SUBMISSION AND COMMENTS BY INTERACT SUPPORT INCORPORATED

Review of the Family Law System

Contact: Joanne Law
Joanne.law@interact.support Phone: 0401 293 500 (Melbourne Time Zone)

Introduction

Interact Support is a not-for-profit established in 2015 by a group of Family Lawyers and Family Dispute Resolution Practitioners including the directors of Mediation Institute Pty Ltd. We are currently applying for charity status and a not government funded.

Interact's mission is to prevent family violence by helping people who would otherwise slip through gaps in the Family Law System. Our goal is to help them to retain their ability to self-determine how their family works and resolve their disputes using alternative dispute resolution where ever possible.

We do this by providing:

- contextualized information about the family law system,
- guidance on how to purchase legal advice and services and referrals,
- video dispute resolution services including high conflict services and referrals,
- online post separation parenting education, coaching and referrals,
- assistance to negotiate and re-negotiate parenting agreements,
- assistance with Consent Order applications.

We have the capacity to develop and deliver an innovative behaviour change program for Men, Women and same sex couples but to date we have been unsuccessful in out attempts to seek government funding or support.

One of our major concerns is the increasing trend in the Family Law system to limit referrals to the "have's" who are government funded services and the "have not's" who are not. There is a lack of visibility about standards for programs such as Post-Separation Parenting Programs and Behaviours Change Programs that locks out training and service delivery providers while not ensuring standards are kept high.

Interact Support uses a social enterprise model where those who can afford to pay for services do so and those who cannot are subsidized throughout our hardship fund. We minimize overheads by working on a contract basis with independent accredited family dispute resolution practitioners (FDRPs) and by referral to independent FDRP's and Family Lawyers who are supportive of less adversarial approaches to family law.

As we offer high conflict services via video mediation and mediator negotiation many of our clients are affected by family violence. The current family dispute resolution model assumes that everyone who is experiencing family violence will bypass FDR and go to court. This is not what is happening. People are being given a s60i certificate but do not have the financial capacity to access the family court. The court systems are difficult to use, poorly supported by those working in the system in terms of explaining what is required in layman's terms and very frightening for people who are already suffering trauma. Consequently many suffer ongoing family violence in silence hoping not to make things worse.

Originally we had a program to assist self-represented litigants in the family court system including a McKenzie Friend program. We have discontinued this as we realized that people don't want to be self-represented litigants. They only do so due to the unaffordable nature of the Family Court.

Many of the clients who came to us as self-represented litigants had spent the $50,000 - $70,000 they were able to access from their own funds and their families on lawyers and then ended up self-representing.

We now focus on providing support for people to reach agreement themselves by educating them about how to manage and avoid high conflict behaviours, how to get good quality legal advice and how to negotiate more collaboratively.

Our Response

We are supportive of many of the proposals in the review and have only submitted a response to the questions and proposals that we feel that our insights would have value or where we feel that what is being proposed is sub-optimal.

As an independent, national not-for-profit service provider we would be very interested in participating in any consultation possible during the next stage and transition process.

Response

2. Education, Awareness and Information

Proposal 2–1 – Awareness Campaign

Proposal is that the government should develop a national education and awareness campaign about the family law system.

Interacts Response

The best use of government funds would be to create resources in a format that is accessible to the community that can be used by the various parts of the family law system.

There will be a need for an awareness campaign if major changes are made and new roles introduced but wasting a lot of money on advertising for a short-term campaign is not likely to make a lot of difference in the long run.

By resources we mean:

- Booklets that can be provided in hard copy to clients written in clear and simple non-technical language
- Softcopy tools and templates that can be used by clients or by professionals working with clients
- Information in audio format such as a Family Law System Podcast series with interviews with Judges and those in various roles in the system talking about what they do
- Information in video format on an accessible platform like YouTube with the ability for the videos to be downloaded. That way they can be used for ofline training and information in remote and rural locations without guaranteed internet access as well as being watched live on websites

Making video content available in community languages would be very positive as it could be used to educate community members and leaders not just end users of the system.

Topics for information:

There is no point in spending a huge amount of money on an awareness campaign as what people need is real support and education rather than superficial awareness.

- **Point 1:** An update on the Marriage, Families and Separation brochure to improve the clarity of the language so that non-lawyers can understand it would cover off on point one. Converting it into a video format option would be even better.
- **Point 2:** A well-researched and evidence-based series of videos, information documents and infographics / posters explaining child developmental needs in terms of their physical and psychological wellbeing would be great. This should be in terms of ages and stages of children and not branded to any specific service, such as relationships Australia so that it can be used by all professionals in the field, family counsellors, FDR Practitioners and lawyers.
- **Point 3:** We are not fans of the Families Hubs. They expect people to travel to Families Hubs which is pretty old-fashioned thinking. It will concentrate and limit the availability of services at a time where technology could facilitate a distributed model. People should not be forced to travel out of their community to seek information, advice and support. Most people with young children or working full time no longer want to do that. People going through marriage breakdown are often struggling financially and emotionally. The model is a resource intensive, inherently constrained approach that shouldn't be the centerpiece of an awareness campaign

strategy

- **Point 4:** The proposal for a package of information for users of the system is a good one however a better one would be to host this information and a comprehensive national directory of family law system professionals and services.

  Our concern is that the package will focus only on government funded services and ignore other quality not-for-profits and for profit services and be in a format that is static and not interactive.

  For example, independent FDR Practitioners are trained, accredited, highly skilled post-graduate qualified professionals. Those that work for government funded services are overburdened and not paid in a way that is commensurate with the role and their qualification level so after gaining experience many seek to set up their own professional practice. In many cases they are underemployed and struggling to make a living.

  Part of the problem for these professionals is their lack of visibility as independent professionals and the competition from a free or virtually free service provided by Relationships Australia and Family Relationship Centers.

  In many cases clients would be happy to pay FDRP's for their professional services. With the exception of the barrister FDRPs they typically charge half what a lawyer would charge for professional services. Despite this currently almost all government supplied information refers people to their own government funded services. The directory of FDRP's on the Attorney Generals Website is set up to show the government services first before other practitioners and has very limited search capacity and no map of providers. Family Dispute Resolution Register

  These funded services have long waiting lists and triage by issuing s60i certificates even when clients could be assisted with appropriately designed services. As a result lawyers who think this is the only option bypass the FDR system and apply for exemptions for parenting matters and don't recommend FDR at all for property matters. They take clients from legal advice enquiries to court without a serious effort to negotiate a financial settlement.

Unless a new approach is taken the proposed Family Law Information Packages will just continue the current lack of visibility about the non-government funded side of the system.

- **Point 5:** Similar to point 4. It is important that the full system of alternative dispute resolution including unfunded not-for-profits (like Interact) and independent FDRP's and arbitrators are supported in the information provided.

Proposal 2–2 – Consultation with the full spectrum of our community

Supported.

Proposal 2–3 – State and Federal Government alignment

The Australian Government should create resources that can be used across sectors working with state and territory governments. including state and local government. Not just a short-term awareness campaign

Proposal 2–4 – Referral into family law services including Families Hubs.

We are concerned that the focus of this proposal is to limit choice by investing in Families Hubs. It would be better to focus attention on creating the most comprehensive national database of family law services and educating specialist service providers to have an appropriate level of knowledge of the family law system.

Local schools, child care facilitates, family violence services, police and health services should be able to tap into the information online and easily find the service providers in their communities who have completed relevant training in the family law system or have the required accreditations.

All of these types of organisations would have even partial access to the internet so accessing information should not be a constraint.

We don't support any assumption that the proposed Families Hubs is a solution to the problem of access to good quality information and support to resolve family law issues and family conflict.

Proposal 2–5 - Standing working group to advise on the Family Law System Package

Good in principal. Only having representatives of government and non-government organizations may be too narrow. This working group should be more representative of end users of the family law system. If combined properly with proposal 2-2 the concern could be addressed.

Proposal 2–6 – State based Family Law information packages

The Family Law Information Package should be a website not a static package of information.

People would be able to then filter for their jurisdiction by location of residence. Allocated content providers from each state or territory could contribute.

Like the Family Court the website content would be formatted so that people could download word or PDF documents for use offline.

An offline information package could not possible cover the information required in a way that would be adequate.

A data base backed webiste that could be used by government funded and also private providers of services would be a great investment.

This would provide greater visibility to ALL providers and if it gave the opportunity for curated feedback would help to identify issues areas.

It would also be able to provide a focal point for complaints about service providers for review by the new industry oversite body proposed.

Proposal 2–7 – Accessibility of the Family Law System Package

The central website is essential and could include the opportunity to order printed material.

The Helpline and Web-Chat service would improve accessibility but the data base that they have access to should include not just government funded programs and practitioners.

As part of the improvement to training and accreditation a transparent, comprehensive and merit based method for all providers in the system needs to be accessible.

Constraints about referrals to non-government funded services need to be reviewed and a system of quality control through accreditation of professionals and programs introduced.

This would allow for the development of greater levels of support in addition to government funded programs reducing the financial burden on the government to provide family dispute resolution related services.

This should extend beyond FDR practitioners and include accredited Family Lawyers and other professionals such as Family Counsellors, psychologists, Certified Family Group Conference Facilitators and other roles if the practitioners can provide certificate evidence of training in the family law system.

Investing in a resource that excludes professionals accredited to work in the system that are not government funded is not improving accessibility.

Proposal 2–8 - alignment with existing services and consulting with end users.

- **Point 1**: Noting the current limitations on information resources and services. Information for referral should include non-government such as all not-for-profits, charity and professional practices run by accredited practitioners working in this area once they demonstrate that they meet an established standard.
- **Points 2 and 3:** Supported

3. Simpler and Clearer Legislation

Proposal 3–1 – redrafting the family law act wording.

There are many opportunities to improve the drafting of the Family Law Act 1975 and it's subordinate legislation.

- **Point 1:** Take care with simplification as often meaning can be lost in this process. **Focus on clarity rather than simplicity.**
- **Points 2 - 4:** Supported
- **Point 5:** Removing / reducing duplication good idea but not to the point that people need to reference other parts of the legislation or other legislation to make meaning of a part of the act. Duplication where it means that people can read a sentence is better than the alternative. The document is read online or on a word processing document so a few extra or duplicated words is not something that makes the use of an act more difficult.
- **Point 6**: No comments on separating out Family Court of Australia and AIFS provisions
- **Point 7:** Removing legislation defining parentage is likely to make the process of determining parentage more complicated not less. We don't see the advantage of this proposal.
- **Point 8:** This is important to review but remember that provisions in subordinate legislation complicate the process substantially especially for self-represented litigants. It is problematic as it will force them to refer to different legislation rather than the ease of searching a single document.

Proposal 3–2 – Reviewing Family Law Forms

- **Point 1:** Removing unnecessary information collection from forms would help and reduce privacy violations and make the process easier to complete. It is important to improve the structuring of forms that are downloaded from the court as they are locked in a way that often results in the formatting not working and being difficult to fix. Check boxes would help. More online forms would help.
- **Point 2:** Providing smart forms would be great for Consent Order templates etc and using more online forms in the CourtPortal rather than downloading and uploading difficult to work with locked word documents would be great and easy to implement.
- **Point 3 - 7:** Supported.

Proposal 3–3 - Proposed Drafting 60CA replacement

Safety should be defined to ensure that safety includes "physical, emotional and psychological safety"

Proposal 3–4 - Proposed Drafting s 60B replacement

The provisions of section 60B should be amended but it appears over simplified.

- **Point 1 - 3**: Supported
- **Point 4:** decisions about children should support their human rights as set out in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities; BUT the drafting should not just be referencing other legislation. The rights have to be identified in the Family Law Act not just by reference.
- **Point 5:** Supported

We are concerned about the drafting proposed. It is important that clarity is not lost in an attempt to simplify. e.g. removing "adequate and proper parenting to help them to achieve their full potential and ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children." in exchange for human rights and rights of persons with disabilities. It is a bit of a cop out to refer to two whole pieces of international legislation and does not clarify things for users of the FLA.

60B (2) seems to be omitted and only culture for ATSI children is formally acknowledged as being important.

The definition of best interest of the child is critical to the whole Family Law Act and Family Law System. It must be clear and understandable.

Proposal 3–5 - Best Interests 60CC

The act should be restructured so that best interests of the child is clear and simple to understand. The language could be significantly simplified so that it actually states what to consider and not use reference to paragraphs in the way it does. Language can be used a lot better than that!

The order proposed putting the views of the child before their safety is concerning. Numbers in brackets are a suggestion for order of clauses.

- **Point 1:** (2) any relevant views expressed by the child; **Putting this first before safety isn't a good idea.**
- **Point 2**: (1) whether particular arrangements are safe for the child and the child's carers, including safety from family violence or abuse; Does simplifying the definition to remove psychological harm out of the definition of safety improve clarity. The family law system and community haven't caught up with our understanding of the long term damage that psychological abuse causes to children. Have you over simplified?

- **Point 3 - 4:** (4) supported other than order
- **Point 5:** (3) the benefit to a child of being able to maintain relationships that are significant to them, including relationships with their parents, where it is safe to do so; and **This is poorly drafted and will encourage child alienation in order to prove that the relationship is not significant to the child. It also will make a barrier to parents who have been separated from children re-establishing a relationship by using the work "maintain"**
- **Point 6:** (6) anything else that is relevant to the particular circumstances of the child. It would be good to provide some examples here for example some of the clauses that have been dropped. Providing greater discretion isn't helping to make the system clearer.

This needs greater consultation. I suggest the order be re-arranged and consider whether some of the clauses that have been dropped are worthy of continued inclusion. You appear to be going for simplicity rather than clarity and the system needs greater clarity about intent not simplicity that leaves more open to interpretation. With clarity in the document it will be easier for people to be advised well by lawyers and sort things out themselves instead of having to go to court because of the ambiguity of the act.

Proposal 3–6 – Aboriginal children

Supported

Proposal 3–7 - Parental Responsibility

- **Point 1:** replacing the term 'parental responsibility' with a more easily understood term, such as 'decision making responsibility' **Only simplified and doesn't clarify. If the intent of "parental responsibility" remains responsibility for long term decisions, then changing it to "decision making responsibility" will be MORE CONFUSING as there will be no distinction between it and day to day decisions. You could use "long-term decision-making responsibility" if you really must replace "parental responsibility"**

- **Point 2:** It appears that this clause will provide greater support for separating children if the interests of one is different from that of their brother or sister. Is that the intention? You should list the major classes of "Long-Term Decision Making" in terms of making it clear that "long-term decision making" must be take into account the safety and best interests of the child.

Question 3–1

How should confusion about what matters require consultation between parents be resolved?

- By including the words long-term in the phrase used to replace “parental responsibility”. Using “decision making responsibility” will make it worse.
- By indicating that they are decisions that will have a long-term impact on the child’s life such as moving to a new house in different area, moving schools, travelling overseas and providing examples.
- By indicating the types of decisions that parents can make unilaterally in a format that is accessible (not necessarily written into the act) but written as clear guidance based on research. This is a major source of conflict where one parent tries to impose their parenting beliefs and values on another who is trying to raise the child in a different but equally valid way.

Proposal 3–8 - Requirement that leave be sought for amended orders

Supported but how would this impact if at all their ability to amend the order via a Parenting Plan? It is a good idea to prevent people being dragged back into court too easy because of the huge financial and emotional burden family law court cases represent.

Not allowing the parents to amend the order by agreement (Parenting Plan) would be a bad idea. Often the orders that come out of the court process (orders by consent) are hurriedly agreed and poorly drafted. Orders handed down by judges are generally more well considered but sometimes they don’t really work from either party or the children from day one or the orders are outgrown by the child or changing circumstances of the parents.

As long as orders can always be amended to avoid non-compliance issues by mutual consent and without a financial burden this proposal would be well supported.

Proposal 3–9 - Publicly available resource for parenting arrangements in terms of child welfare and developmental needs.

This resource should be a part of the family law information package proposed in Part 2.

Providing the resources through the same website that provides the information about the family law system would help with increasing awareness and accessibility of both types of information.

Good quality, evidence based information about children’s developmental needs and parenting is difficult to obtain in a format that can be used with clients. Much of it is referring back to specific services and so not appropriate for use by other services.

How would key stakeholders be determined?

Proposal 3–10 – Property Provisions

Supported

Proposal 3–11 - Family Violence and Property Division

Supported.

This could be helpful but there would need to be some indication of how those effects should be considered. The problem with the current version of the act is there is no guidance on how the considerations should be considered.

Proposal 3–12 – Research into consequences of property settlements

Supported

Proposal 3–13 - Debt and the financial sector

This would be very helpful. Sexually transmitted debt is a major problem for many people who have been in a financially abusive relationship and is poorly supported by legislation and the financial sector.

Greater education about the financial abuse and family violence for the financial sector and a requirement to ensure consent when entering into loans in a way that does not put someone at risk of further family violence should be considered as part of any protocol established.

Proposal 3–14 – Consideration of requiring debt amnesties from financial institutions

The language in this proposal is very convoluted. It sounds like you are indicating that family law orders should be able to avoid the need for someone to pay a debt back if it was incurred due to financial abuse? I fail to see how that would work and it would be better to be in banking regulations.

Proposal 3–15 – Information resources on super splitting

This should be included in the family law information package website proposed in proposal 1.

There could also be an improvement to the court forms by providing pop up help information that actually contains information not clause references. That would help a lot. There is

enough generic information but the information in the Consent Order Application process is woeful.

Proposal 3–16 – Standard Super Splitting Orders

Supported.

This would be a major improvement. At the moment the process for procedure fairness is slow. They have 28 days and many take that time adding a month to the process of applying for consent orders. Often they will ask for minor wording changes even though what is drafted is based on their own proposed clauses provided on their websites.

There is no good reason for this lack of standardization.

Proposal 3–17 – Tools for super splitting

Supported

Question 3–2

Should provision be made for early release of superannuation to assist a party experiencing hardship as a result of separation? If so, what limitations should be placed on the ability to access superannuation in this way? How should this relate to superannuation splitting provisions?

Not Supported.

This is likely to result in the wholesale loss of superannuation from people who can least afford it. There is a hardship process to apply for super funds right now. What is asked in the question will make it easier or "standard" to strip super when going through a separation.

It will make the hit that people receive when they separate worse.

Rather than hardship an option to access a lump sum from their super for a deposit on a residence (primary home). This would deal with the problem that many couples have of retaining enough cash to purchase a new home. If they were able to use some of their super to purchase property to live in when they don't have a deposit but have the capacity to pay a mortgage this would be beneficial.

Making it easier to use super for day to day living expenses would not be beneficial.

Question 3–3

Which, if any, of the following approaches should be adopted to reform provisions about financial agreements in the *Family Law Act 1975* (Cth):

- **Point 1: Supported.** Yes at the moment to get a binding financial agreement is very expensive and difficult to find lawyers who will take the risk due to the uncertainty.
- **Point 2: Not Supported.** This would just increase the uncertainty. Focus on identifying the family violence that is occurring when the financial agreement is sought to be made by increasing the rigor of the process with education for lawyers and a requirement to screen for family violence.
- **Point 3: Supported.** Yes. The ability to apply for "Financial Consent Orders" before and during a relationship rather than just orders to end the financial relationship at the end would be a good idea. This would reduce uncertainty for couples who are marrying when they each have assets they are bringing into the relationship by providing a document of what they are and what their intentions are should they separate. The full disclosure obligation of Consent Orders would have to apply for them to be enforceable.
- **Point 4: Supported.** If point 3 was implemented, then there would not be the need for provisions for binding pre-nuptial financial agreements in the FLA.

Proposal 3–18 – Spousal Maintenance

Supported.

Proposal 3–19 - Spousal Maintenance and DV

Supported.

This is a good idea. Requiring someone who has been abusive to pay spousal maintenance while their spouse is suffering from ongoing physical and mental health issues seems like appropriate reparation. They may find that it is in their interest to be more supportive of their former spouse and discontinue abusive behaviours. If they understood that if their former spouse is healthy and can financially support themselves is in their best interests perhaps they would find a way to be kinder and less frightening.

This would not necessarily need to be based on evidence that family violence has occurred and not just accusations if spousal support was more clearly identified as being based on the capacity of the spouse to earn an income during the transition period following separation.

There is a lack of clarity about spousal maintenance in the non-court system that is unfortunate. Greater clarity in the legislation might result in more negotiation of spousal maintenance in family dispute resolution and avoid the need for dependent spouses to go to court or suffer homelessness and hardship.

Question 3–4

What options should be pursued to improve the accessibility of spousal maintenance to individuals in need of income support?

Should consideration be given to:

- **Point 1: Supported.** The delay in getting spousal maintenance awarded by the courts is contributing to homelessness. If dependent spouses are not living in secure housing they may not have enough money to pay rent and end up homeless and dependent on friends and families for somewhere safe to live. The months of delays before the court considers their spousal support requests is unacceptable. Creating an application and approval process could assist however non-disclosure of income / financial situation by the other spouse is likely to be a problem.
- **Point 2: Supported.** This could be good as well based on the financial statement submitted by both parties. If the spouse refuses to submit a financial statement use deeming provisions. In many cases where there is financial abuse it takes several hearings and interim orders before duty of disclosure obligations can be enforced delaying the consideration of spousal maintenance.

4 Getting Advice and Support

Proposal 4–1 – Families Hubs

The Australian Government should work with state and territory governments to establish community-based Families Hubs that will provide separating families and their children with a visible entry point for accessing a range of legal and support services.

Not Supported. Is this really necessary and the best approach? Is this intended to replace Relationships Australia and FRC's or duplicate them? Does it duplicate the Family Relationships Advice Line? Family Relationships Online? Or is it a proposal to roll all of those things into one?

These Hubs should be designed to:

- **Point 1:** Rather than concentrating support into hubs it would be better to provide resources that can be used to provide more support to existing services to identify the person's safety, support and advice needs and those of their children;
- **Point 2:** Rather than concentrating support into hubs that someone at risk wouldn't be able to visit without fear it would be better to provide more training in safety planning and accredit a "Safe House" type program throughout the community. You could provide training and a street front sign so that people who are experiencing family violence can approach an existing service in their town run by non-family law professionals. For example, the florist, chemist, doctor or hairdresser could be identified as a family violence "safe house" to help them with a templated safety plan and referral into existing specialist family violence services in their town.

- **Point 3:** you don't need to build Families Hubs to connect clients with relevant services
- **Point 4**: Does this mean that you are proposing that a social work support person style arrangement is used for the Families Hubs? It isn't needed for many clients and the others should be supported more flexibly not required to travel to a Families Hub.

Proposal 4–2 – Use of digital tech within families hubs

Not Supported. The proposal for families hubs is a step back in time and not a good approach.

Make use of existing digital tools such as Family DOORS commissioned by the Attorney Generals Department and provided for free to the industry by Relationships Australia https://familydoors.com/

Build capability in the community and not buildings
https://www.familyrelationships.gov.au/talk-someone/advice-line

Proposal 4–3 – Families Hubs services

Not Supported.

The whole proposal for Families Hubs is not going to substantially advance the safety and wellbeing of separating families and their children while supporting them through separation.

Creating buildings that contain all of the services listed is not going to be viable in smaller centers and will just compete against other services and private practitioners.

This would be a lot of money going into an old fashioned and constrained service delivery model. The proposal is like building a Family Law Shopping Centre that you want people to travel to. That model of service delivery is no longer viable.

It might sound good on paper but it would very soon become as constrained as the current system.

A better alternative is to build a more connected system through information to find the services, education and accreditation in family law for specialists in specific types of help such as those listed as being out-posted to hang out in your Families Hubs.

Better to support the existing services (public and private) and provide subsidized services via vouchers available from the government for those experiencing hardship. This would use resources more judiciously to support those most in need with fully funded services and referral out to other services where people can afford to pay.

The government should be in the business of providing safety net services, ensuring that people have visibility about which service providers are trained and accredited, enforcing standards for services to these most vulnerable of clients. Those who can afford to pay for their services should do so.

Proposal 4–4 – Locally appropriate

Not Supported. Local service providers should provide the services not be designing Families Hubs.

All of these organisations could be provided with information about the family law system, resources developed in accordance with other parts of this proposal and support their clients.

I don't see the benefit of creating hubs. People don't really want to travel to a family law hub to access services. It would be much better to upskill the workers in the organisations they are already accessing to better understand and support family law and family safety requirements.

Spend the money on supporting the connection of existing services and filling needs gaps rather than duplicating what is already in place and creating more competition for independent, accredited professionals who are providing locally appropriate services.

Proposal 4–5 – Expand FASS

Not Supported. Client feedback on the current Family Advocacy and Support Service (FASS) is poor. This proposal assumes that the evaluation is going to be positive. Ensure that appropriate client focused terms of reference are established for any evaluation.

Based on our clients experience this program does provide some help for clients but a review of whether it really is meeting their needs should be done before extending it.

Anecdotally the advice is not always strategic and taking into account the larger picture of their full requirements, especially in terms of the jurisdictional differences of the family law and family violence systems.

Proposal 4–6 – FASS Case Management

Not Supported: Vulnerable clients do need the support of a case worker but expanding the FASS system does not appear to be the best way to achieve this**.** Tapping into and expanding the resources and family law knowledge of case workers in family violence, Drug and Alcohol support services would be a better and more appropriately resourced approach.

Proposal 4–7 – FASS Service duration

Supported

Proposal 4–8 - FASS

Supported. See comments regarding evaluation.

5 Dispute Resolution

Proposal 5–1 – Move reg 25 out of FDR Regs.

Supported however it should be repeated in the regs not removed from them.

Proposal 5–2 - new provision reg 25

Not Supported

This is something that relates to imbalance of power in FDR and should already be considered by FDRP's. It could be clarified by being listing as one of the sources of imbalance of power.

An imbalance of current understanding of relevant financial arrangements need not be a source of automatic not appropriate for FDR.

Referral for specific Legal Advice, specific Financial Advice and Lawyer Inclusive FDR are all ways of addressing a knowledge imbalance. As is the family law information that the FDRP should be providing to the clients.

It should not be a blanket reason for not proceeding with FDR as there is generally an imbalance of financial knowledge.

Proposal 5–3 - FDR for property

Supported.

The *Family Law Act 1975* (Cth) should be amended to require parties to attempt family dispute resolution prior to lodging a court application for property and financial matters along with a clarification in the act about the grounds for spousal maintenance.

There should be a limited range of exceptions to this requirement, including:

- **Point 1: Supported.** Agreed. This should be an exemption and feed into the provisions for a registrar to review an application for spousal support or an administrative process in the court. Greater clarity in the act would lead to better legal advice about spousal maintenance and may reduce the number of cases where going to court for interim financial orders is urgent.
- **Point 2: Supported.** The presence of third parties or trusts would generally require greater levels of disclosure and the complexity would generally involve the need for a modified approach to family dispute resolution. Options such as Lawyer Inclusive FDR could negate the need to go to court even in more complex cases. These higher net worth clients are paying unnecessarily huge amounts of money for an adversarial system where a more collaborative approach using appropriate experts in FDR would give better outcomes at a significantly lower cost. This is why there needs to be

greater visibility of independent practitioners and not just the government funded services who are generally staffed by people without the understanding of more complex financial situations.

- **Point 3: Not Supported.** Imbalance of power is not the best way to word this. Imbalances of power can be addressed in the FDR process in a number of ways. This should be worded "safety concerns or an unresolvable imbalance of power including due to family violence or non-disclosure."
- **Point 4: Not Supported.** This situation could be dealt with in the inbalance of power clause. Where there are reasonable grounds to believe non-disclosure may be occurring a property version of the section 60i Certificate could be issued to the court that a party has refused to disclose assets (to the knowledge of the FDRP)
- **Point 5: Not Supported.** The issue of whether one party has attempted to delay or frustrate the resolution of the matter should not be a reason to avoid the requirement to participate in FDR. They should be invited to FDR and a certificate issued if they refuse to participate or do not participate within reasonable timeframes.
- **Point 6: Supported.** where there are allegations of fraud such as the supply of fraudulent documents or hiding of assets. If a party claims the other is disclosing false information they could be issued a FDR certificate or an exemption (especially if there is urgency involved)

Proposal 5–4 - Genuine Steps to Resolve & Costs

Not Supported: should include FDR or exemption.

The *Family Law Act 1975* (Cth) should be amended to specify that a court must not hear an application for orders in relation to property and financial matters unless the parties have lodged a **FDR Certificate or exemption with a genuine steps statement** at the time of filing the application. The relevant provision should indicate that if a court finds that a party has not made a genuine effort to resolve a matter in good faith, they may take this into account in determining how the costs of litigation should be apportioned.

This would be a good provision to keep parties and their lawyers more settlement focused even if they are seeking an exemption from FDR

Proposal 5–5 – FDR Certificate for Property Matters

Supported however.

The *Family Law Act 1975* (Cth) should include a requirement that family dispute resolution providers in property and financial matters should be required to provide a certificate to the parties where the issues in dispute have not been resolved. The certificate should indicate that:

- **Point 1: Supported** the matter was assessed as not suitable for family dispute resolution;
- **Point 2: Not Supported.** Should read "the person to whom the certificate was issued had attempted to initiate a family dispute resolution process but the other party has ~~r~~refused to participate or failed to attend. If they have not responded it is possible that the contact information was incorrect. If there is no response, the person

seeking to initiate should be required to submit a an exemption and Genuine Steps Certificate not a FDR one. A FDR practitioner should not be issuing a certificate if they have had no contact with the other party.

- **Point 3: Not Supported.** the parties had commenced family dispute resolution and the process had been terminated; **this is ambiguous. It would be better to standardize to "Genuine Effort" as with parenting or that the FDR determined it was inappropriate to continue.**
- **Optional Point:** the FDR process was terminated due to a failure of full and frank disclosure by (name of party who failed to disclose) This should be identified and be considered with regards to costs.
- Point 4: ~~the matter had commenced and concluded with partial resolution of the issues in dispute.~~ This should be the same wording as used on s60i "genuine effort" and what is the relevance of partial resolution of the issues?
- **Optional Point:** Could consider another clause of "Failure to provide or consider a settlement proposal" In other words for situations where a party would not come up with a proposal. If they couldn't due to lack of financial literacy that would be an unsuitable certificate but if they simply refused that could be indicated to the court on the certificate and used to consider costs.

Question 5–1

The 12 months / 24 months is arbitrary and often people are not ready or able to fully negotiate their property settlement in this timeframe. That said it is important to have a timeframe so that it is not open ended.

A modification could be that if both parties agree then there is no need for a hearing to determine if the matter can be heard. If a party believes that it is not appropriate but often both were not ready in the time frame and the current requirement to seek leave of the court is an unnecessary further delay and cost.

The clock should stop if FDR or the application process for Consent Orders has commenced. The process to negotiate their settlement agreement and then apply for Consent Orders can push past the deadline if they start near the end of the 12 months/ 2 year time limit.

Proposal 5–6 – Full and Continuing Disclosure

Supported. The *Family Law Act 1975* (Cth) should set out the duties of parties involved in family dispute resolution or court proceedings for property and financial matters to provide early, full and continuing disclosure of all information relevant to the case.

Proposal 5–7 – Consequences of non-disclosure

Supported. This would be good to impose clearer and greater sanctions. Guidance in the form of educational case studies as to how this would be taken into account would help parties to understand the dangers of failing to comply.

Question 5–2

Should the provisions in the *Family Law Act 1975* (Cth) setting out disclosure duties be supported by civil or criminal penalties for non-disclosure?

Consequences such as those outlined above if applied by the court quickly could be sufficient. Imposing penalties in excess of the costs and consequences to the property settlement may be an excessive approach.

The major benefit that people get from non-disclosure is delaying the court case so giving less chances (repeated mentions) would help.

If one party has evidence of the other parties assets there could be an onus on the party who is suspected of non-disclosure to prove that their spouses estimate is incorrect and if they do not then it will be deemed to be correct. That would flush out documentation more quickly you would assume.

Proposal 5–8 - Advisors obligations to inform

Supported. This further clarifies the obligations and consequences of non-disclosure and could help frighten people into disclosing fully.

Question 5–3

Is there a need to review the process for showing that the legal requirement to attempt family dispute resolution prior to lodging a court application for parenting orders has been satisfied? Should this process be aligned with the process proposed for property and financial matters?

Yes. A process similar to the one proposed in the Genuine Steps and Costs should be implemented for parenting to prevent so many parenting cases bypassing FDR and going straight to court.

Lawyers should demonstrate that they have made a genuine effort to resolve the dispute with a proposal for settlement that is required to be submitted during the process to apply for court orders for both parenting and property.

Judges should be required to read the s60i Certificate and actually apply costs if there was a refusal to participate leading to no other option than to go to court.

Proposal 5–9 – Improve culturally appropriate Services

Supported. This could be achieve by providing an accreditation that practitioners could have to indicate that they have successfully completed training in Culturally Appropriate Services. This would make it desirable for practitioners to upskill and visible to the community. Complaints about inappropriate services could be made to the regulating body.

The dot points don't seem totally aligned to the intro text of this proposal.

This should include:

- **Point 1: Not-Supported.** It would be better to upskill the existing services and accredit practitioners rather than segregating culturally appropriate services where ever

possible and providing training in family dispute resolution to those services that are already culturally appropriate. This would support the Legal and FDR Industry, would help resources stretch further for people who do not have the money to pay for services and assist non-government funded not-for-profits such as Interact Support to provide services to our niche in the family law system.

- **Point 2: Supported.**

The is the need for a greater alignment between Family Dispute Resolution and financial counselling / financial advice including the possibility of incorporating a model where a neutral financial specialist provides information into the process in the same way a child specialist might in a parenting matter. FDRP's should be heavily encouraged to support clients getting specific legal advice.

At Interact our practitioners are required to ask clients what their advice was not just if they have had advice and to refer them to legal advice if they are unable to state what it is that they were advised.

The legal advice that is part of community legal centres and FRAL is generally inadequate for the needs of people going to FDR. This is because they provide generic information that is not tailored to the clients specific circumstances.

Interact refers clients to independent family lawyers who provide a legal advice and strategy session based on information provided by the client which includes their family law "vital statistics" and provides them with the

- WATNA (worst alternative to a negotiated agreement) i.e. what is the worst that a judge is likely to order?
- BATNA (best alternative to a negotiated agreement) i.e. what is the best they the judge is likely to order?
- MLATNA (most likely alternative to a negotiated agreement) i.e. What is the most likely outcome if they went to court?
- How long is it likely to take to get an order out of the court they would be going to?
- How much is it likely to cost to take the matter to court based on other recent clients with similar cases?

With this information on hand clients are much more likely to reach a resolution in FDR than those who call up the FRAL or drop into a Community Legal Service or talk to a duty lawyer who does not do family law cases.

- **Point 3:** we'd support amendments to existing funding agreements and practice agreements to allow clients greater choice about the services and models of family dispute resolution that they access.

  For example at the moment if they are using legal aid they are forced into a model that is not culturally appropriate.

Providing funding or vouchers so that services could contract local legal practitioners to provide these advice services would be a much better option than paying lawyers who don't know the answers to the questions they are asked because they don't really know the family law act.

Proposal 5–10 –LADR guidelines

Supported. Interact Support would be very interested in being involved in this consultation process.

These Guidelines should include:

- **Point 1: Supported**. There needs to be more appropriate guidance as to when LADR should be used and the models used, especially in matters involving family violence and other risk related issues; LADR should not be restricted to shuttle mediation in a venue as often used. A FDR process via Video Mediation or Shuttle Video Mediation is much more suited to cases where there has been family violence. Both parties could be in the office of their respective lawyers. **Victims of family violence should not be forced to travel to a building where they know that someone who has abused them in the past is.** This is traumatic even if they are not required to be in the same room and is entirely unnecessary. People should not be excluded from FDR because of family violence (if they want to use the process) but they should be offered an appropriate process.
- **Point 2: Supported.** There is the need for effective practice in screening, assessing and responding to risk arising from family violence, child safety concerns, mental ill-health, substance misuse and other issues that raise questions of risk; Screening should be done by a qualified practitioner (not an administrative assistant), it should use a risk screening tool such as DOORS or CRAF and it should involve a conversation not just filling out a form.
- **Point 3: Supported.** the respective roles and responsibilities of the professionals involvedneed to be clarified by the meeting facilitator (the FDRP) and the roles agreed by all parties.
- **Point 4: Supported.** the application of child-inclusive practice needs to be supported through an accreditation process for child-inclusive practitioners that includes evidence that they have work experience as part of their training or on the job experience.
- **Point 5: Supported.** the application of approaches to support cultural safety for Aboriginal and Torres Strait Islander people needs to be supported by resources, training and accreditation for FDR Practitioners and lawyers to provide evidence of their understanding of cultural safety
- **Point 6: Supported.** the application of approaches to support cultural safety for families from culturally and linguistically diverse communities needs to be supported by resources, training and accreditation for FDR Practitioners and lawyers to provide evidence of their understanding of cultural safety
- **Point 7: Supported.** the application of approaches to support effective participation for LGBTIQ families needs to be supported by resources, training and accreditation for FDR Practitioners and lawyers to provide evidence of their understanding of emotional safety
- **Point 8: Supported**. the application of approaches that support effective participation for families where parents or children have disability. This is important and needs to be supported by resources and professional development support for FDR Practitioners and lawyers.
- **Point 9: Supported.** practices relating to referral to other services, including health services, specialist family violence services and men's behaviour change programs; This

is important and needs to be supported by improving the referral resources available to those working in the system. The proposals around a comprehensive database including government funded and accredited private practice professionals and programs would improve this

- **Point 10: Supported**. practices relating to referrals from and to the family courts; and How referrals to and from the court should be made should be transparent and easy to understand. **The process to get a program such as the Interact Post Separation Parenting Program approved for referral by the court is mystifying and unclear.** This needs significant improvement as it is not standardized or accessible.
- **Point 11: Supported** information sharing and collaboration with other services involved with the family. The use of processes such as Family Group Conferencing and other more inclusive approaches for parenting should be considered when creating a framework. Other sections of the proposals for the review address this more comprehensively.

Proposal 5–11 - Guidelines

Supported.

6.Reshaping the Adjudication Landscape

Question 6–4

What other ways of developing a less adversarial decision-making process for children's matters should be considered?

In Parenting matters where one or both of the parents are high conflict but not high levels of family violence include a diversion program such as used in countries like the US to provide them with education and family counselling and the opportunity to participate in FDR again before their matter goes to trial.

The model we are family with is court ordered using the New Ways for Families Course from the High Conflict Institute in the US and has seem very promising results in reducing conflict, parental alienation and compliance with orders.

The program has three phases:

- **Individual Coaching** - Parents participate in post-separation parenting using the New Ways for Families course which teaches 4 big skills (managed emotions, moderate behaviour, flexible thinking and checking yourself),
- **Family Counselling** - then they participate in family counselling sessions with the child and finally
- **Family Dispute Resolution** - they go to a FDR with a FDRP who is trained in the New

Ways for Families approach to negotiating parenting plans.

If agreement is reached it can become orders by consent. If not they have to return to court and explain to the Judge why they were unable to reach agreement.

We are able to arrange a video meeting with Bill Eddy in the US to explain more about how the program is used and court ordered in the US and Canada and the statistics on how it is successfully leading to less adversarial and more quickly resolved parenting order cases.

Proposal 6–9 – Post-Order Parenting Support

Not Supported:

The Australian Government should develop a standard for post-order parenting support service to assist parties to parenting orders to implement the orders and manage their co-parenting relationship.

They should do this by making it clear what is required to be included in such a program including in relation to education about child development and conflict management, negotiation and dispute resolution skills and decision making skills in relation to implementation of parenting orders.

The government should set the standards for these programs and then support families with a way for program providers, government funded and private programs to be accredited.

There needs to be a way for programs to be evaluated and put on an approved programs list. We have a program that meets these requirements but currently have no way to get it accepted as court ordered.

This means that there is a supply constraint caused by the uncertainty of whether a program complies and is acceptable even though there is a high demand.

We do not support the government creating a single program. That would stifle innovation and the ability to adapt programs to make them culturally appropriate.

Not everything has to be developed and paid for by the government.

By developing and locking up the IP on programs the government actually inhibits the work of the sector.

Deliverers of the program should have appropriate qualification and knowledge set by using either an existing unit or skill set from a qualification or make a new one which is available for training along with guidelines.

When setting guidelines we encourage an open mind about how these services can be delivered such as online learning plus individual or group coaching online or in person as well as group workshops.

It is important to focus on objective, content and outcomes not method.

Proposal 6–10 – Intake Process

Not Supported. The standards should be set by the Australian Government to develop intake assessment processes not a post-order parenting support service.

The government could provide resources to support multiple organisations to offer post order parenting support not create their own.

The resource constraints exist because there are no standards. Spend the money on creating quality resources and an accreditation system to identify courses and programs that meet the standards.

Proposal 6–11 – Accreditation and Training for Post-Order Parenting Support

Not Supported.

The proposed Family Law Commission (Proposal 12–1) should develop accreditation and training requirements for professionals delivering post-order parenting services. Not create their own service.

As above any accreditation and training should align with the ASQA framework and could include adding additional units to existing qualifications which could be taught as a skill set.

The governments role would be to set the standard of what should be included in the program and the level of training.

- Assess suitability for Post-Separation Parenting Program
- Deliver Post-Order Parenting Support
- Review Post-Order Parenting Support Program

Organisations such as Interact Support who are staffed by FDR Practitioners would be able to require those wanting to deliver Post-Order Parenting Support programs under a court ordered program to have the required skillset and provide a compliant program.

There is no benefit in the government creating their own program. Make resources that can be plugged into anyone's program and support organisations that are already working with people to be able to train and resource people to deliver it.

You will get much better results if the families are supported by a trusted organization not one they are ordered to especially if they are from a culturally diverse background.

7. Children in the Family Law System

Proposal 7–1 – Information for children

Supported Information about family law processes and legal and support services should be available to children in a range of age-appropriate and culturally appropriate forms.

The idea that you are protecting children from the consequences of their parents family law situation by not providing them with information is poorly considered. The opportunity for children and young people to access age appropriate, factual information would be very helpful.

Proposal 7–2 – hub counselling and peer support groups

Not-Supported. The proposed Families Hubs is a bad idea. **T**he idea of supporting counselling services and peer support groups is good.

Counsellors working with children in the family law system should be required to has some family law system knowledge which is not always the case. Use government resources to establish an accreditation system for counsellors that all counsellors throughout Australia could apply for based on completion of training in the family law system at the level needed to be understood by counsellors.

It would be better to resource programs within existing groups and organizations working with children.

Proposal 7–3 – expressing views

Supported. The *Family Law Act 1975* (Cth) should provide that, in proceedings concerning a child, an affected child must be given an opportunity (so far as practicable) to express their views.

This needs to be carefully worded. Children should have the opportunity to express their views, to have their views considered and if they are not respected and reflected in the orders to be provided with feedback by the professional that they provided their views to.

Views do not mean that the child should be burdened with making the decision about where they live and should be about what they are having trouble with e.g. conflict between their parents, uncertainty about where they are going to be etc unless they have definite opinions about factors such as where they live. The earlier provision to make this the number one priority should follow the requirement that they are safe.

Proposal 7–4 – Children's views in FDR

Supported. The *Family Law Act 1975* (Cth) should provide that, in any family dispute resolution process concerning arrangements for a child, the affected child must be given an opportunity (so far as practicable) to express any views about those arrangements.

This is a brilliant idea but has to be resourced.

Is the proposal to move to a Family Group Conference Style Family Dispute Resolution Process

where the child and other family members participate in a family meeting to discuss parenting plans? We would be very interested in trialing this approach.

If the proposal is to have child inclusive practitioners meet with the child in every parenting mediation there will be the need for more training for Child Inclusive Practitioners (CIP) as there are not enough people who feel qualified to do this work.

What about the financial aspect of this.

In a typical model there would be four meetings

- 1 with each parent
- 1 with the child
- The CIP participating in a FDR Meeting
- Plus the ideal would be a 2nd with the child to de-brief after the FDRP process

This is a significant cost burden to families who may not be very well resourced.

What about when people return to FDR to review and adjust parenting plans. Would the child inclusive process be repeated each time?

Proposal 7–5 - Guidelines

Supported. The Attorney-General's Department (Cth) should work with the family relationship services sector **and the professional associations of independent FDRP's** to develop best practice guidance on child-inclusive family dispute resolution, including in relation to participation support where child- inclusive family dispute resolution is not appropriate.

This would be great especially if the guidelines informed the qualification in the FDR Course or even better there was an accreditation for CIP's based on a statement of attainment.

Current training environment is that people are being trained without a requirement for a practical aspect of working with a child and this should not be acceptable as an accredited CIP practitioner.

Not sure what you mean by "participation support where child-inclusive family dispute resolution is not appropriate"

We would like to be included in the consultation as we would like to advocate for the inclusion of courses for parents such as New Ways for Families to be included in a framework especially as preparation for parents to be ready to engage in a CIP Process and accept the feedback from their child.

Proposal 7–6 - Risk of child involvement

Supported. There should be an initial and ongoing assessment of risk to the child of participating in family law proceedings or family dispute resolution, and processes put in place to manage any identified risk.

Proposal 7–7 – Voluntary involvement

Supported. Children should not be required to express any views in family law proceedings or family dispute resolution.

It must always be voluntary and even an invitation to participate must be considered in terms of risk to the child.

Proposal 7–8 - Child Advocate

Not Supported due to insuffient rigor in the requirement.

Children involved in family law proceedings should be supported by a 'children's advocate': a social science professional with training and expertise in child development and working with children. **(Not sufficient - should be role specific training and accreditation)**

Supported The role of the children's advocate should be to:

- explain to the child their options for making their views heard
- support the child to understand their options and express their views;
- ensure that the child's views are communicated to the decision maker; and
- keep the child informed of the progress of a matter, and to explain any outcomes and decisions made in a developmentally appropriate way.

This child advocate role could be another role for the Child Inclusive Practitioners and included in their accreditation requirements.

Having a generic social science degree will not automatically equip them for this role.

The guidelines and requirements should be part of a skillset certificate and accreditation by the accrediting body.

Proposal 7–9 – Advocacy role

Supported. Where a child is not able to be supported to express a view, the children's advocate should:

- support the child's participation to the greatest extent possible; and
- advocate for the child's interests based on an assessment of what would best promote the child's safety and developmental needs.

If the child advocate is the child inclusive practitioner, they worked with during the FDR process where possible that would allow a continuity of understanding and relationship.

How this advocacy would occur would need to be made clear in the legislation and the guidelines for the role but would avoid the child trying to develop trust with multiple people who are supposed to be supporting their safety and interests.

Proposal 7–10 – Child's legal representative

Supported but they should be qualified. The *Family Law Act 1975* (Cth) should make provision for the appointment of a legal representative for children involved in family law proceedings (a 'separate legal representative') in appropriate circumstances, whose role is to:

- gather evidence that is relevant to an assessment of a child's safety and best interests; and
- assist in managing litigation, including acting as an 'honest broker' in litigation.

What training would they have to have to understand the best interests provisions? How are they going to represent the child's safety and best interests unless they meet with the child or the child advocate? This should be clarified in the act.

Question 7–1

In what circumstances should a separate legal representative for a child be appointed in addition to a children's advocate?

The child's legal representative seems like a variation on the current ICL program.

Thoughts about when they should be appointed include when there are self-represented litigants in the case, when there are accusations of family violence (the child advocate will be talking to the child about what their thoughts are not grill them on family violence)

Question 7–2

How should the appointment, management and coordination of children's advocates and separate legal representatives be overseen? For example, should a new body be created to undertake this task?

If the child advocate is also a child inclusive practitioner, they may have already got a relationship with the child. That should continue if the child wants them to advocate for them.

If not the person could be allocated from a register maintained by the accreditation body who are willing and able to provide services to the specific court.

There should be a requirement regarding qualifications to become a Children's Advocate, working with children and good character requirements, insurance, complaints handling body, professional development and an application process the same was as with FDRP.

Separate Legal Representatives should be a variation on the process used to appoint ICL's however there should be a requirement for some training for them to be able to fullfil the child safety and best interests part of the role.

The roles need to be clarified further before the practical elements of appointment and payment for the services can be locked in.

Question 7–3

What approach should be taken to forensic issues relating to the role of the children's advocate, including:

- *admissibility of communications between the children's advocate and a child; and*
- *whether the children's advocate may become a witness in a matter?*

There should be the same mandatory reporting obligations for a child advocate as for a FDRP. Other than that if the child's participation in the court process is to be allowed to be voluntary then they must give permission for the information that the child advocate releases to be released.

A child advocate should not be the same sort of role as a family report writer who makes decisions based on their own evaluation of the situation.

A child advocate should be providing to the court the information that the child wants the court to know. If they are providing a report they should have an obligation to show a draft of their report to the child before they are authorized to submit it to the court.

If the child permits it the child advocate should be able to become a witness to the matter but be able to decline to answer questions that they are not authorized to respond to.

Proposal 7–11 – Role of the Child Advocate

Supported Children should be able to express their views in court proceedings and family dispute resolution processes in a range of ways, including through:

- a report prepared by the children's advocate; **see comments above about the requirement to check it with the child before submitting it.**
- meeting with a decision maker, supported by a children's advocate; or
- directly appearing, supported by a children's advocate.

This would be excellent and the child advocate role could be used instead of the current model of child inclusive practice.

The child would attend Family Dispute Resolution with the child advocate and speak directly with their parents and then wait outside with the child advocate if they don't want to be part of the full negotiation. This could be done in person or they could call into an online FDR session from the child advocates office.

The child could attend Family Court but it is a very tense and stressful environment. It would be better to make arrangements for the child to attend the office of the child advocate and appear in the court via video link for their appearance.

The court would have to improve their time management and case organization for this to be possible but it could be done as a one on one conversation with the judge supported by

the child advocate rather than in full hearing.

Proposal 7–12 – Guidance for Judicial Officers

Supported. Guidance should be developed to assist judicial officers where children seek to meet with them or otherwise participate in proceedings. This guidance should cover matters including how views expressed by children in any such meeting should be communicated to other parties to the proceeding.

There should be standardized guidelines to assist judicial officers with this new process

Proposal 7–13 - Advisory board

Supported. There should be a Children and Young People's Advisory Board for the family law system. The Advisory Board should provide advice about children's experiences of the family law system to inform policy and practice development in the system.

This could be good. Even better would be a website and information collection point where children can directly provide their stories to the advisory board. This website should be used by Child Advocates with the involvement of the child to help the child to provide their feedback**.**

8. Reducing Harm

Proposal 8–1 - Definition

Supported. The definition of family violence in the *Family Law Act 1975* (Cth) should be amended to:

- clarify some terms used in the list of examples of family violence and to include other behaviours (in addition to misuse of systems and processes (Proposal 8– 3)) including emotional and psychological abuse and technology facilitated abuse; and
- include an explicit cross-reference between the definitions of family violence and abuse to ensure it is clear that the definition of abuse encompasses direct or indirect exposure to family violence.

Question 8–1

What are the strengths and limitations of the present format of the family violence definition?

Limitation – the current definition limits family violence to "coerces, or controls or causes to be fearful" and doesn't really capture the psychological abuse that undermines a persons human rights and ability to self-determine without overt violence.

Strengths – providing examples of behaviour is helpful and does expand the 4AB (1) definition.

Question 8–2

Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?

The wording could be improved for clarity. I'm not sure if technology facilitated abuse is a type of violence as much as a how it is delivered but it helps to ensure that it is recognized as being a type of family violence.

What about allowing family violence such as abuse by one child against another?

Proposal 8–2 - Research on the definition

Not Supported. The Australian Government should commission research projects to examine the strengths and limitations of the definition of family violence in the *Family Law Act 1975* (Cth) in relation to the experiences of:

- Aboriginal and Torres Strait Islander people;
- people from culturally and linguistically diverse backgrounds; and
- LGBTIQ people.

Seems like a very limited research project. What about research into the willingness of the family law system to uphold the provisions to protect people from family violence regardless of the nuances of definition?

Proposal 8–3 - Misuse of the legal system

Not Supported. The definition of family violence in the *Family Law Act 1975* (Cth) should **not** be amended to include misuse of legal and other systems and processes in the list of examples of acts that can constitute family violence in s 4AB(2) by inserting a new subsection referring to the 'use of systems or processes to cause harm, distress or financial loss'.

This is a difficult to define form of abuse so if it was implemented then it needs good support material. Any family court application will cause harm, distress and financial loss so it will be something that is very frequently claimed by parties.

In cases where the court gets it wrong people do have to go back to court to try and get their matters considered and that is not intended to be abusive. It would seem that more work could be done on the vexations litigant sections of the act and also more oversight about multiple court actions in multiple courts which would fall into the definition of this type of abuse.

Proposal 8–4 - Vexatious

Supported. The existing provisions in the *Family Law Act 1975* (Cth) concerning dismissal of proceedings that are frivolous, vexatious, an abuse of process or have no reasonable prospect of success ('unmeritorious proceedings') should be rationalised.

At the moment it is very difficult for people who are being subjected to this type of abuse to

be protected from continuously being drawn back into the courts.

Proposal 8–5 – Considerations

Supported. The *Family Law Act 1975* (Cth) should provide that, in considering whether to deem proceedings as unmeritorious, a court may have regard to evidence of a history of family violence and in children's cases must consider the safety and best interests of the child and the impact of the proceedings on the other party when they are the main caregiver for the child.

This would be wise also the number of court cases there have been including in civil courts as it is often not just the family and family violence courts.

Question 8–3

Should the requirement for proceedings to have been instituted 'frequently' be removed from provisions in the Family Law Act 1975 (Cth) setting out courts powers to address vexatious litigation? Should another term, such as 'repeated' be substituted?

Neither are particularly clear. Repeated is slightly better.

Question 8–4

What, if any, changes should be made to the courts' powers to apportion costs in s 117 of the Family Law Act 1975 (Cth)?

- Improve the language to improve clarity and reduce the number of subsection references
- Clarify the teams more specifically especially in regards to failing to comply with disclosure obligations, failing to comply with interim orders etc.

Proposal 8–6 - Protected Confidences

Supported. The *Family Law Act 1975* (Cth) should provide that courts have the power to exclude evidence of 'protected confidences': that is, communications made by a person in confidence to another person acting in a professional capacity who has an express or implied duty of confidence.

The provisions seem reasonable and presumably will relate to a child advocate.

Proposal 8–7 – Working group on use of sensitive records

Supported. Working group should also include professional bodies for workers in the industry who would be affected

9. Additional Legislative Issues

Proposal 9–1 – Supported decision making for disabled people

Supported. There needs to be a better level of support for people with physical and/or mental disabilities interacting with the family law system.

This could include making available good quality resources for those working in the system to use to communicate and share information.

Proposal 9–2 - Roles

Supported. The Australian Government should ensure that people who require decision making support in family law matters, and their supporters, are provided with information and guidance to enable them to understand their functions and duties.

There needs to be information and education available how to support the ability to make decisions.

Proposal 9–3 – Litigation Representatives

Supported. The *Family Law Act 1975* (Cth) should include provisions for the appointment of a litigation representative where a person with disability, who is involved in family law proceedings, is unable to be supported to make their own decisions. The Act should set out the circumstances for a person to have a litigation representative and the functions of the litigation representative. These provisions should be in a form consistent with recommendations 7–3 to 7–4 recommendations of ALRC Report 124, *Equality, Capacity and Disability in Commonwealth Laws*.

Yes but this should be drafted based on an understanding that disability isn't a clearly defined on/or matter. Someone may be unable to make their own decisions one day or at a time of the day but able to on another occasion or visa versa. The need for ongoing monitoring and review is needed.

Proposal 9–4 - practice notes

Not-Supported. Family courts should develop practice notes explaining the duties that litigation representatives have to the person they represent and to the court.

Should be a bit more robust than that and include the same level of requirement as for a children's lawyer in terms of legal qualifications and some level of education into disability issues. Litigation Representatives (the practitioners providing the service to the client) should be accredited.

Proposal 9–5 - authority

Supported. The Australian Government should work with state and territory governments to facilitate the appointment of statutory authorities as litigation representatives in family law proceedings.

The practitioner working for the authorities must be accredited to represent the clients.

Proposal 9–6

Supported. The Australian Government should work with the National Disability Insurance Agency (NDIA) to consider how referrals can be made to the NDIA by family law professionals, and how the National Disability Insurance Scheme (NDIS) could be used to fund appropriate supports for eligible people with disability to:

- build parenting abilities;
- access early intervention parenting supports;
- carry out their parenting responsibilities;
- access family support services and alternative dispute resolution processes; and
- navigate the family law system.

Yes. Greater connection between family law services and the NDIA would be helpful for those with disabilities for family law but also family violence abuse under state legislation. This should be done in consolation and collaboration with state governments.

Make use of the directories that should be developed of local, accredited professionals and accredited services to make this connection process easier.

Proposal 9–7 – Support for disabled people

Supported. The Australian Government should ensure that the family law system has specialist professionals and services to support people with disability to engage with the family law system.

Creating hubs you expect people to travel to will not be helpful.

Better to provide a training requirement and accreditation system to encourage existing professionals to upskill to work with people with disability and make it easier for NDIS providers to locate them and engage with them. Greater use of technology such as video mediation and resourcing organisations like Interact Support to provide Consultations with customized information about the family law system options would be helpful.

Creating educational resources in video format for use by training organisations and professional bodies to help with professional development would be helpful.

Proposal 9–8 – More inclusive definition of family

Supported The definition of family member in s 4(1AB) of the *Family Law Act 1975* (Cth) should be amended to be inclusive of Aboriginal and Torres Strait Islander concepts of family.

Consult with ATSI communities to develop the definition.

Question 9–2 - What should it say?

How should a provision be worded to ensure the definition of family member covers Aboriginal and Torres Strait Islander concepts of family?

Consult with ATSI communities

10 A Skilled and Supported Workforce

Proposal 10–1 – Workforce Capability Plan

Supported. The Australian Government should work with relevant non- government organisations and key professional bodies to develop a workforce capability plan for the family law system.

This would be a good idea. Consult widely and make sure that the plan links back to the qualification system

Much of this work has already been done in the appropriate Qualifications e.g. CHC81115 Graduate Diploma of FDR but it is not being used appropriately

The current reliance on a generic undergraduate degree is not good. Often appropriate services could be provided with a lower level but skills based training and in other cases post graduate qualifications should be required or post graduate plus a specialist accreditation.

Map it out and make it clear to the community as part of the awareness campaign and also to professionals so that they can develop their careers with greater confidence.

Proposal 10–2 - Identify

Supported. The workforce capability plan for the family law system should identify:

- the different professional groups working in the family law system;
- the core competencies that particular professional groups need; and
- the training and accreditation needed for different professional groups.

Make sure that what is already in place is incorporated. There are or could be appropriate units of competence in the VET system for all relevant roles with higher ed creating equivalent courses. All training and accreditation should be competence based and accreditation through the same body.

There needs to be ongoing professional development requirements and not just a one off training course.

Proposal 10–3 – Core Competencies

The identification of core competencies for the family law system workforce should include consideration of the need for family law system professionals to have:

- **Supported.** *an understanding of family violence;* More training is required for lawyers and others who do not currently risk screen adequately such as doctors and support to keep up to date with changes.
- **Supported.** *an understanding of child abuse, including child sexual abuse and neglect;* **.** More training is required for lawyers and other non-specialists on how to identify potential child abuse. Higher level training for child advocates, child inclusive practitioners, supervision and changeover workers etc who work directly with children.
- **Supported.** *an understanding of trauma-informed practice, including an understanding of the impacts of trauma on adults and children*; Especially for judges and lawyers but required for all workers in the system. Psychological abuse often goes unrecognized due to the behaviour of abuse victims being judged rather than understood.
- **Supported.** *an ability to identify and respond to risk, including the risk of suicide;* including self-care for workers impacted by client suicide. We still hear professionals saying things like attempted suicide is "a cry for help" and not treating it as serious.
- **Supported.** *an understanding of the impact on children of exposure to ongoing conflict;* this is required right across the system. Interact Support has a world class program that teaches this information and the information is new or not previously well understood by all of the professionals who have taken the course.
- **Supported.** *cultural competency, in relation to Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities and LGBTIQ people;* There is the need for better training in how to respectfully work with people of different backgrounds and needs.
- **Supported.** *disability awareness;* and how to recognize abuse by carers
- **Supported.** *an understanding of the family violence and child protection systems and their intersections with the family law system.* The level of understanding needed depends on role but all practitioners should understand these two systems. It is already included in FDR training.

Question 10–1 – Other Competencies

Are there any additional core competencies that should be considered in the workforce capability plan for the family law system?

A general understanding of the family law system. We find that often family violence workers have minimal understanding of the family law system and definitions such as best interest of the child.

An understanding of self-determination and human rights. Not all parts of the system uphold these requirements especially when working with vulnerable clients and those with disabilities.

Proposal 10–4 – Training

Not Supported. The Family Law Commission proposed in Proposal 12–1 should oversee the implementation of the workforce capability plan through **specifying training and accreditation** requirements — including cross-disciplinary training—and accreditation of family law system professionals.

The Family Law Commission should not be providing the training. They should specify the training requirements. Where appropriate they should provide components for the training e.g. high quality video material, guidance to professionals etc.

This is the most reliable method of ensuring reach and application. Tap into the existing professional development bodies that most practitioners have. An example of how the government / Family Law Commission can help is to provide quality course outlines and video resources in an open source format to be used as part of the training like the AVERT Family Violence program.

Proposal 10–5 – FDR Property Capability

Supported. In developing the workforce capability plan, the capacity for family dispute resolution practitioners to conduct family dispute resolution in property and financial matters should be considered. This should include consideration of existing training and accreditation requirements.

The current Grad. Dip. FDR assumes that FDR's will conduct property mediation, but the qualification is poorly written in terms of property FDR with little detail.

The training would benefit from a new unit added to the Grad. Dip. on Property Mediation.

Question 10–2 – FDR Property Training

What qualifications and training should be required for family dispute resolution practitioners in relation to family law disputes involving property and financial issues?

Some training providers of the CHC81115 – Graduate Diploma of Family Dispute Resolution such as Mediation Institute are already providing comprehensive training in FDR Property mediations others less so.

Improvements to the Dispute Resolution units by adding a stand alone property mediation

unit that would have to be completed by all FDRP's within a specific amount of time. This is the common practice with the Training and Assessment Qualification and others when changes occur.

Those seeking to work with that qualification are required to complete the new unit or units within a specified timeframe.

There should be more rigor in the FDR and other professional roles in the family law system. We still have practitioners who did a short course in 2008 when the current system was implemented and no upgrade to their training when the qualification was updated (not equivalent) in 2015.

This will provide an opportunity to formalize the re-accreditation requirements for FDRP's.

Proposal 10–6 – Family Violence Training for Lawyers

Supported. State and territory law societies should amend their continuing professional development requirements to require all legal practitioners undertaking family law work to complete at least one unit of family violence training annually. This training should be in addition to any other core competencies required for legal practitioners under the workforce capability plan.

The plan needs to identify clearly what competencies need to be covered in an approved family violence unit.

Proposal 10–7 – Children's Contact Services

Not Supported. The *Family Law Act 1975* (Cth) should provide for the accreditation of Children's Contact Service workers and impose a requirement that these workers hold a valid Working with Children Check.

These workers should hold the relevant units from the Certificate IV in Community Services, a valid working with children's card, insurance and be able to meet good character requirements. The accreditation must be based on training and skills assessment.

Question 10–3

Should people who work at Children's Contact Services be required to hold other qualifications, such as a Certificate IV in Community Services or a Diploma of Community Services?

Yes. They should have as a minimum the skillset from the Cert IV in Community Services. Since the Cert IV in Children's Contact Services Works was superseded in 2015 there is no longer a specialist course. A generic degree or no formal qualifications is not sufficient to understand their obligations in terms of protecting children, supporting contact and transition from contact to not requiring supervision (where appropriate) and in providing evidence to the court.

The old qualification gives a good indication of the necessary competencies which include:

- working effectively with clients with complex alcohol and/or other drug issues

- facilitate changeover
- facilitate and monitor contact
- support families to develop relationships
- recognize and respond appropriately to domestic and family violence
- Work with a child focused approach
- Work with involuntary and mandated clients
- Work effectively with culturally diverse clients and co-workers

Proposal 10–9 – Family Report Writers

Supported. The Australian Government should task the Family Law Commission (Proposal 12–1) with the development a national accreditation system with minimum standards for private family report writers as part of the newly developed Accreditation Rules.

An accreditation system should be put in place and linked with the VET Qualification framework.

Proposal 10–10 – List of Family Report Writers

Supported. The Family Law Commission (Proposal 12–1) should maintain a publicly available list of accredited private family report writers with information about their qualifications and experience as part of the Accreditation Register.

A complaint system is badly needed for these practitioners

Proposal 10–11 – Clarity of Instructions for reports

Supported. When requesting the preparation of a report under s 62G of the *Family Law Act 1975* (Cth), the family courts should provide clear instructions about why the report is being sought and the particular issues that should be reported on.

Proposal 10–12 - Assessor of child care, welfare and development

Not Supported. In appropriate matters involving the care, welfare and development of a child, judges should consider appointing an assessor with expert knowledge in relation to the child's particular needs to assist in the hearing and determination of the matter.

Not ideal. If this person is not already providing support services to the child it is another adult they have to engage with in terms of the family law matter. Should be restricted to the child advocate, childs lawyer and their current professional services providers except in very specific and exceptional circumstances. The Family Report writer should have the qualifications to be able to provide this information to the court.

Proposal 10–13 Reports

Not Supported. The *Family Law Act 1975* (Cth) should provide that, where concerns are raised about the parenting ability of a person with disability in proceedings for parenting orders, a report writer with requisite skills should:

- prepare a report for the court about the person's parenting ability, including what supports could be provided to improve their parenting; and
- make recommendations about how that person's disability may, or may not, affect their parenting.

This is concerning in regards to how this report writer will collect this information and what requisite skill they would need to have. This could not be assessed adequately in an interview in an office.

It would be better to provide education to those working in NDIS services to provide a report similar to a child contact service report to show the situation based on ongoing contact. Where possible.

Proposal 10–14 - ATSI parents

? The *Family Law Act 1975* (Cth) should be amended to provide that in parenting proceedings involving an Aboriginal or Torres Strait Islander child, a cultural report should be prepared, including a cultural plan that sets out how the child's ongoing connection with kinship networks and country may be maintained.

This would be really helpful. Who will be qualified to prepare a report such as this

Question 10–6 - Mandatory report?

? Should cultural reports be mandatory in all parenting proceedings involving an Aboriginal or Torres Strait Islander child?

No. It should only be used when there is a dispute amoung the parents about the child's ability to maintain their connections. Making it mandatory in all cases is likely to be a delay and burden in other cases.

It would be helpful if people capable of producing this report were accredited and able to be identified so that non-court dispute resolution services could engage them as required.

Proposal 10–15 – Staff Wellbeing

Supported. The Australian Government should, as a condition of its funding agreements, require that all government funded family relationships services and family law legal assistance services develop and implement wellbeing programs for their staff.

That would be a good idea. Many already provide supervision and support.

11 Information Sharing

Not an area we need to provide input.

12 System Oversight and Reform Evaluation

Proposal 12–1 – Family Law Commission

The Australian Government should establish a new independent statutory body, the Family Law Commission, to oversee the family law system. The aims of the Family Law Commission should be to ensure that the family law system operates effectively in accordance with the objectives of the *Family Law Act 1975* (Cth) and to promote public confidence in the family law system. The responsibilities of the Family Law Commission should be to:

- **Supported**. monitor the performance of the system; **What criterion for Performance indicators?**
- **Supported** manage accreditation of professionals and agencies across the system, including oversight of training requirements; This would be good as the attorney Generals department don't have the ability to purse inappropriate training providers. Don't re-invent the wheel and make sure that the VET system forms the basis for training.
- **Supported.** issue guidelines to family law professionals and service providers to assist them to understand their legislative duties; Yes and provide the opportunity to seek clarification
- **Supported.** resolve complaints about professionals and services within the family law system, including through the use of enforcement powers; There is a need for improved complaint handing for certain sectors such as family report writers and government funded FDR services.
- **Supported.** improve the functioning of the family law system through inquiries, either of its own motion or at the request of government;
- **Supported**. be informed by the work of the Children and Young People's Advisory Board (Proposal 7–13);
- **Supported** raise public awareness about the roles and responsibilities of professionals and service providers within the family law system; and
- Supported. make recommendations about research and law reform proposals to improve the system.

Proposal 12–2 – Accreditation of Professionals

The Family Law Commission should have responsibility for accreditation and oversight of professionals working across the system. In discharging its function to accredit and oversee family law system professionals, the Family Law Commission should:

- **Supported.** develop Accreditation Rules; They should include qualification and training requirements
- **Supported.** administer the Accreditation Rules including the establishment and maintenance of an Accreditation Register; This should be publicly available and searchable.
- **Supported.** establish standards and other obligations that accredited persons must continue to meet to remain accredited, including oversight of training requirements; Needs to be more rigorous than the current standards where they exist.
- **Supported.** establish and administer processes for the suspension or cancellation of accreditation; and
- **Supported.** establish and administer a process for receiving and resolving complaints against practitioners accredited under the Accreditation Rules.

Proposal 12–3 Powers

The Family Law Commission should have power to:

- **Supported.** conduct own motion inquiries into issues relevant to the performance of any aspect of the family law system;
- **Supported.** conduct inquiries into issues referred by government relevant to the performance of any aspect of the family law system; and
- **Supported.** make recommendations to improve the performance of an aspect of the family law system as a result of an inquiry.

Proposal 12–4 – Awareness of roles within the system

Supported. The Family Law Commission should have responsibility for raising public awareness about the family law system and the roles and responsibilities of professionals and services within the system.

Proposal 12–5 – Information and education for FL professionals

Supported. The Family Law Commission should have responsibility for providing information and education to family law professionals and service providers about their legislative duties and functions. This should be in the form of making available good quality training resources and guidance and probably self-paced online training for base level knowledge that is required by large numbers of individuals.

Proposal 12–6 Research priorities

Supported. The Family Law Commission should identify research priorities that will help inform whether the family law system is meeting both its legislative requirements and its public health goals.

Proposal 12–7 Evaluation

Supported. The Australian Government should build into its reform implementation plan a rigorous evaluation program to be conducted by an appropriate organisation.

Proposal 12–8 Cultural Safety Framework (CSF)

Supported. The Australian Government should develop a cultural safety framework to guide the development, implementation and monitoring of reforms to the family law system arising from this review to ensure they support the cultural safety and responsiveness of the family law system for client families and their children. The framework should be developed in consultation with relevant organisations, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and LGBTIQ organisations.

Proposal 12–9 Cultural Safety Framework detail

The cultural safety framework should address:

- **Supported.** the provision of community education about the family law system;
- **Supported.** the development of a culturally diverse and culturally competent workforce;
- **Not Supported.** the provision of, and access to, culturally safe and responsive legal and support services; and **This should not be segregated. We need to ensure that legal and support services are culturally safe and responsive through training, accreditation and complaint services.**
- the provision of, and access to, culturally safe and responsive dispute resolution and adjudication processes. **This should not be segregated. We need to ensure that legal and support services are culturally safe and responsive through training, accreditation and complaint services.**

Proposal 12–10 Compliance with CSF

Supported. Family law service providers should be required to provide services that are compliant with relevant parts of the cultural safety framework.

Proposal 12–11 Restrictions on publication of family law proceedings

Privacy provisions that restrict publication of family law proceedings to the public, currently contained in s 121 of the *Family Law Act 1975* (Cth) should be maintained, with the following amendments:

- s **Supported.** 121 should be redrafted to make the obligations it imposes easier to understand;
- **Supported.** an explicit exemption to the restriction on publication or dissemination of accounts of proceedings should be provided for providing accounts of family law proceedings to professional regulators, and for use of accounts by professional regulators in connection with their regulatory functions; **Very important especially in regards to complaints about professionals**
- **Supported.** an avoidance of doubt provision should be inserted to clarify that government agencies, family law services, service providers for children, and family violence service providers are not parts of the 'public' for the purposes of the provision;
- **Supported.** the offence of publication or dissemination of accounts of proceedings should only apply to public communications, and legislative provisions should clarify that the offence does not apply to private communications; and
- **Supported.** to ensure public confidence in family law decision making, an obligation should be placed on any courts exercising family law jurisdiction, other than courts of summary jurisdiction, to publish anonymised reports of reasons for decision for final orders. **Important**

Question 12–1

Should privacy provisions in the Family Law Act 1975 (Cth) be amended explicitly to apply to parties who disseminate identifying information about family law proceedings on social media or other internet-based media?

Yes. This is used as a form of abuse but it is also done through ignorance so there would need to be clear education about this provision for court users.

Question 12–2 Judicial Commission

Should a Judicial Commission be established to cover at least Commonwealth judicial officers exercising jurisdiction under the Family Law Act 1975 (Cth)? If so, what should the functions of the Commission be?

Unsure