



Review of the family law court system

A submission to the:
Australian Law Reform Commission

Prepared by:
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About yourtown

yourtown (formally BoysTown) is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, **yourtown's** Mission is to enable young people, especially those who are marginalised and without voice, to improve their quality of life.

yourtown provides a range of face to face and virtual services to young people and families seeking support. These services include:

- Kids Helpline, a national 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues
- Accommodation responses to young parents with children who experience homelessness and women and children seeking refuge from domestic and family violence
- Young Parent Programs offering case work, individual and group work support and child development programs for young parents and their children
- Parentline, a telephone counselling service for parents and carers'
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse or been exposed to violence
- Employment programs and social enterprises, which support young people to re-engage with education and/or employment, including Aboriginal and Torres Strait Islander specific services.

Kids Helpline

Kids Helpline (KHL) is Australia's only national 24/7, confidential support and counselling service specifically for children and young people aged 5 to 25 years. It offers counselling support via telephone, email and a real-time web platform. Kids Helpline is staffed by a paid professional workforce, with all counsellors holding a tertiary qualification.

Since March 1991, young Australians have been contacting Kids Helpline about a diverse group of issues ranging from everyday topics such as family, friends and school to more serious issues of child abuse, bullying, mental health issues, drug and alcohol use, self-injury and suicide.

In 2017, Kids Helpline counsellors responded to over 150,000 contacts from children and young people across the nation, with an additional 600,000 unique visitors utilising materials from the website.

Our overall response

yourtown welcomes the comprehensive and thorough approach that the Australian Law Reform Commission (ALRC) is taking to this Inquiry. The scale and complexity of this Inquiry could be overwhelming but ALRC clearly has taken considerable effort to hear, understand and include the views and issues of all those who have responded to the consultation. Thanks to this hard work and resulting understanding of the many challenges that the current family law system presents, **yourtown** strongly welcomes the recommendations outlined in the Discussion paper.

Indeed, many of the recommendations directly respond to the concerns and challenges that our clients experience when encountering the family law court. These include: low awareness about how the system works; accessibility issues given its complexity and lack of coordination; inability to understand and accommodate the needs of children and young people, LGBTI people, and Aboriginal and Torres Strait Islanders and; the adversarial nature of the system and additional harm that it can cause in cases of family violence and serious family conflict.

We therefore particularly welcome the recommendation to take a public health approach. The combination of an education and awareness campaign, community-based family hubs and increased options for flexible dispute resolution recognises and responds to the multifaceted nature of the many issues that children, young people and adults encounter in the current system.

We particularly welcome the focus on designing a system that does not compromise the safety and wellbeing of all of those who must access the system, particularly the most vulnerable including children, young people and people affected by family violence. Indeed, we note and welcome that the proposed changes to the system that recognise that the current system too frequently adds to the trauma experienced by its most vulnerable clients: an adversarial approach to family law is clearly unsuitable in the resolution of family issues, given the unique complexity of, and ongoing nature or long-lasting impact of, family relationships.

We also are delighted that children and young people are appropriately recognised as being clients of the family law system and by the clear focus in the paper on making the system accessible to children and young people. We strongly support the recognition that children and young people's involvement is needed in court processes and strongly welcome the development of a Child Advocate whose specific role would be to facilitate this involvement.

We welcome the discussion on the current issues relating to the interpretation of the best interests of children and young people, and the proposed move to prioritise their safety and best interests (before any other consideration including parents' access). We also welcome the recommended changes to the definition to family violence and the inclusion of new types of family violence, including the use of family law procedures by perpetrators against their victims. We are also greatly encouraged by the recognition that any change to the system must be underpinned by a whole of system approach to the training of all staff working in family law, crucially including the knowledge and understanding of the judge in relation to both child development, trauma and family violence.

Finally, whilst we broadly support the proposed changes to the Family Law System, we feel it is imperative to acknowledge that they require significant political will and resources if they are to be effective in their implementation and intended outcomes. We therefore pledge to commit to work to call on politicians of all sides to support and commit to making these changes a reality in practice.

Specific points

In this section, we set out some additional comments on some specific issues contained in the Discussion Paper.

3. Simpler and Clearer Legislation

As mentioned before, we welcome the proposed change to the principle that the child's 'safety and best interests' and not just the child's 'best interests' must be the paramount consideration in making decisions about children. This is an important amendment, as it will hopefully lead to the prevention of legal decision-makers prioritising having a 'meaningful relationship with a parent' who may be abusing that child, above the child's best interests and safety. Clearly, the success of this change will need to be supported by effective and system-wide training of staff to ensure that the principle is appropriately interpreted in court.

In thinking about the decision-making pathway and steps and principles to assist decision-making about a child's safety and best interests, we recommend that the ALRC considers developing guidance on how courts should approach the concepts of co-parenting and parallel parenting, 'substantial and significant time' with a parent and shared (not equal) parental responsibility and the requirement that parents make joint decisions where family violence is present in a case. For example, co-parenting is not a realistic outcome in cases where there is family violence, whilst joint decision-making and consultation is dramatically affected again when there is an imbalance of power between the two parents such as in cases of family violence.

In our experience, the impact that family violence has on these concepts to reaching appropriate resolutions is not well understood by legal staff and instead they seem to place parent's rights ahead of children's rights to safety, whilst ignoring the reality of an extremely unsafe context in which they may be placing a child. In addition to guidance for staff in this area, we would like to see guidance and information that supports parents who, for example, cannot co-parent due to domestic violence, including information on a range of strategies needed to support parallel parenting.

Although the Discussion Paper acknowledges that family courts need to follow a series of steps before establishing a child's best interests, that they apply and should be followed when making interim orders too needs to be emphasised. Currently, we know that domestic and family violence may not be taken into account when making an interim order. A future system must ensure that interim orders adequately manage any risk of harm.

In addition, we recommend that the rules around legal aid need to be reviewed in relation to property and financial matters and family violence. Currently, if a victim of family violence has their name on the title deed of a property they are not eligible for legal aid, yet they are unable to access the equity tied up in the property to fund their legal costs due to the length of time it can take to reach a property settlement. Ways to ensure that these victims can access legal representation regardless of their financial position must be found and offered.

In our experience, our clients affected by domestic violence have received less of the pool when property is divided. We have come across cases where perpetrators have administered the family finances, and for example, have put the house in the name of their relative to ensure that the victim receives little or none of the property. We would like to see research on this issue to see how common our clients' experience is in the system.

Finally, we would like to see a clear and simple process in legislation setting out an effective feedback and complaints process to help manage issues arising throughout the court stages. We have supported numerous clients who have encountered staff (including judges and independent children's lawyers) whose poor actions and/or decisions have severely impeded the fairness of the trial. Yet there has been no avenue for our clients to complain about the actions of these staff in a timely manner and many victims have had to wait until the right of appeal to have their complaint heard (and at great expense to them in terms of both time and finance).

4. Getting Advice and Support

Family hubs would undoubtedly provide an excellent resource as a one-stop-shop for services, advice and information for separating families. As part of this offer, we would strongly support the appropriate resourcing of specialist family violence services to ensure that the staff who support victims and perpetrators of family violence are appropriately trained. Given both victims and perpetrators are often likely to seek to access the same family hub, ways to ensure how they can do this without exacerbating the victim's trauma must be found. In addition, children and young people affected by family conflict or violence should be able to seek access to a range of support services, including mental health support, independently and without cost when required.

7. Children in the Family Law System

As mentioned previously, we welcome the recognition that the family law system does not currently, appropriately support the needs of children and young people and ensure that they have a say in decisions relating to their lives. We would therefore emphasise the importance of ensuring that children and young people are supported to have a voice throughout the system. This includes by:

- Having appropriately tailored education and awareness campaigns to ensure they are informed about their rights and processes and who can help them. **yourtown** has developed a series of online and hard copy comics on sensitive and challenging issues for young children (e.g. suicide¹ and child abuse²). Schools have informed us that they are invaluable resources and are meeting critical gaps in support and knowledge in younger children.
- As most disputes are settled before court proceedings, ensuring children and young people have a voice in pre-court dispute resolution processes is critical. Their involvement could again be supported by the proposed Child Advocate, who could also represent them at this stage as necessary.
- Providing children and young people with access to a legal representative, such as the Child Advocate, and placing a positive obligation on decision-makers to ensure children have an opportunity to be heard in proceedings as soon as the matter looks like it cannot be resolved outside of court.
- Ensuring that the proposed Children's and Young People's Advisory Board supports the involvement of the most vulnerable children and young people, a group who often are confronted by a series of insurmountable barriers to their input into formal consultation processes.
- Establishing an Office of Children's Advocates to coordinate the activities, policy and processes (including of their own accreditation and practice review and supervision) relating to Children's Advocates and the facilitation of children's input into the family law system at all key stages. We believe such a body is required given how piecemeal, non-committal and ad hoc the current

¹<https://kidshelpline.com.au/comic-talking-about-suicide>

²<https://www.yourtown.com.au/blog/child-protection-week-2018>

approach is to hearing from children and young people and so that Child Advocates have professional oversight to ensure they are meeting certain standards in their work.

- Providing the Child Advocate with legal privilege, similar to that of the legal profession, in recognition that children and young people need to feel they can fully confide in and trust their Advocate. Whilst we believe that it is right that a Child Advocate could be called to testify, they could be 'friends of the court' (like social workers), which would not only protect the privacy of children and young people where necessary but also would help raise the status of Child Advocates and recognise their legal standing in court.

8. Reducing Harm

As previously stated, we welcome the proposed changes to the definition of family violence. In addition to these amendments, we would recommend that exposure to parental conflict is also defined as domestic and family violence acknowledging the significant impact that witnessing or overhearing parental conflict has on the health and wellbeing of children and young people.

10. A Skilled and Supported Workforce

We welcome the chapter on building community trust within the Discussion Paper, and we see the development of a skilled and supported workforce as fundamental to this. In our experience, too many legal staff are not today ensuring that current legal principles (e.g. the best interests of the child) are appropriately applied in practice or know what processes are best applied to certain situations (eg. FDR is not suitable for high risk family violence situations) and as a result risk the safety of the people the system should be protecting.

In addition, too many staff working in the family law system are not trained in domestic and family violence (including their impact on children's wellbeing and parental attachment and need for safety considerations), trauma-informed practice and in child development. We believe that training in these areas are urgently needed and that all staff members working in family law must regularly receive them.

Importantly, judges and key legal decision-makers must undergo this training and their work, decisions and practices must be regularly reviewed and held to account to ensure that decisions cannot be based on outdated ideas about relationships, gender, age or mental health, a lack of understanding about family violence and/or traditional ways of interpreting the law (a complaints system would help to this end). Training should include how to deal with parental conflict and sharing parental responsibility in cases where family violence is involved.