⁰ Queensland Government Statisticians Office, *Population growth highlights and trends, Queensland regions, 2015*, (2015).

¹¹ Brisbane, Bundaberg, Cairns, Hervey Bay, Ipswich, Mackay, Maroochydoore, Rockhampton, Southport, Toowoomba, Townsville.

¹² Brisbane, Bundaberg, Cairns, Hervey Bay, Ipswich, Mackay, Maroochydoore, Rockhampton, Southport, Toowoomba, Townsville, but also Beenleigh, three circuits out of Cairns including the Cape Circuit, the Cooktown Circuit, and the Thursday Island and Bamaga Circuit, Charleville & Cunnamulla, Dalby, Emerald and Clermont, Gladstone, Goondiwindi, the Gulf Circuit, Gympie, Kingaroy, Longreach, Maryborough, Mt Isa & Cloncurry, Stanthorpe, Warwick. District Court calendar available at

https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/544884/district-court-calendar-2018.pdf

¹³ Magistrates Court of Queensland, *Annual report 2016–2017* (2017) available at

https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/561237/mc-ar-2016-2017.pdf

the Gulf country and West Queensland to fly or travel to Townsville and Cairns, and similarly for parties from the Torres Strait.

SPECIFIC COMMENTS TO PROPOSALS AND QUESTIONS

We welcome many of the innovations proposed in Discussion Paper 86 but wish to highlight our concern that the proposals are essentially city-based and rely upon the concentration of services and expertise that occur in the cities. The information and out-reach model described in the discussion paper is also a very centralised one. In contrast we would argue that a better approach to take would be to develop information packages different cross-sections of the community that seek to access the family law system such as fly in fly out workers, rural & farming communities, and remote Aboriginal and Torres Strait Islander communities.

We will comment on specific proposals and questions following the chapter structure and numbering contained in DP 86.

2. Education Awareness and Information
3. Simpler and Clearer Legislation
4. Getting Advice and Support
5. Dispute Resolution
6. Reshaping the Adjudication Landscape
7. Children in the Family Law System
8. Reducing Harm
9. Additional Legislative Issues
10. A Skilled and Supported Workforce
11. Information Sharing
12. System Oversight and Reform Evaluation

2. Education, Awareness and Information

It is essential for the successful operation of the courts for a public out-reach campaign to contain information essential for the public to know how to access the family law system and to properly understand the duties and responsibilities of parents and to properly understand what a child

centred approach looks like. Unless they have already been through the family law system, members of the general public are broadly unaware of how the Family Law Courts work. This means that those who come to the courts may have unrealistic expectations and may be quite disillusioned when they depart the courts. It is essential that people know that there is a recourse to courts for a variety of matters, that they understand the dynamics of the legal process and the conduct of a matter in the courtroom, and that they have reasonable expectations of what the court process will achieve. Particularly parents need to understand that the Court is not going to do whatever they want but will decide according to what the Court considers is in the best interests of the child. The successful functioning of the courts is reliant on this knowledge being disseminated effectively.

Proposal 2-1 and proposal 2-4

We agree that referral relationships can be established successfully from health services, for example the legal health-check clinics¹⁴ that are being run from medical centres. For example, the Wuchopperen Aboriginal Health Service in Far North Queensland has established Health Justice Partnerships with LawRight, Queensland Indigenous Family Violence Legal Service and ATSILS to support clients of Wuchopperen.¹⁵ We also note the success of the Men's Shed established in Mount Druitt since 2004 which supports men at risk of serious stress and suicide, generally arising from cumulative stress often due to disadvantaged situations. For Aboriginal and Torres Strait Islander parties, the success of the referrals made in both organisations comes from them being made through Aboriginal and Torres Strait Islander caseworkers or helpers who the clients trust. The Men's shed runs programs and acts as a referral point, alternatively service providers such as probation and parole, mental health services, housing and employment services access the men at The Shed. Importantly those visiting services are encouraged to see themselves as coming into the men's space and not to regard The Shed as an extension of their offices. It has been described as a one stop shop for men in need and enjoys enormous support from the Aboriginal and Torres Strait Islander community with Elders actively involved in its direction.

¹⁴ Recommendation 5.3 in Australian Government Productivity Commission, *Access to Justice Arrangements, Productivity Commission Inquiry Report No 72*, Volume 1 (2014), available at <https://www.pc.gov.au/inquiries/completed/access-justice/report>.

¹⁵ See, for example, <https://www.facebook.com/LawRightQLD/posts/refs-from-lawright-wuchopperen-aboriginal-health-service-qifvls-atsils-and-respe/1758304524222412/>

The success of The Shed has been recognised in the 2017 Aboriginal Justice award from the New South Wales Law Foundation.¹⁶ We consider this a successful model that achieves a better rate of outreach than some other projects and suggest that this form of outreach be replicated in other states including Queensland.

We also note in Victoria the establishment of the Orange Door network of support and safety hubs across Victoria to assist those experiencing family violence and needing support to access coordinated support from community, health and justice services. The Orange Door offers specialist family violence services, mens' family violence services, and integrated family services.¹⁷ Importantly the provision of help is flexible, recognising that the experiences of family violence or child and family vulnerability are not linear and that risk is dynamic so people accessing the hubs will experience the service in different ways that may not represent a linear step by step process and that people will connect with or leave the hub at different points.

Proposal 2-1 and 2-3 and 2-5

We note the redevelopment and re-launch of Family Relationships Online in June 2018 which is available via a website.¹⁸ From the perspective of our client group, we have both educated clients with access to electricity and to Internet and those who have no access or limited access to a reliable telecommunications signal or the necessary equipment to access web services, who have travel issues, and who have limited time due to childcare obligations or carer obligations to go seek assistance accessing the website. Especially in areas where there is poor signal strength, apps designed for smart phones are a far more effective way to reach people. In the communities, the use of Facebook and other social media apps is a far more reliable form of communication than relying on mobile phone calls and call centres.

The barriers to accessing justice vary greatly between different groups, depending on location, age, language and community. Instead of a centralised message promulgated from the website, we would strongly recommend that the proposed national package is instead regionalised to address the issues relevant to the affected groups, for example those who live in communities, those who are fly in fly out workers, and those who live in communities where there has been a mass loss of employment and that the information packages pick up on and expand upon

¹⁶ *Success of 'the Shed' leads to Aboriginal Justice Award*, available at https://www.westernsydney.edu.au/newscentre/news_centre/awards_and_appointments/success_of_the_shed_leads_to_2017_aboriginal_justice_award

¹⁷ <https://www.premier.vic.gov.au/the-orange-door-continues-to-roll-out-across-victoria/>

¹⁸ <https://www.familyrelationships.gov.au/>

information sources that have been developed locally. We would also recommend the development of information packages for Community Justice Groups or service providers who are based in the communities and who already assist local community members to access information.

Proposal 2-7 and 2-5

In our view the traditional means of disseminating information described in proposal 2-7 is not particularly useful for our client group. Face to face and oral communication is preferred and the community members prefer to hear information from magistrates and other people who have credibility in the eyes of the community.

The successes of face to face interaction have been demonstrated by the Family Law Pathways Networks when assisting Aboriginal clients. In New South Wales, the Family Law Pathways Networks encouraged not only face-to-face interaction between those who work in family law including lawyers and social workers but also encouraged communication between key figures in Aboriginal communities and community legal services.¹⁹ The Greater Sydney FLP Aboriginal family law conference came about as a result of persistence in making connections and gradually finding out what the community needed in regards to the family law system. The participants at the conference were the connectors of the communities: aunties, uncles and service providers who took information back to their communities.²⁰ As a result of that conference, partnerships were formed, relationships were developed, and respect and trust were also developed through the planning processes.²¹ Similarly in Far North Queensland, an Aboriginal and Torres Strait Islander Family Law Pathways Network was formed for communication and outreach purposes.

We would advocate relying upon existing successful means of communication, such as the Torres Strait radio programs, and on the mainland through live interviews on indigenous radio such as

¹⁹ Encompass, *Independent Review of the Family Law Pathways Networks* (2012) p 35, available at <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Documents/IndependentReviewoftheFamilyLawPathwaysNetworks.doc>,

²⁰ Judicial Council on Cultural Diversity, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts*, page 36 available at https://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf

²¹ See also *Ibid*, page 32 commenting on the need for two-way learning between judicial offices and communities which both build relationships and helps judicial officers acquire an understanding of local issues and facilitates learning for the ATSI people involved as well.

Bumma Bipperra Media 98.7FM²² in the far north of Queensland. Storytelling on indigenous community TV would also be a far more effective means of communication. Other successful outreach could occur through social media and through the clever use of apps.

The difficulty with a centralised working group is that it fails to take into account the diverse lived experience of parties who wish to be come before the family courts the development of materials useful to those different identified groups. Previous reports have highlighted the need to understand the potential complexity of Aboriginal and Torres Strait Islander communities and cultures.²³

Proposal 2-8

We strongly agree with the inherent sense in proposal 2-8 that information packages be developed, and we would recommend that there be a number of regionalised packages, and that these would be user-tested for accessibility by community groups including children and young people and Aboriginal and Torres Strait Islander peoples amongst others.

3. Simpler and Clearer Legislation

Proposal 3-4, Proposal 3-5

We welcome the improved language to s 60B to recognise a child's right not only to maintain but to develop their cultural identity including the right to maintain a connection with family, community, culture and country and, consistent with the child's age and developmental level, to have the support, opportunity and encouragement necessary to participate in that culture ... and to develop a positive appreciation of that culture.

We would urge that the child's right to enjoy, or maintain and develop their cultural identity, should remain explicitly listed as it now is in S 60CC (3)(h)

(h) if the child is an Aboriginal child or a Torres Strait Islander child:

²² <http://www.bbm987.com.au/>

²³ Judicial Council on Cultural Diversity, The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts, available at https://iccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf;

(i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

(ii) the likely impact any proposed parenting order under this Part will have on that right;

Even with that explicit reference, our experience is that in family law matters concerning children where one party is non-indigenous, culture and connection take a back seat.

For Aboriginal or Torres Strait Islander children, the right to enjoy, participate in, and develop their identity in their culture is inherent to the best interests of the child, not some severable or ancillary notion.

Prior to the introduction of the amendments to the Family Law Act in 2006, the Family Court had for some time stressed the need for an Aboriginal and Torres Strait Islander child to connect with culture through participation, for example in *B & F* [1998] FamCA 239, Moore J stated:

“[A]s I see it, the requirement to maintain a connection to their lifestyle, culture and traditions involves an active view of the child's need to participate in the lifestyle, culture and traditions of the community to which they belong. This need, in my opinion, goes beyond a child being simply provided with information and knowledge about their heritage but encompasses an active experience of their lifestyle, culture and traditions. This can only come from spending time with family members and community. Through participation in the everyday lifestyle of family and community the child comes to know their place within the community, to know who they are and what their obligations are and by that means gain their identity and sense of belonging.”

While the circumstances of each child vary and correspondingly what arrangements can be made to ensure that the child achieves self-confidence and a sound appreciation of their heritage through contact with Aboriginal relatives it is imperative that more than a tokenistic level of contact with culture and appropriate relatives is envisaged. An example cited in the *Complex Families* report is the decision in *Bachmeier & Foster* (2011) FamCA 86 where the child spent three periods of two hours with the father each year, and yet the court was of the view that that time was sufficient for the father to teach the child about their culture. Neither the adequacy of the time nor the question of access to other family members appears to have been properly ventilated or considered.

In contrast, *In the Matter of B and R*,²⁴ the Full Court of the Family Court discussed the importance of cultural connection even for infant children because of the long term influence it would have on the child's passage through adolescence and later adjustment as an adult. The Court noted that section 60CC reflected Article 30 of the United Nations *Convention on the Rights of the Child* and research which highlighted the importance of cultural connection to the child. Quoting a passage from Stephen Ralph's paper, *The Best Interests of the Aboriginal Child in Family Law Proceedings*,²⁵

"The significance of this connection to culture in such cases rests in the child's potential need for support from an Aboriginal parent or carer and other Aboriginal people in dealing with the complex issue of what it is to be an Aboriginal child growing up in white society. Although this might not be an immediate and vital concern in considering the needs of an infant child, in the long term it is very likely to be a crucial factor influencing the child's passage through adolescence and later adjustment as an adult."

The Court referred to the unique history of Aboriginal Australians and the difficulties confronted by Aboriginal Australians in mainstream Australian society. Those difficulties were likely to permeate the child's existence from the time they commence direct exposure to the outside community and to continue through experiences such as commencing school, reaching adolescence, forming relationships and seeking employment and housing.²⁶ It was the Court's view that that history and those experiences elevated the needs of a child beyond a mere right to know one's culture. The Court commented that removal of a child from his or her environment can have a devastating effect on a child, especially if it results in exclusion from contact with his or her family and culture. Aboriginal children often suffer acutely from an identity crisis in adolescence especially if brought up in ignorance of or in circumstances which deny or belittle their Aboriginality and that this is likely to have a significant impact upon their self esteem and self identity into adult life. The Court noted that an Aboriginal child is better able to cope with discrimination from within the Aboriginal community because usually that community actively reinforces identity, self-esteem and appropriate responses.

The Court's reference to Aboriginal culture applies with equal force to Torres Strait Islander Culture.

²⁴ *In the Matter of B and R* (1995) [1995] FamCA 104; (1995) 127 FLR 438; [1995] FLC 92-636; (1995) 19 Fam LR 594.

²⁵ (1998) 12 Australian Journal of Family Law 140.

²⁶ *In the Matter of B and R* (1995) [1995] FamCA 104 at para [38].

The explicit language in s 60CC as it now stands creates a far greater imperative for the court to give consideration to issues of culture²⁷ and so should remain.

Proposal 3-6 and Filing Cultural Support Plans with Affidavits

In our view, the assessment of cultural issues in family reports and the assessments of the cultural issues relevant to what would be best for the children needs to be improved.

We would like to see a requirement for the parties to file a cultural support plan with their affidavits to be introduced to improve taking cultural issues relevant to the child into account. As highlighted in our earlier submission, this could overcome some of the current deficiencies in the family law system and promote a more child focussed approach.

The current method of taking cultural issues relevant to the child into account via family reports is not working sufficiently well and the assessments of the cultural issues relevant to what would be best for the children needs to be improved. A survey conducted on behalf of the Family Court of Australia concluded that there was a level of frustration that cultural concerns were not being taken into account for Aboriginal and Torres Strait Islander children.²⁸ Our experience confirms this. Looking at the specifics, the survey of family law practitioners revealed a negative view of family reports in these cases and many were critical of report writers when it came to the assessment of cultural issues.

It would make sense to train Aboriginal and Torres Strait Islander people to write the cultural reports rather than rely upon report writers with limited understanding of Aboriginal and Torres Strait Islander culture and child rearing practices.

There should be directions for the Cultural Report writers to not only address the matters for consideration at sections 60CC (3)(h) and (6) but additionally to cover the sorts of matters currently traversed in cultural support plans in Child Protection, including matters such as:

²⁷ See for example the comments in *Sheldon & Weir (No. 3)* [2010] FamCA 1138 at para 505.

²⁸ S. Ralph, *Indigenous Australians and Family Law Litigation: Indigenous Perspectives on Access to Justice* (2011), available at <http://www.familycourt.gov.au/wps/wcm/connect/03eec3e6-63e4-4060-a874-3cfb3dc125f7/IndigenousAustraliansFamilyLaw.pdf>

- (a) information on matters relating to the child's identity including a genogram of at least three generations of the child's family, information about the child's clan or nation, language group, totem, land or water country;
- (b) Information on matters relating to the child's connection, including the story of the child's mother's country, the story of the child's father's country and the history of the community where the child lives;
- (c) Information on the child's cultural journey to date, whether the child has returned to Country, whether the child's traditional ownership has been supported, whether there is a confirmation of Aboriginality; and information from the child on the child's reflections on their cultural journey;
- (d) Information about and contact with key family members, including parents, siblings, aunts, uncles, grandparents, sister cousins and brother cousins, and other extended family members. Information about other people significant to the child;
- (e) Information from the child on family members they would like to spend more time with or would like to meet, what cultural activities the child wants to take part in, what would help the child to strengthen their belonging to the community;
- (f) Information on an Aboriginal or Torres Strait Islander role model or cultural mentor for the child and who can be the child's primary source of cultural authority;
- (g) What cultural sports or recreational activities, learning materials, documentaries, music or movies about Aboriginal culture would help connect the child to the wider local Aboriginal or Torres Strait Islander community;
- (h) Identification of Health and developmental support services for the child that are culturally informed.

Proposal 3-9, 3-7, and question 3-1

Care should be exercised about how the evidence based resources are relied upon because traditional mainstream constructs can be inappropriately applied to cases involving a child of Aboriginal or Torres Strait Islander heritage.²⁹

²⁹ See for example discussion in J. Dewar, *Indigenous Children and Family Law*, [1997] AdelLawRw 9, cited in Donnell & Dovey, 2010 FamCAFC 15 at para 324.

An example of the care taken by the Court to avoid the inappropriate application of mainstream family assumptions to cases involving a child of Aboriginal or Torres Strait Islander heritage appears in *Donnell & Dovey* [2010] FamCAFC 15, (2010) 42 Fam LR 559. At first instance, the Federal Magistrate had commented that that if a 'suitable parent' was available to care for the child, they should be preferred over the child's older sister due to the 'significance of the tie between children and their biological parents'. The Court of Appeal noted the general propositions relied upon by the report writer and the Magistrate should not be applied to indigenous families without any consideration of cultural context.³⁰ The Court of Appeal noted:

*we consider that an Australian court exercising family law jurisdiction in the twenty first century must take judicial notice of the fact that there are marked differences between indigenous and non-indigenous people relating to the concept of family. This is not to say that the practices and beliefs of indigenous people are uniform, since it is well known that they are not. However, it cannot ever be safely assumed that research findings based on studies of European/white Australian children apply with equal force to indigenous children, even those who may have been raised in an urban setting.*³¹

In *Sheldon & Weir (No. 3)* [2010] FamCA 1138, the particular circumstances of that case meant no expert evidence on Aboriginal cultures had been called at trial and instead academic writings³² on Aboriginal culture, including kinship, heritage and child rearing practices were admitted into evidence as extrinsic material.

The judge considered evidence of Aboriginal child rearing practices which described practices where the child may have multiple care givers with occasional lengthy absences from their parents and develop multiple attachments. The security of a child raised in this fashion would be derived from a network of regular caregivers, and from that care arrangement, opportunities are created to form enduring relationships in the community, which allows the support and maintenance of the child's emotional health throughout their life span.³³

³⁰ *Sheldon & Weir (No. 3)* [2010] FamCA 1138 at para 315.

³¹ *Sheldon & Weir (No. 3)* [2010] FamCA 1138 at para 321.

³² These were, Soo See Yeo, "Bonding and Attachment of Australian Aboriginal Children" Child Abuse Review Volume 12 292-304 (2003), and Stephen Ralph, "The Best Interests of the Aboriginal Child in Family Law Proceedings" Australian Journal of Family Law [12 AJ FL 140](#).

³³ *Sheldon & Weir (No. 3)* [2010] FamCA 1138 at paras 506 – 509.

The court noted³⁴ the long term of importance to culture to a child even in circumstances where the child was living between two worlds:

“For children who uneasily straddle the divide between Aboriginal and non-Aboriginal society the fostering of their connection to Aboriginal culture in a careful and sensitive manner may promote the development and experience of a ‘special’ individual identity. This process must be informed by the wishes of the child, where appropriate, and be sensitive to the child’s experience of racism and the effect this may have had upon their perception of themselves, their family and Aboriginal culture. With support and sensitive guidance from others, children may come to take pride in their heritage and reshape their own identify in accordance with a new perspective upon themselves, their ancestry and their place within contemporary Aboriginal society. The significance of this connection to culture in such cases rests in the child’s potential need for support from an Aboriginal parent or carer and other Aboriginal people in dealing with the complex issue of what it is to be an Aboriginal child growing up in white society. Although this might not be an immediate and vital concern in considering the needs of an infant child, in the long term it is very likely to be a crucial factor influencing the child’s passage through adolescence and later adjustment as an adult.”

The indivisible link between connection to culture and relationships with other Aboriginal people has been described by Commissioner Jackomos and quoted most recently in the final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory:

“For us culture is about our family networks, our Elders, our ancestors. It’s about our relationships, our languages, our dance, our ceremonies, our heritage. Culture is about our spiritual connection to our lands, our waters. It is in the way we pass on stories and knowledge to our babies, our children; it is how our children embrace our knowledge to create their future. Culture is how we greet each other and look for connection. It is about all the parts that bind us together. It is the similarities in our songlines.”³⁵

Even for those living away from their culture and immersed in mainstream Australia social life, kinship is the one aspect of culture which remains strong. One of the most important obligations

³⁴ Sheldon & Weir (No. 3) [2010] FamCA 1138 at para 510.

³⁵ Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Volume 1, p 182, available at <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>

and expectations of kin is that they maintain contact as interactional failings cause concern, and this is generally applied within a wide range of kin.³⁶

4. Getting Advice and Support

Proposal 4-1 and the need for provision of assistance to all parties

We agree that it is essential to identify the parties safety, support and advice needs and those of the children, we also agree that the parties need to develop plans to address their safety, support and advice needs and those of the children, that the separating parties need to be connected with relevant services, and their engagement with multiple services needs to be coordinated. It is both necessary and desirable that both separating parties receive that assistance, proper coverage of assistance increases the safety of the system and helps ensure the success of post separation parenting arrangements. Currently the assistance available to parties needs to address complex situations such as where the parties are experiencing intergenerational trauma.

In our view given the very decentralised nature of the Queensland population and the differing needs of urban, regional, rural, and remote parties, that any model to address giving advice and support should also be decentralised and for that reason it needs to be built on existing infrastructure currently located in those areas. For example, for our clients, advice and support and referrals are currently being made through Aboriginal and Torres Strait Islander community medical centres which have a far greater reach than the anticipated family hubs will have. Similarly Centrelink and Australia Post offices are existing Commonwealth infrastructure through which information can be made available.

Proposal 4-2

Along the lines of our earlier comments to part 2, the emphasis on digital technologies could focus on delivering information through smart phones and social media. That is because in areas with poor telecommunications coverage and where access to equipment and even electricity can be limited, there is greater reliance on smart phones and social media for communications. It makes sense to build upon what is already successful in the communities. Equally the provision of information at post office as and Centrelink offices is a logical place for provision of paper-based information where parties have only access to that form of information.

³⁶ D. Eades, *They Don't Speak an Aboriginal Language or do they?* In *Aboriginal ways of using English*. Aboriginal Studies Press, (2013) pp 56-75, from a study carried out in South East Queensland.

Call hotlines are not a particularly effective means of communication, especially in remote communities, or for those with responsibilities with young children. Current wait times on calls made to the National Enquiry Centre can take 45-60 minutes to be answered. Extra staff could assist to reduce waiting times however waiting for those lengths of times is only financially feasible for those who can call on landlines which in turn limits who can use the call services.

Proposal 4-3

We note the common sense of providing a wide range of relevant services including specialist family violence services, legal assistance services, family dispute resolution services, therapeutic services, financial counselling services, housing assistance services, health services, gambling help services, children's contact services and parenting support programs or parenting education services (including a program for fathers).

The problem that we see is that many of these services are currently overwhelmed for Aboriginal and Torres Strait Islander parties. We would also argue that the logical place to coordinate these services through would be existing places such as the Aboriginal Torres Strait Islander Community Health services (ATSICHS). We note the comment made by the Men's Shed that the reason why their coordination of services is so successful is that the service providers do not treat the space as an outpost office but recognise that they are coming into the mens' space.³⁷

Current barriers to accessing services include the care of children, work commitments or financial barriers. The value of the proposal for Hubs lies mostly in urban areas, by making the services available in one place where clients would otherwise have difficulty obtaining transport to access those services. We do also note that the further away from urban areas that these hubs are, the less likely that there would be anything like that list of services available to the people who need them. It is a proposal more suited to the more densely populated urban areas where the services are available.

It would make sense for the Registry, which is often the first point of contact for parties, to conduct a triage for parties, providing information and referral pathways to locally available services.

³⁷ And these comments apply equally to areas that are women's spaces.

Currently ATSILS responds to individual requests for assistance on a duty lawyer basis in the family law courts in addition to the representation services we offer in family law matters. With further resourcing, we would support an expansion of the duty lawyer service at the family law courts.

Furthermore, supplying basic assistance to self-represented parties to file materials would have a huge impact on easing the congestion in the family law system. Lawyers are unavailable or simply too costly for most people, especially when matters can easily run for two to three years, and the lack of help for self-represented people in turn means that self-represented parties floundering their way through the system bring additional delay and congestion to an already overloaded family law system.

Proposals 4-4, 4-5, 4-6, 4-7

Without a doubt more needs to be done to ensure that referral services are culturally safe and accessible, are responsive to local needs, and build on existing networks and relationships between local services. It would be wise to start again and to re-examine whether the FASS model is the appropriate one. We have limited understanding of the proposed interaction between the hubs and the FASS, at the moment the uptake rate does not look suitably inclusive nor is it likely to produce culturally safe options for clients. The Men's Shed referred to earlier in our submission appears to have successfully addressed many of the issues that may be impacting on that low uptake, by providing a safe space where men can also be listened to and gain appropriate referrals, where safety can be better addressed through appropriate programs, and where programs exist to address complex needs of couples including inter-generational trauma.

Such an approach would improve safety and improve the management of separation and post separation parenting.

5. Dispute Resolution

Proposal 5-1, 5-2, 5-3, 5-4,

We note the ideas of a compulsory preliminary mediation subject to some limited exceptions. Our concern is whether there would be sufficient funding to make this practical, and accessible to regional, remote, and rural clients. We agree that urgency is an exception that should allow the parties immediate recourse to the courts.

Question 5–1

We are aware of the case stories of a number of clients where proceedings have been instigated many years after separation. This occurs for a variety of reasons but mostly it arises from issues of practicality. We would suggest an application for extension of time should be broadly available otherwise being too prescriptive on this issue may cause unintended unfairness.

Proposal 5–6, 5–7, 5–8, question 5–2.

We agree with the necessity for early, full and continuing disclosure, and identify this as a significant issue where one partner is deliberately not complying. It may be best to deal with contraventions during proceedings rather than leave them until a final hearing or even not deal with them at all.

Question 5–3, proposal 5–9.

Currently ATSILS has not been made part of the FDRC pilot although we are in discussions over an MOU to provide assistance to ATSILS clients who are victims of violence. The Legally Assisted and Culturally Appropriate Family Dispute Resolution Project being run in Upper Mt Gravatt Queensland is trialling a legally assisted and culturally appropriate family dispute resolution process for separating families experiencing family violence and from Aboriginal or Torres Strait Islander or CALD backgrounds. We agree that it would be highly desirable to work with Aboriginal and Torres Strait Islander Legal Service as a provider of legal assistance services because it is imperative that any further developments of legally assisted dispute resolution models should be culturally appropriate and offer culturally safe models of family dispute resolution for parenting and financial matters. In our view there is currently very poor uptake in a number of different services because they are simply not culturally appropriate.

As previously stated, parties from rural and remote areas must make repeated trips for mentions (unless permitted to appear by telephone)³⁸ and family reports. The enormous burden placed on those parties by the distance, difficulty and expense of travel, cost of overnight accommodation, and the need to find alternative arrangements for other responsibilities (such as the care of other children) makes participation in the court process very difficult. Given the high levels of financial disadvantage of our clients living in rural and remote areas, the proposed compulsory family dispute resolution services represents an additional stage and an additional expense which may

³⁸ See our comments on page 4 about the practicalities of appearances by telephone.

act to put family law services further out of reach if financial service and cost recovery models are too easily invoked.

A more accessible FDR program available at multiple opportunities during the Court process and not limited by merit testing as is the current practice would be a more desirable approach. It should particularly be available at the early and interim orders points. It should be flexible so that parties could attend in person or by telephone. It is useful to have these processes available after an independent expert report has been prepared as often this is a useful way of parents being able to have their positions reality tested.

On the matter of cost recovery, the costs of family dispute resolution services should not be considered in isolation from the costs of the family court proceedings, instead the potential for family dispute resolution services to resolve matters and save the cost of further court proceedings downstream might be the better way to assess the cost and the benefit of investment in FDR.

Proposal 5-10

We agree that the Australian government should work with providers of family dispute resolution services including, not excluding, the Aboriginal and Torres Strait Islander Legal Service to review and build on the family dispute resolution services. We consider it imperative that effective practice guidelines are developed for the delivery of Legally Assisted Dispute Resolution (LADR) for parenting and property matters. We agree the guidelines should include guidance as to when LADR should not be applied in matters involving family violence and other risk related issues. It is imperative to develop approaches that support cultural safety for Aboriginal and Torres Strait Islander people, it is important to define the respective roles and responsibilities of the professionals involved, and we strongly agree that guidelines need to define the application of approaches that support effective participation for families with parents or children who have disability, it is also important to define practices relating to referrals from and to the family courts.

6. Reshaping the Adjudication Landscape

Proposals 6–1, 6–2, 6-3

We strongly agree that there should be an indigenous list as a specialist court pathway.

We agree that there should be a triage process to ensure the matters are directed to specialist pathways in the court as needed.³⁹ That triage process could offer a more informal round-table process with the parties, the court's registrars and the family consultants during the assessment and case management process and will likely be more effective if the parties are at ease during that process.⁴⁰ The use of specialist judicial officers and a specialist court list has proved successful in the Murri Court system in the Queensland Courts. The model has also successfully incorporated greater coordination with affiliated health services, counselling services and the Elders. We would anticipate that a specialist court list with specialist judges, specialist family report writers, cultural report writers and indigenous liaison officers⁴¹ would be similarly effective.

We also consider that the Western Australian case management system and the appointment of a family consultant at the outset of each matter is a desirable model to follow.⁴²

Proposal 6-4, 6-5

A vulnerable client can of course fall into all three categories, being an Aboriginal and/or Torres Strait Islander and a victim of violence and wanting to access a simplified small property claims process. There is very limited assistance or free services for those with very small pools of property to divide.

We agree with proposal 6-4 and would suggest that it would be possible for the parties to appear before the Registrar with the assistance of a financial expert. This could be the equivalent of a compulsory conference with the registrar for property matters.

With respect to the simplified court procedure we would also say that there should be an indigenous person to assist Aboriginal and Torres Strait Islander parties (similar to the family consultants). For our clients who do not understand the court process it can be difficult to cope in an alien environment. It is not uncommon for a client being alone and anxious in the setting to react adversely. Also, we have had situations where an overwhelmed and unresponsive party has drawn the ire of a Registrar. The availability of a support person would assist the party and could avoid an unhelpful situation arising. Additionally, special training for the registrars would assist

³⁹ We note the promising outcomes in SNAICC, *Report on Aboriginal and Torres Strait Islander Family-led Decision Making Trials, Queensland January 2016 to June 2017* (2017).

⁴⁰ We note the success of the round-table approach being used in Marram-Ngala Ganbu in Victoria, <https://www.premier.vic.gov.au/victoria-leads-the-way-with-koori-childrens-court/>

⁴¹ J. Akee, *The Role of Indigenous Family Liaison Officers in the Family Court of Australia*, available at <https://aifs.gov.au/sites/default/files/fl.pdf>

⁴² Described at https://courts.justice.wa.gov.au/F/family_court_counselling_consultancy_service.aspx?uid=2990-4878-2719-3392

them to both manage the simplified process and have effective ways of dealing with vulnerable parties.

Proposal 6–6

With respect to the proposal to develop case management protocols for court registrars to establish, monitor and enforce timelines, there needs to be consideration of how assistance will be supplied to the parties, especially self-represented parties, to help them comply. Whatever procedure is put in place, for matters involving smaller property pools, the affected parties will need basic assistance to do what is required to meet the courts requirements for procedural steps. It is already a feature of the Family Law system that the lack of help for self-represented parties means that they flounder their way through the system bringing additional delay and congestion to an already overloaded family law system.

7. Children in the Family Law System

Proposal 7–1

The provision of age appropriate and culturally appropriate forms is uncontroversial.

Proposal 7–2

Our concerns are where the proposed family hubs are going to be located. We would anticipate, on current numbers, there would be only very few outposted workers from specialised services for children and young people that would be available in rural, regional and remote centres.

Proposal 7–3

Proposal 7-3 is uncontroversial that a child so far as practical should be given an opportunity to express their views.

Proposal 7–5

The proposal to produce best practice guidelines on when child-inclusive family dispute resolution is and is not appropriate is uncontroversial.

Proposals 7–4 and 7–7

These proposals should be read together. Due to concerns about alienation and manipulation, children should not be required to express any views in family law proceedings or family dispute resolution but may be given an opportunity so far as is practical to express their views.

Proposal 7–8, 7–9, 7–10, and questions 7–1, 7–2, 7–3

These proposals create a role for a child social worker or social science professional to assume the role of a children’s advocate, with what appears to be a secondary role for only an occasional appointment of a separate legal representative. These proposals create an advocate who is not a lawyer and consequently the proposal raises a number of questions such as whether the child could claim the equivalent of legal professional privilege over communications with the non-lawyer advocate, and by the nature of their mixed role whether the non-lawyer advocate would be compellable witness in proceedings. On the other hand, an advocate who is a lawyer can directly represent the child and in turn that means that the questions listed in question 7-3 are long settled.

Children are generally capable of expressing their wishes in other types of proceedings, so the better approach would be to have a child’s legal representative appointed, and then, when required, a social science professional could be appointed to assist the advocate when, due to developmental or other issues, a child needs assistance to understand the options and express their views or even to have the options explained to them and for outcomes to be explained in a developmentally appropriate way. That would appear to be the more logical approach. It is uncertain from proposal 7-10 if there is to be a new name for the Independent Children’s Lawyer or whether a different model is anticipated. If so any residual role of the ICL should still be examined.

We have seen an increasing disclosure of family violence allegations upon separation and an increased volume of domestic violence orders issued in the state courts. Respondents are often not legally represented or legally assisted to challenge the assumptions concerning their children in those orders. There are some parents who play the system to make allegations of family violence to limit or stop a child’s relationship with the other parent so an independent examination of the rights of the child to maintain their relationship with each parent should be preserved and that is best done by the child’s legal representative or an ICL.

The answer then to question 7–1 is that a separate legal representative for a child should be appointed in accordance with the grounds for an ICL as expounded in *Re K* (1994) FLC 92-461, that

is when there is a vulnerable party, impacts of alcohol or drugs, when the child is at risk, or there is intractable conflict between the parties.

Proposal 7–11

Proposal 7-11 reads as an alternative procedure to expressing the views of the child through a family report. We are uncertain who would be paying for this.

Proposal 7-13

Instead of creating a separate advisory board it may make more sense to utilise existing bodies who could provide input.

8. Reducing Harm

Proposal 8–2

More research into the dynamics of family violence and the experiences of Aboriginal and Torres Strait Islander people would lead to a deeper understanding of the varying dynamics of family violence and to inform decision-making as it affects the particular circumstances of Aboriginal and Torres Strait Islanders.

Proposals 8.3 - 8 .5 and Question 8-3

The concern in Proposals 8-3, 8-4, 8-5 and Question 8-3 is that in the emotionally fraught circumstances of family law disputes, a distressed party who is not able to obtain legal representation could be seen as being unmeritorious simply because they are not able to frame their case appropriately without assistance. Only the clearest examples of abuse of process should be pursued.

In Proposal 8.3, the removal of the word “frequently” and the substitution of a word such as “repeated” appears logical in the circumstances.

Proposals 8.6 and 8.7

It would make sense to convene a working group to examine the question of protection of sensitive records and the prevention of the use in proceedings however the consequences of

records not being able to be relied upon also needs to be examined more closely. In proposal 8–7 there is no mention of the Aboriginal and Torres Strait Island Legal Service being included in that working group and given that there are additional grounds for information to be regarded as sensitive those aspects should be explored fully in the working group.

9. Additional Legislative Issues

Proposal 9–8 and Question 9–2

We support the proposal that the definition of family member in section 4 of the *Family Law Act 1975* (Cth) should be amended to be inclusive of Aboriginal and Torres Strait Islander concepts of family so as to recognise the significant child rearing and cultural roles played by family members and amendment of section 60CC(2)(a) so the child may have the benefit of a meaningful relationships with their family, clan group and extended kinship system.

As noted in the fairly generic description contained in the Queensland Supreme Court Equal Treatment Benchbook:

*In many Aboriginal communities, a child's mother's sisters (the child's aunts) will also be considered the child's mothers, with an obligation to support the raising of the child. Grandmothers and 'aunties' are responsible for passing on traditional knowledge to female children, but also have a role in raising male children. Fathers and their brothers (uncles) also play a role in childrearing, again with a gendered emphasis, passing on male traditional knowledge to male children. The sharing of childrearing responsibilities remains a part of Aboriginal communities regardless of whether they are in urban, regional or remote areas. Cousins are often referred to and treated as sisters and brothers.*⁴³

Equally overlooked, is that due to different societal structures, an Aboriginal or Torres Strait Islander person may have multiple fathers and mothers.⁴⁴

⁴³ Queensland Supreme Court, *Equal Treatment Benchbook*, page 23, available at https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/94054/s-etbb.pdf

⁴⁴ See also C. Bourke and B. Edwards, *Family and Kinship* in C. Bourke, E. Bourke and B. Edwards (eds), *Aboriginal Australia: An Introductory Reader in Aboriginal Studies* (2004) cited in the Equal Treatment Benchbook, *ibid*, at p 24.

We also request consideration of amending the definition of parent in section 4 to be inclusive of Aboriginal and Torres Strait Islander concepts of parents so the child can have a meaningful relationship with all those the child would describe as mother and all those the child would describe as father.

We would encourage consultation with Aboriginal and Torres Strait Islander representative groups and peak organisations to arrive at an appropriate wording for section 4 and section 60CC(2)(a).

10. A Skilled and Supported Workforce

Proposal 10–2

Proposal 10–2 appears to be creating an extra layer of training and accreditation to that which is already available for professional groups operating in the family law system, especially for lawyers.

Proposal 10–3

We are in agreement that the identification of core competencies for family law practitioners and family law professionals should include cultural capability in relation to Aboriginal and Torres Strait Islander people.

Proposal 10–4

Proposal 10–4 appears to be creating an additional layer where cooperation with the existing training and accreditation bodies maybe more effective .

Proposal 10–9

Minimum standards for private family report writers should include cultural capability with respect to Aboriginal and Torres Strait islanders and others. The need was illustrated by the Appeal Court in *Donnell & Dovey*, discussed above. Without cultural capability it is difficult to see how a family report writer could fulfil their role in Family court proceedings affecting an Aboriginal or Torres Strait islander.

Question 10–6

Cultural reports should be mandatory in all parenting proceedings involving an Aboriginal or Torres Strait islander child unless the parents do not identify, or subject to the wishes of the indigenous parties.

11. Information Sharing

We note the proposals for increased information sharing and urge caution around the proper protection of information. Information about the existence of child safety orders or departmental intervention should be made available to the court. However there are serious concerns about and hence care should be exercised in allowing the untested opinions and summaries of child protection case to be admitted into evidence in family law court proceedings. Significations issues are raised in Section 11 which require close and careful examination and deserve a separate working group and consultation process.

Some preliminary responses are:

Question 11 – 2

The information sharing framework should not include health records.

Proposal 11–6

The information shared should be limited to the existence of family court orders rather than information about those family court orders and pending proceedings.

Question 11 – 4

A child protection agency should be able to confirm their involvement and to provide a short affidavit in relation to the children and safety, in other words to confirm that they have concluded that there is an on-going concern and their level of involvement, but not to go beyond that.

There are serious concerns about and hence care should be exercised in allowing the untested opinions and summaries of child protection material to be admitted into evidence in family law court proceedings.

Proposal 11–10

The proposed information sharing should be limited to the sharing of information between courts. We do not support the sharing of information with other bodies and agencies. For example, there is concern about the sharing of information with Child Safety bodies.

Question 11–5

With respect to the types of information propose to be shared between family hubs, client consent should be required to share this information. The other party should not be able to get access to any information provided by the family hub services to the family courts, there should not be any capacity for the services provided through the family hubs to provide written or verbal evidence to the family courts other than general information on the services that they supply and the fact of the counselling. The normal rules should continue to apply with respect to obtaining subpoenas for information.

12. System Oversight and Reform Evaluation

Proposal 12-8

We support the development of a cultural safety framework to guide the development, implementation and monitoring of reforms to the family law system, to ensure that the reforms envisaged in this Discussion Paper and other reforms support the cultural safety and responsiveness of the family law system for client families and their children.

While many of the recommendations offer many useful reviews and changes, we would note a concern about the number of bodies proposed, the duplication of functions such as accreditation, and the proposal for a number of new organisations rather than the extension or expansion of existing bodies or services. In our view it represents a duplication of service and additional expense when the financial pressure on the family law system already impacts its functioning in a number of ways.

We thank you for the opportunity to provide input and thank you for your careful consideration of these submissions.

Yours faithfully,



Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.