

FAMILY LAW PRACTITIONERS' ASSOCIATION OF WESTERN AUSTRALIA (INC)
SUBMISSION TO
THE AUSTRALIAN LAW REFORM COMMISSION
IN RELATION TO
DISCUSSION PAPER 86: REVIEW OF THE FAMILY LAW SYSTEM

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Abbreviations

The following abbreviations are used in this submission:

FLPAWA	Family Law Practitioners' Association of Western Australia (Inc)
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Submission: general comments

Before addressing the specific proposals and questions set out in the Discussion Paper, FLPAWA makes the following general submissions:

1. The Discussion Paper appears to assume the expenditure of significant amounts of money. If resources are limited, then necessarily the expenditure of money must be prioritised. Whilst there are certain proposals that FLPAWA is not opposed to per se, FLPAWA would be concerned if the consequence of funding those proposals would be to take funding away from other parts of the family law system. In other words, there may be other aspects of the family law system that should be funded in priority to certain of the proposals.
2. There are instances where the Discussion Paper does not make it sufficiently clear as to how a proposal for change is intended to interact with and relate to an existing aspect of the family law system.

The FLPAWA responses to specific proposals and questions set out in the Discussion Paper are intended to be read in the context of the general submissions set out above.

Submission: response to specific proposals & questions in Discussion Paper

2. EDUCATION, AWARENESS AND INFORMATION	
Proposal 2–1	<p>The Australian Government should develop a national education and awareness campaign to enhance community understanding of the family law system. This should include information about:</p> <ul style="list-style-type: none"> • the benefits of seeking information, advice and support when contemplating or experiencing separation; • the duties and responsibilities of parents and the importance of taking a child- centred approach to post-separation parenting that prioritises children's safety and best interests; • the existence and location of the proposed Families Hubs (Proposals 4–1 to 4–4) as a place where people experiencing separation can access advice and support services; • the availability of the proposed family law system information package (Proposals 2–5 to 2–8) that provides practical information to assist people, including children and young people, to understand and navigate the family law system, including how to access the package; and • the availability of alternative dispute resolution processes to assist and empower people experiencing separation to reach agreement about arrangements for their children and property outside of court proceedings.
Response:	Agree
Comment	<p>FLPAWA supports the concept of raising awareness in the community. There is already a significant number of agencies in existence who produce information in this area. FLPAWA submits it would be most efficient to identify and make use of existing resources to the extent possible.</p> <p>The information also needs to be available in electronic formats and make the best use of technology.</p> <p>Ongoing funding would be necessary to ensure such information is always current.</p>

Proposal 2-2	The national education and awareness campaign should be developed in consultation with Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations and be available in a range of languages and formats.
Response:	Agree
Comment	None
Proposal 2-3	The Australian Government should work with state and territory governments to facilitate the promotion of the national education and awareness campaign through the health and education systems and any other relevant agencies or bodies.
Response:	Agree
Comment	None
Proposal 2-4	The Australian Government should work with state and territory governments to support the development of referral relationships to family law services, including the proposed Families Hubs (Proposals 4-1 to 4-4), from: <ul style="list-style-type: none"> • universal services that work with children and families, such as schools, childcare facilities and health services; and • first point of contact services for people who have experienced family violence, including state and territory specialist family violence services and state and territory police and child protection agencies.
Response:	Agree
Comment	None
Proposal 2-5	The Australian Government should convene a standing working group with representatives from government and non-government organisations from each state and territory to: <ul style="list-style-type: none"> • advise on the development of a family law system information package to facilitate easy access for people to clear, consistent, legally sound and nationally endorsed information about the family law system; and • review the information package on a regular basis to ensure that it remains up- to-date.
Response:	Agree
Comment	FLPAWA agrees with this proposal however, notes this proposal will require significant funding upfront to establish and ongoing funding to maintain.
Proposal 2-6	The family law system information package should be tailored to take into account jurisdictional differences and should include information about: <ul style="list-style-type: none"> • the legal framework for resolving parenting and property matters; • the range of legal and support services available to help separating families and their children and how to access these services; and • the different forums and processes for resolving disputes.
Response:	Agree
Comment	None

Proposal 2-7	<p>The family law system information package should be accessible in a range of languages and formats, including:</p> <ul style="list-style-type: none"> • electronically via a central website; • as printed material available at key entry points to the family law system and universal services; and • through interactive means, including a national telephone helpline and a national web-chat service.
Response:	Agree
Comment	<p>FLPAWA agrees with the proposal however, we note the significant information which is already available in the Family Advocacy & Support Services (FASS), which is already funded by the Australian Government and could be further funded as part of these proposals.</p>
Proposal 2-8	<p>The family law system information package should be:</p> <ul style="list-style-type: none"> • developed with reference to existing government and non-government information resources and services; • developed in consultation with Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations; and • user-tested for accessibility by community groups including children and young people, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities, LGBTIQ people and people with disability.
Response:	Agree
Comment	None
Proposal 3-1	<p>The <i>Family Law Act 1975</i> (Cth) and its subordinate legislation should be comprehensively redrafted with the aim of simplification and assisting readability, by:</p> <p>a. simplifying provisions to the greatest extent possible;</p> <p>The use of simple language is supported by FLPAWA. Particularly, in relation to the definitions of parental responsibility and parenting Orders. FLPAWA shares the concerns of the Law Council of Australia that care needs to be taken to preserve the important provisions of the legislation which are the subject of a significant body of jurisprudence.</p> <p>b. restructuring legislation to assist readability, for example by placing the most important substantive provisions as early as possible;</p> <p>The question of what comprises the most important substantive provisions requires in depth assessment and consultation before any restructure occurs.</p> <p>c. redrafting the Act, Regulations and Rules in ordinary English, by modernising language, and as far as possible removing terms that are unlikely to be understood by general readers, such as legal Latin, archaisms, and unnecessarily technical terms;</p> <p>The <i>Family Law Act</i> is not a very old piece of legislation and does not</p>

	<p>contain significant amounts of legal Latin, archaisms and unnecessarily technical terms.</p>
	<p>d. user testing key provisions for reader comprehension during the drafting process, for example, through focus groups, to ensure that the legislation is understood as intended;</p> <p>It is also important to ensure reader comprehension does not change the legal meaning and consequence of the legislation.</p>
	<p>e. removing or rationalising overlapping or duplicative provisions as far as possible;</p> <p>Consideration must be given to the <i>Family Court 1997 (WA)</i> which operates in the Family Court of Western Australia.</p>
	<p>f. removing provisions establishing the Family Court of Australia and the Australian Institute of Family Studies to separate legislation;</p> <p>No comment.</p>
	<p>g. removing provisions defining parentage for the purposes of Commonwealth law to separate legislation; and</p> <p>FLPAWA understands there is a special leave application to the High Court of Australia which relates to the legislation presently before the Federal Parliament for consideration.</p>
	<p>h. considering what provisions should be contained in subordinate legislation rather than the Act.</p> <p>FLPAWA considers having to refer to subordinate legislation is unhelpful, particularly for self-represented litigants.</p>
Response:	As above
Comment	As above
Proposal 3–2	<p>Family law court forms should be comprehensively reviewed to improve usability, including through:</p> <ul style="list-style-type: none"> • only gathering information that is absolutely required, and simplifying how information is gathered (eg through use of check-boxes); • using smart forms, to pre-populate information from previously completed forms (such as name and address), ask contextual questions based on previous answers, and provide contextual help within the form; • using real-time help functions, such as a live-chat functionality, and links to audio-visual help; • providing collaborative functions in circumstances where forms require information from both parties to allow them both to easily enter information; • ensuring that all forms are drafted in ordinary English and where

	<p>possible providing alternative forms in Easy English to assist litigants with limited literacy or English skills;</p> <ul style="list-style-type: none"> • providing a paper form for use by individuals without access to technology; and • providing a single set of forms for all courts exercising jurisdiction under the <i>Family Law Act 1975</i> (Cth).
Response:	Agree
Comment	Whilst we agree with this proposal, we note the forms utilised in the Family Court of Western Australia might be informative and of benefit to consideration of the forms to be used. FLPAWA does not support a position where the Family Court of Western Australia loses the use of their forms.
Proposal 3–3	The principle (currently set out in s 60CA of the <i>Family Law Act 1975</i> (Cth)) that the child's best interests must be the paramount consideration in making decisions about children should be retained but amended to refer to 'safety and best interests'.
Response:	Agree
Comment	FLPAWA agrees the child's best interests must remain the paramount consideration. The proposal uses the words "safety and best interests". FLPAWA prefers the use of language that references "minimising risk" rather than the use of the word "safety".
Proposal 3–4	<p>The objects and principles underlying part VII of the <i>Family Law Act 1975</i> (Cth) set out in s 60B should be amended to assist the interpretation of the provisions governing parenting arrangements as follows:</p> <ul style="list-style-type: none"> • arrangements for children should be designed to advance the child's safety and best interests; • arrangements for children should not expose children or their carers to abuse or family violence or otherwise impair their safety; • children should be supported to maintain relationships with parents and other people who are significant in their lives where maintaining a relationship does not expose them to abuse, family violence or harmful levels of ongoing conflict; • 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; and • decisions about the care of an Aboriginal or Torres Strait Islander child should support the child's right to maintain and develop the child's cultural identity, including the right to: <ol style="list-style-type: none"> (a) maintain a connection with family, community, culture and country; and (b) have the support, opportunity and encouragement necessary to participate in that culture, consistent with the child's age and developmental level and the child's views, and to develop a positive appreciation of that culture.
Response:	Agree
Comment	Again, we question the use of the word "safety".
Proposal 3–5	The guidance in the <i>Family Law Act 1975</i> (Cth) for determining the arrangements that best promote the child's safety and best interests (currently set out mainly in s 60CC), should be simplified to provide that the

	<p>following matters must be considered:</p> <ul style="list-style-type: none"> • any relevant views expressed by the child; • whether particular arrangements are safe for the child and the child's carers, including safety from family violence or abuse; • the developmental, psychological and emotional needs of the child; • the capacity of each proposed carer of the child to provide for the developmental, psychological and emotional needs of the child; • 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 • anything else that is relevant to the particular circumstances of the child.
Response:	Agree
Comment	None
Proposal 3–6	The <i>Family Law Act 1975</i> (Cth) should provide that, in determining what arrangements best promote the safety and best interests of an Aboriginal or Torres Strait Islander child, the maintenance of the child's connection to their family, community, culture and country must be considered.
Response:	Agree
Comment	Whilst FLPWA agrees with the proposal, it is our view these considerations are not limited only to the interests of an Aboriginal or Torres Strait Islander child. Rather it should apply to all children and the child's connection to their family, community, culture and country is a relevant consideration for all children.
Proposal 3–7	<p>The decision making framework for parenting arrangements in pt VII of the <i>Family Law Act 1975</i> (Cth) should be further clarified by:</p> <ul style="list-style-type: none"> • replacing the term 'parental responsibility' with a more easily understood term, such as 'decision making responsibility'; and • making it clear that in determining what arrangements best promote the child's safety and best interests, decision makers must consider what arrangements would be best for each child in their particular circumstances.
Response:	Agree
Comment	None
Question 3–1	How should confusion about what matters require consultation between parents be resolved?
Response:	See below
Comment	The <i>Family Law Act 1975</i> (Cth) sets out what is a long term decision upon which the parents need to consult. We do not agree there is confusion about such matters.
Proposal 3–8	<p>The <i>Family Law Act 1975</i> (Cth) should be amended to explicitly state that, where there is already a final parenting order in force, parties must seek leave to apply for a new parenting order, and that in considering whether to allow a new application, consideration should be given to whether:</p> <ul style="list-style-type: none"> • there has been a change of circumstances that, in the opinion of the court, is significant; and

	<ul style="list-style-type: none"> it is safe and in the best interests of the child for the order to be reconsidered.
Response:	Agree
Comment	None
Proposal 3-9	The Attorney-General's Department (Cth) should commission a body with relevant expertise, including in psychology, social science and family violence, to develop, in consultation with key stakeholders, evidence-based information resources to assist families in formulating care arrangements for children after separation that support children's wellbeing. This resource should be publicly available and easily accessible, and regularly updated.
Response:	Agree
Comment	FLPAWA considers Government funding more directly to assist parties on litigation including providing access to legal representation. Any resource developed under this proposal cannot be a substitution for legal advice and must be guidance only.
Proposal 3-10	The provisions for property division in the <i>Family Law Act 1975</i> (Cth) should be amended to more clearly articulate the process used by the courts for determining the division of property.
Response:	Agree
Comment	FLPAWA agrees with the proposal save that there would need to be further consultation on the drafting of such provisions.
Proposal 3-11	<p>The provisions for property division in the <i>Family Law Act 1975</i> (Cth) should be amended to provide that courts must:</p> <ul style="list-style-type: none"> in determining the contributions of the parties, take into account the effect of family violence on a party's contributions; and in determining the future needs of the parties, take into account the effect of any family violence on the future needs of a party.
Response:	Partly agree
Comment	<p>FLPAWA supports the comments of the Law Council of Australia with respect to this proposal. We also recognise the potential importance of change in this area and there may be a preventative element where the legislation requires consideration of family violence. We share the concerns of the Law Council of Australia. The focus only on family violence ignores there are many other forms of behaviour such a drug and alcohol abuse and mental health issues which also have significant consequences on a family.</p> <p>There also needs to be very careful consideration of the evidentiary challenges in family violence.</p> <p>We repeat and support the views of the Law Council of Australia as to the issues which need to be addressed as part of any drafting exercise including:</p> <ol style="list-style-type: none"> “will the existing definition of ‘family violence’ in the <i>Family Law Act</i> apply to financial matters? Will one incident of ‘family violence’ suffice or will a course of conduct be required? What is the intent of the amendment in respect of the contributions factor? Is it intended to be punitive/compulsory in nature and will a link to making contributions more arduous be required? In respect of the future needs factors, is it intended to be relevant only if there is a casual link to a diminution of income earning capacity or having an

	<p><i>effect for example on health?</i></p> <p>d) <i>Is there a risk of 'double dip' if it is included both as a factor affecting contributions weighting and a factor going to future needs, if it arises from the same factual incident or incidents?...</i></p> <p>e) <i>If is included simply as a factor for consideration, it must in the vast majority of cases then be reflected by the percentage awarded to a party of the 'property' available for division...</i></p> <p>f) <i>Will it be mandatory to disclose family violence in financial cases, even if a party does not want to pursue a finding or seek a contributions weighting or future needs adjustment on that issue?</i></p> <p>g) <i>Will it be necessary to give particulars of the incidents or actions that amount to family violence, to enable a respondent to address them?</i></p> <p>h) <i>Evidence at trials is generally filed simultaneously by way of exchange. If there are not pleadings that identify the issues, will the rules need to be amended to require a party raising such matters to file evidence first, with the other party then responding, or otherwise permitting a case in reply?</i></p> <p>i) <i>Will the usual rules of evidence apply to family violence cases?</i></p> <p>j) <i>Will a party still be entitled to bring a common law claim for damages in respect of an assault as well as seeking findings about the same incidents and contributions weightings / future needs adjustments under the Family Law Act? How would the state laws and commonwealth laws interact?</i></p> <p>k) <i>What effect, from the point of view of case load, length of trials, number of witnesses, and judicial workload and funding and resources of the courts, would an amendment of this nature have?"</i></p>
Proposal 3–12	The Attorney-General's Department (Cth) should commission further research on property and financial matters after separation, including property adjustment after separation, spousal maintenance, and the economic wellbeing of former partners and their children after separation.
Response:	Disagree
Comment	FLPAWA disagrees with this proposal on the basis there is already a significant amount of research which has been undertaken on property and financial matters after separation and new research does not need to be set up, but rather existing projects need further funding.
Proposal 3–13	The Australian Government should work with the financial sector to establish protocols for dividing debt on relationship breakdown to avoid hardship for vulnerable parties, including for victims of family violence.
Response:	No view expressed.
Comment	FLPAWA would need further information to be able to comment on this proposal.
Proposal 3–14	If evaluation of action flowing from this Inquiry finds that voluntary industry action has not adequately assisted vulnerable parties, the Australian Government should consider relaxing the requirement that it not be foreseeable, at the time the order is made, that to make the order would result in the debt not being paid in full.
Response:	No view expressed
Comment	None

Proposal 3–15	The Australian Government should develop information resources for separating couples to assist them to understand superannuation, and how and why superannuation splitting might occur.
Response:	Agree
Comment	None
Proposal 3–16	The <i>Family Law Act 1975</i> (Cth) should require superannuation trustees to develop standard superannuation splitting orders on common scenarios. Procedural fairness should be deemed to be satisfied where parties develop orders based on these standard templates. The templates should be published on a central register.
Response:	Agree
Comment	None
Proposal 3–17	The Australian Government should develop tools to assist parties to create superannuation splitting orders. These could include: <ul style="list-style-type: none"> • a tool to look up the legal name and contact details of superannuation funds; • a tool, with appropriate safeguards, to identify the superannuation accounts held by a former partner from Australian Tax Office records, with necessary amendments to the taxation law to support this; • tools to assist parties with process requirements, such as making superannuation information requests, providing draft orders to superannuation trustees for comment where standard orders are not used, and providing final orders to trustees; and • allowing auto-generation of standard form orders based on the standard orders provided by the superannuation trustee and user-entered data.
Response:	Agree
Comment	None
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?
Response:	No view
Comment	We note and share the views of the Law Council of Australia as to this question.
Question 3–3	Which, if any, of the following approaches should be adopted to reform provisions about financial agreements in the <i>Family Law Act 1975</i> (Cth): <ol style="list-style-type: none"> a) amendments to increase certainty about when financial agreements are binding; b) amendments to broaden the scope for setting aside an agreement where it is unjust to enforce the agreement, for example, because there has been family violence, or a change of circumstances that was unforeseen when the agreement was entered into; c) replacing existing provisions about financial agreements with an ability to make court-approved agreements; or

	d) removing the ability to make binding pre-nuptial financial agreements from family law legislation, and preserving the operation of any existing valid agreements?
Response:	FLPAWA supports (a) of this question opposes (b), (c), and (d).
Comment	In relation to (a), FLPAWA supported the <i>Family Law Amendment (Financial Agreements and Other Measures Bill) 2015</i> . We support the comments of the Law Council of Australia on (a).
Proposal 3–18	The considerations that are applicable to spousal maintenance (presently located in s 75 of the <i>Family Law Act 1975</i> (Cth)) should be located in a separate section of family law legislation that is dedicated to spousal maintenance applications ('dedicated spousal maintenance considerations').
Response:	Agree
Comment	None
Proposal 3–19	The dedicated spousal maintenance considerations should include a requirement that the court consider the impact of any family violence on the ability of the applicant to adequately support themselves.
Response:	Disagree
Comment	If, and to what extent, family violence affects a person's earning capacity is already a factor to be taken into account by the Court in the legislation.
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: <ul style="list-style-type: none"> • greater use of registrars to consider urgent applications for interim spousal maintenance; • administrative assessment of spousal maintenance; or • another option?
Response:	Agree in part
Comment	In the Family Court of Western Australia, we have a single point of entry for all Applications which are filed. At first instance, unless the matter is complex, Applications are dealt with by a family law Magistrate. For Registrars to consider urgent Applications for interim spousal maintenance, there would need to be increased powers and funding.
4. Getting Advice and Support	
Proposal 4–1	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. These Hubs should be designed to: <ul style="list-style-type: none"> • identify the person's safety, support and advice needs and those of their children; • assist clients to develop plans to address their safety, support and advice needs and those of their children; • connect clients with relevant services; and • coordinate the client's engagement with multiple services.
Response:	Disagree
Comment	FLPAWA considers this proposal will require enormous Government funding not only to establish but also to maintain.

	Existing services (legal and support) need to be properly funded rather than creating a new platform. FLPAWA shares the concerns raised by the Law Council of Australia in response to this proposal.
Proposal 4–2	The Australian Government should work with state and territory governments to explore the use of digital technologies to support the assessment of client needs, including their safety, support and advice needs, within the Families Hubs.
Response:	Disagree
Comment	None
Proposal 4–3	Families Hubs should advance the safety and wellbeing of separating families and their children while supporting them through separation. They should include on-site out-posted workers from a range of relevant services, including: <ul style="list-style-type: none"> • specialist family violence services; • legal assistance services (such as community legal centres); • family dispute resolution services; • therapeutic services (such as family counselling and specialised services for children); • financial counselling services; • housing assistance services; • health services (such as mental health services and alcohol and other drug services); • gambling help services; • children’s contact services; and • parenting support programs or parenting education services (including a program for fathers).
Response:	Disagree
Comment	No comment
Proposal 4–4	Local service providers, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations, specialist family violence services and legal assistance services, including community legal services, should play a central role in the design of Families Hubs, to ensure that each hub is culturally safe and accessible, responsive to local needs, and builds on existing networks and relationships between local services.
Response:	Disagree
Comment	None
Proposal 4–5	The Australian Government should, subject to positive evaluation, expand the Family Advocacy and Support Service (FASS) in each state and territory to include: <ul style="list-style-type: none"> • an information and referral officer to conduct intake, risk and needs screening and triage, as well as providing information and resources; • a family violence specialist legal service and a family violence specialist support service to assist clients who have experienced or are experiencing family violence; and

	<ul style="list-style-type: none"> an additional legal service and support service, to assist clients who are alleged to have used family violence and clients who are not affected by family violence but have other complex needs.
Response:	Agree
Comment	<p>FLPAWA agrees the Family Advocacy & Support Service (FASS) should be continued and expanded and funding made available for this.</p> <p>We again comment on the focus of the discussion paper and proposals on family violence. Family violence rarely exists by itself. The discussion paper overlooks those people with drug and alcohol problems and mental health issues, who also need support.</p>
Proposal 4–6	The FASS support services should be expanded to provide case management where a client has complex needs and cannot be linked with an appropriate support service providing ongoing case management.
Response:	Agree
Comment	As per proposal for 4-5 above.
Proposal 4–7	The level and duration of support provided by the FASS should be flexible depending on client need and vulnerability, as well as legal aid eligibility for ongoing legal services.
Response:	Agree
Comment	As per proposal for 4-5 above.
Proposal 4–8	The Australian Government should, subject to positive evaluation, roll out the expanded FASS to a greater number of family court locations, including in rural, regional and remote locations.
Response:	Agree
Comment	As per proposal for 4-5 above.
5. Dispute Resolution	
Proposal 5–1	The guidance as to assessment of suitability for family dispute resolution that is presently contained in reg 25 of the <i>Family Law (Family Dispute Resolution Practitioners) Regulations 2008</i> (Cth) should be relocated to the <i>Family Law Act 1975</i> (Cth).
Response:	Agree
Comment	None
Proposal 5–2	The new legislative provision proposed in Proposal 5–1 should provide that, in addition to the existing matters that a family dispute resolution provider must consider when determining whether family dispute resolution is appropriate, the family dispute resolution provider should consider the parties' respective levels of knowledge of the matters in dispute, including an imbalance in knowledge of relevant financial arrangements.
Response:	Agree
Comment	None
Proposal 5–3	The <i>Family Law Act 1975</i> (Cth) should be amended to require parties to attempt family dispute resolution prior to lodging a court application for

	<p>property and financial matters. There should be a limited range of exceptions to this requirement, including:</p> <ul style="list-style-type: none"> • urgency, including where orders in relation to the ownership or disposal of assets are required or a party needs access to financial resources for day to day needs; • the complexity of the asset pool, including circumstances involving third party interests (apart from superannuation trustees); • where there is an imbalance of power, including as a result of family violence; • where there are reasonable grounds to believe non-disclosure may be occurring; • where one party has attempted to delay or frustrate the resolution of the matter; and • where there are allegations of fraud.
Response:	Not agreed
Comment	<p>FLPAWA supports the use of legally assisted Alternative Dispute Resolution and Mediation in financial cases.</p> <p>FLPAWA has read the comments of the Law Council of Australia in answer to this proposal both in their submission to the issues paper and the discussion paper. FLPAWA shares the concerns about the potential use of Family Dispute Resolution as a tool for delay, cost and oppression to the detriment of vulnerable persons.</p> <p>As indicated by the Law Council of Australia, there are significant differences in the nature of Dispute Resolution for parenting matters as opposed to financial matters.</p> <p>In Western Australia we would be concerned people in the regions would find it very expensive to participate in compulsory Family Dispute Resolution and there would need to be significant funding for such a project.</p>
Proposal 5-4	<p>The <i>Family Law Act 1975</i> (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 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.</p>
Response:	Disagree
Comment	None
Proposal 5-5	<p>The <i>Family Law Act 1975</i> (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:</p> <ul style="list-style-type: none"> • the matter was assessed as not suitable for family dispute resolution; • the person to whom the certificate was issued had attempted to initiate a family dispute resolution process but the other party has not responded; • the parties had commenced family dispute resolution and the process had been terminated; or • the matter had commenced and concluded with partial resolution of the issues in dispute.

Response:	Disagree
Comment	None
Question 5-1	Should the requirement in the <i>Family Law Act 1975 (Cth)</i> that proceedings in property and financial matters must be instigated within twelve months of divorce or two years of separation from a de facto relationship be revised?
Response:	Disagree
Comment	None
Proposal 5-6	<p>The <i>Family Law Act 1975 (Cth)</i> 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. For parties involved in family dispute resolution or court proceedings, disclosure duties should apply to:</p> <ul style="list-style-type: none"> • earnings, including those paid or assigned to another party; • vested or contingent interests in property, including that which is owned by a legal entity that is fully or partially owned or partially controlled by a party; • income earned by a legal entity fully or partially owned or controlled by a party, including income that is paid or assigned to any other party, person or legal entity; • superannuation interests; and • liabilities and contingent liabilities.
Response:	Agree
Comment	None
Proposal 5-7	<p>The provisions in the <i>Family Law Act 1975 (Cth)</i> setting out disclosure duties should also specify that if a court finds that a party has intentionally failed to provide full, frank and timely disclosure it may:</p> <ul style="list-style-type: none"> • impose a consequence, including punishment for contempt of court; • take the party's non-disclosure into account when determining how costs are to be apportioned; • stay or dismiss all or part of the party's case; or • take the party's non-disclosure into account when determining how the financial pool is to be divided.
Response:	Agree
Comment	None
Question 5-2	Should the provisions in the <i>Family Law Act 1975 (Cth)</i> setting out disclosure duties be supported by civil or criminal penalties for non-disclosure?
Response:	Disagree
Comment	None
Proposal 5-8	<p>The <i>Family Law Act 1975 (Cth)</i> should set out advisers' obligations in relation to providing advice to parties contemplating or undertaking family dispute resolution, negotiation or court proceedings about property and financial matters. Advisers (defined as a legal practitioner or a family dispute resolution practitioner) must advise parties that:</p> <ul style="list-style-type: none"> • they have a duty of full, frank and continuing disclosure, and, in the

	<p>case of family dispute resolution, that compliance with this duty is essential to the family dispute resolution process; and</p> <ul style="list-style-type: none"> • if the matter proceeds to court and a party fails to observe this duty, courts have the power to: <ol style="list-style-type: none"> (a) impose a consequence, including punishment for contempt of court; (b) take the party's non-disclosure into account when determining how costs are to be apportioned; (c) stay or dismiss all or part of the party's case; and (d) take the party's non-disclosure into account when determining how the financial pool is to be divided.
Response:	Disagree
Comment	None
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?
Response:	Agree
Comment	
Proposal 5-9	<p>The Australian Government should work with providers of family dispute resolution services, legal assistance services, specialist family violence services and Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations to support the further development of culturally appropriate and safe models of family dispute resolution for parenting and financial matters. This should include:</p> <ul style="list-style-type: none"> • examining the feasibility of means-tested fee for service and cost recovery models to be provided by legal aid commissions and community organisations such as Family Relationship Centres; • the further development of dispute resolution models for property and financial matters involving, where necessary, support by financial counsellors and the provision of legal advice by private practitioners and legal assistance services, such as legal aid commissions, community legal centres and the Legal Advice Line that is part of Family Relationships Advice Line; and • amendments to existing funding agreements and practice agreements to support this work.
Response:	Agree
Comment	Subject to funding
Proposal 5-10	<p>The Australian Government should work with providers of family dispute resolution services, private legal services, financial services, legal assistance services, specialist family violence services and Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations to develop effective practice guidelines for the delivery of legally assisted dispute resolution (LADR) for parenting and property matters.</p> <p>These Guidelines should include:</p> <ul style="list-style-type: none"> • guidance as to when LADR should not be applied in matters involving family violence and other risk related issues;

	<ul style="list-style-type: none"> • 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; • the respective roles and responsibilities of the professionals involved; • the application of child-inclusive practice; • the application of approaches to support cultural safety for Aboriginal and Torres Strait Islander people; • the application of approaches to support cultural safety for families from culturally and linguistically diverse communities; • the application of approaches to support effective participation for LGBTIQ families; • the application of approaches that support effective participation for families where parents or children have disability; • practices relating to referral to other services, including health services, specialist family violence services and men’s behaviour change programs; • practices relating to referrals from and to the family courts; and • information sharing and collaboration with other services involved with the family.
Response:	Agree
Comment	Subject to funding
Proposal 5–11	These Guidelines should be regularly reviewed to support evidence-informed policy and practice in this area.
Response:	Agree
Comment	Subject to funding
6. Reshaping the Adjudication Landscape	
Proposal 6–1	The family courts should establish a triage process to ensure that matters are directed to appropriate alternative dispute resolution processes and specialist pathways within the court as needed.
Response:	Agree
Comment	<p>The Family Court of Western Australia has a form of triage in place for child related matters. This involves a child related hearing list which is conducted every day. This list is supported by a Family Consultant, who can obtain a Report from the Department of Communities (if relevant) and provide the Judicial Officer with preliminary information from the Police relating to charges that are pending or have been dealt with the criminal or traffic courts.</p> <p>FLPAWA supports the continued exchange of information which is in place with the Memorandum of Understanding which the Family Court of Western Australia has in place with various departments and other courts.</p>
Proposal 6–2	The triage process should involve a team-based approach combining the expertise of the court’s registrars and family consultants to ensure initial and ongoing risk and needs assessment and case management of the matter, continuing, if required, until final decision.
Response:	Agree
Comment	None

Proposal 6-3	<p>Specialist court pathways should include:</p> <ul style="list-style-type: none"> • (a) a simplified small property claims process; • (b) a specialist family violence list; and • (c) the Indigenous List.
Response:	Agree in part
Comment	<p>FLPAWA supports a simplified small property claims process. We do not support (b) and (c).</p> <p>FLPAWA shares the concerns raised by the Law Council of Australia that small will have a different meaning across Australia and the use of the word "small" trivialises what is a very important aspect of some parties' lives.</p>
Proposal 6-4	<p>The <i>Family Law Act 1975</i> (Cth) should provide for a simplified court process for matters involving smaller property pools. The provisions should allow for:</p> <ul style="list-style-type: none"> • the court to have discretion, subject to the requirements of procedural fairness, not to apply formal rules of evidence and procedure in a given case; • the proceedings to be conducted without legal technicality; and • the simplified court procedure to be applied by the court on its own motion or on application by a party.
Response:	Agree
Comment	Subject to criteria and the process being to opt in rather than it automatically applying.
Proposal 6-5	<p>In considering whether the simplified court procedure should be applied in a particular matter, the court should have regard to:</p> <ul style="list-style-type: none"> • the relative financial circumstances of the parties; • the parties' relative levels of knowledge of their financial circumstances; • whether either party is in need of urgent access to financial resources to meet the day to day needs of themselves and their children; • the size and complexity of the asset pool; and • whether there are reasonable grounds to believe there is history of family violence involving the parties, or risk of family violence. <p>The court should give weight to each of these factors as it sees fit.</p>
Response:	Agree
Comment	None
Proposal 6-6	<p>The family courts should consider developing case management protocols to support implementation of the simplified process for matters with smaller property pools, including provision for:</p> <ul style="list-style-type: none"> • case management by court registrars to establish, monitor and enforce timelines for procedural steps, including disclosure; • conducting a conciliation conference once the asset pool has been identified; and • establishing a standard timetable for processing claims with expected timeframes for case management of events (mentions, conciliation conferences and trial).
Response:	Agree

Comment	None
Proposal 6–7	<p>The family courts should consider establishing a specialist list for the hearing of high risk family violence matters in each registry. The list should have the following features:</p> <ul style="list-style-type: none"> • a lead judge with oversight of the list; • a registrar with responsibility for triaging matters into the list and ongoing case management; • family consultants to prepare short and long reports on families whose matters are heard in the list; and • a cap on the number of matters listed in each daily hearing list. <p>All of the professionals in these roles should have specialist family violence knowledge and experience.</p>
Response:	Disagree
Comment	The Family Court of Western Australia already has a process in its Case Management Guidelines to refer complex matters, including high risk matters, to the complex track. These matters are then managed by a Judge.
Question 6–1	What criteria should be used to establish eligibility for the family violence list?
Response:	We do not support the establishment of a family violence list.
Comment	None
Question 6–2	What are the risks and benefits of early fact finding hearings? How could an early fact finding process be designed to limit risks?
Response:	No response
Comment	FLPAWA refers to the Law Council of Australia comments on this question.
Proposal 6–8	The Australian Government should work with state and territory governments to develop and implement models for co-location of family law registries and judicial officers in local court registries. This should include local courts in rural, regional and remote locations.
Response:	Disagree
Comment	In Western Australia the Family Court of Western Australia utilises technology across the regional areas.
Question 6–3	What changes to the design of the Parenting Management Hearings process are needed to strengthen its capacity to apply a problem-solving approach in children's matters? Are other changes needed to this model?
Response:	FLPAWA does not support parenting management hearings.
Comment	None
Question 6–4	What other ways of developing a less adversarial decision-making process for children's matters should be considered?
Response:	Disagree
Comment	This question pre-supposes the existing process is not working.
Proposal 6–9	The Australian Government should develop a post-order parenting support service to assist parties to parenting orders to implement the orders and

	<p>manage their co-parenting relationship by providing services including:</p> <ul style="list-style-type: none"> • education about child development and conflict management; • dispute resolution; and • decision making in relation to implementation of parenting orders.
Response:	Disagree
Comment	None
Proposal 6–10	<p>The Australian Government should work with relevant stakeholders, including the Community Services and Health Industry Skills Council, the Australian Psychological Society, the Australian Association of Social Workers, the Mediator Standards Board, Family & Relationship Services Australia and specialist family violence services peak bodies, to develop intake assessment processes for the post-order parenting support service.</p>
Response:	Disagree
Comment	None
Proposal 6–11	<p>The proposed Family Law Commission (Proposal 12–1) should develop accreditation and training requirements for professionals working in the post-order parenting support service.</p>
Response:	Disagree
Comment	None
Proposal 6–12	<p>The Australian Government should ensure that all family court premises, including circuit locations and state and territory court buildings that are used for family law matters, are safe for attendees, including ensuring the availability and suitability of:</p> <ul style="list-style-type: none"> • waiting areas and rooms for co-located service providers, including the extent to which waiting areas can accommodate large family groups; • safe waiting areas and rooms for court attendees who have concerns for their safety while they are at court; • private interview rooms; • multiple entrances and exits; • child-friendly spaces and waiting rooms; • security staffing and equipment; • multi-lingual and multi-format signage; • remote witness facilities for witnesses to give evidence off site and from court-based interview rooms; and • facilities accessible for people with disability.
Response:	Agree
Comment	None
7. CHILDREN IN THE FAMILY LAW SYSTEM	
Proposal 7–1	<p>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.</p>
Response:	Agree
Comment	<p>Although we agree, we note there are already many services offering information in a range of formats for children. FLPWA also refers to the final Report produced by Kids Helpline and the University of Sydney dated</p>

	21 August 2018, "A National Online Survey about children's Experiences of Parental Separation".
Proposal 7-2	The proposed Families Hubs (Proposals 4-1 to 4-4) should include out-posted workers from specialised services for children and young people, such as counselling services and peer support programs.
Response:	Disagree
Comment	Services already exist and need to be appropriately funded.
Proposal 7-3	The <i>Family Law Act 1975</i> (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.
Response:	Agree
Comment	None
Proposal 7-4	The <i>Family Law Act 1975</i> (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.
Response:	Agree
Comment	None
Proposal 7-5	The Attorney-General's Department (Cth) should work with the family relationship services sector 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.
Response:	Agree
Comment	None
Proposal 7-6	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.
Response:	Agree
Comment	None
Proposal 7-7	Children should not be required to express any views in family law proceedings or family dispute resolution.
Response:	Agree
Comment	None
Proposal 7-8	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. The role of the children's advocate should be to: <ul style="list-style-type: none"> • 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.
Response:	Disagree
Comment	FLPAWA supports the comment of the Law Council of Australia in opposition to this proposal.
Proposal 7–9	Where a child is not able to be supported to express a view, the children's advocate should: <ul style="list-style-type: none"> • 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.
Response:	Disagree
Comment	None
Proposal 7–10	The <i>Family Law Act 1975</i> (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: <ul style="list-style-type: none"> • 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.
Response:	Disagree
Comment	None
Question 7–1	In what circumstances should a separate legal representative for a child be appointed in addition to a children's advocate?
Response:	See below
Comment	FLPAWA does not support a "children's advocate". The Independent Children's Lawyer exists to ensure the child's best interests are put before the Court.
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?
Response:	No response
Comment	FLPAWA supports the Independent Children's Lawyers system. Their Legal Aid Commission's require urgent funding to improve the availability and quality of Independent Children's Lawyers.
Question 7–3	What approach should be taken to forensic issues relating to the role of the children's advocate, including: <ul style="list-style-type: none"> • admissibility of communications between the children's advocate and a child; and • whether the children's advocate may become a witness in a matter?
Response:	See below
Comment	FLPAWA refers to the comments made by the Law Council of Australia to this question.
Proposal	Children should be able to express their views in court proceedings and

7–11	family dispute resolution processes in a range of ways, including through: <ul style="list-style-type: none"> • a report prepared by the children’s advocate; • meeting with a decision maker, supported by a children’s advocate; or • directly appearing, supported by a children’s advocate.
Response:	Disagree
Comment	FLPAWA agrees there should be a Report in relation to children’s views (a wishes report) but does not support the proposal.
Proposal 7–12	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.
Response:	Disagree
Comment	None
Proposal 7–13	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.
Response:	Disagree
Comment	There is existing research into issues concerning Family Court proceedings and children’s experience with the Family Court system. There is no need for the establishment of a new body.
8. REDUCING HARM	
Proposal 8–1	The definition of family violence in the <i>Family Law Act 1975</i> (Cth) should be amended to: <ul style="list-style-type: none"> • 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.
Response:	Agree
Comment	None
Question 8–1	What are the strengths and limitations of the present format of the family violence definition?
Response:	
Comment	
Question 8–2	Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?
Response:	
Comment	
Proposal 8–2	The Australian Government should commission research projects to examine the strengths and limitations of the definition of family violence in the <i>Family</i>

	<p><i>Law Act 1975</i> (Cth) in relation to the experiences of:</p> <ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander people; • people from culturally and linguistically diverse backgrounds; and • LGBTIQ people.
Response:	Agree
Comment	Subject to funding.
Proposal 8–3	The definition of family violence in the <i>Family Law Act 1975</i> (Cth) should 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’.
Response:	Agree
Comment	No.
Proposal 8–4	The existing provisions in the <i>Family Law Act 1975</i> (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.
Response:	Disagree
Comment	No changes should be made.
Proposal 8–5	The <i>Family Law Act 1975</i> (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.
Response:	Disagree
Comment	None
Question 8–3	Should the requirement for proceedings to have been instituted ‘frequently’ be removed from provisions in the <i>Family Law Act 1975</i> (Cth) setting out courts powers to address vexatious litigation? Should another term, such as ‘repeated’ be substituted?
Response:	No
Comment	
Question 8–4	What, if any, changes should be made to the courts’ powers to apportion costs in s 117 of the <i>Family Law Act 1975</i> (Cth)?
Response:	None should be made
Comment	
Proposal 8–6	<p>The <i>Family Law Act 1975</i> (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 Act should provide that:</p> <ul style="list-style-type: none"> • Subpoenas in relation to evidence of protected confidences should not be issued without leave of the court.

	<ul style="list-style-type: none"> • The court should exclude evidence of protected confidences where it is satisfied that it is likely that harm would or might be caused, directly or indirectly, to a protected confider, and the nature and extent of the harm outweighs the desirability of the evidence being given. Harm should be defined to include actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear). • In exercising this power, the court should consider the probative value and importance of the evidence to the proceedings and the effect that allowing the evidence would have on the protected confider. • In family law proceedings concerning children, the safety and best interests of the child should be the paramount consideration when deciding whether to exclude evidence of protected confidences. Such evidence should be excluded where a court is satisfied that admitting it would not promote the safety and best interests of the child. • The protected confider may consent to the evidence being admitted. • The court should have the power to disallow such evidence on its own motion or by application of the protected confider or the confidant. Where a child is the protected confider, a representative of the child may make the claim for protection on behalf of the child. • The court is obliged to give reasons for its decision.
Response:	Disagree
Comment	None
Proposal 8-7	<p>The Attorney-General's Department (Cth) should convene a working group comprised of the family courts, the Family Law Section of the Law Council of Australia, the Royal Australian and New Zealand College of Psychiatrists, the Australian Psychological Society, the Royal Australian College of General Practitioners, Family & Relationship Services Australia, National Legal Aid, Women's Legal Services Australia and specialist family violence services peak bodies and providers to develop guidelines in relation to the use of sensitive records in family law proceedings. These guidelines should identify:</p> <ul style="list-style-type: none"> • principles to consider when a subpoena of sensitive records is in contemplation; • obligations of professionals who are custodians of sensitive records in relation to the provision of those records; • processes for objecting to a subpoena of sensitive records; and • how services and professionals need to manage implications for their clients regarding the possibility that material may be subpoenaed and any potential consequences for their clients if a subpoena is issued.
Response:	Disagree
Comment	None
9. ADDITIONAL LEGISLATIVE ISSUES	
Proposal 9-1	<p>The <i>Family Law Act 1975</i> (Cth) should include a supported decision making framework for people with disability to recognise they have the right to make choices for themselves. The provisions should be in a form consistent with the following recommendations of the ALRC Report 124, <i>Equality, Capacity and Disability in Commonwealth Laws</i>:</p> <ul style="list-style-type: none"> • Recommendations 3-1 to 3-4 on National Decision Making Principles and Guidelines; and

	<ul style="list-style-type: none"> Recommendations 4-3 to 4-5 on the appointment, recognition, functions and duties of a 'supporter'.
Response:	Agree.
Comment	Subject to further details.
Proposal 9-2	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.
Response:	Agree
Comment	Subject to further details.
Proposal 9-3	The <i>Family Law Act 1975</i> (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, <i>Equality, Capacity and Disability in Commonwealth Laws</i> .
Response:	Agree
Comment	Subject to further details and funding.
Proposal 9-4	Family courts should develop practice notes explaining the duties that litigation representatives have to the person they represent and to the court.
Response:	Agree
Comment	Subject to resourcing.
Proposal 9-5	The Australian Government should work with state and territory governments to facilitate the appointment of statutory authorities as litigation representatives in family law proceedings.
Response:	Agree
Comment	None
Proposal 9-6	<p>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:</p> <ul style="list-style-type: none"> 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.
Response:	Agree
Comment	None
Proposal	The Australian Government should ensure that the family law system has

9–7	specialist professionals and services to support people with disability to engage with the family law system.
Response:	Agree
Comment	None
Question 9–1	In relation to the welfare jurisdiction: <ul style="list-style-type: none"> • Should authorisation by a court, tribunal, or other regulatory body be required for procedures such as sterilisation of children with disability or intersex medical procedures? What body would be most appropriate to undertake this function? • In what circumstances should it be possible for this body to authorise sterilisation procedures or intersex medical procedures before a child is legally able to personally make these decisions? • What additional legislative, procedural or other safeguards, if any, should be put in place to ensure that the human rights of children are protected in these cases?
Response:	Agree
Comment	
Proposal 9–8	The definition of family member in s 4(1AB) of the <i>Family Law Act 1975</i> (Cth) should be amended to be inclusive of Aboriginal and Torres Strait Islander concepts of family.
Response:	Agree
Comment	We refer to the comments made at proposal 3-6 and the wider concept and application of family.
Question 9–2	How should a provision be worded to ensure the definition of family member covers Aboriginal and Torres Strait Islander concepts of family?
Response:	No comment
Comment	None
10. A SKILLED AND SUPPORTED WORKFORCE	
Proposal 10–1	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.
Response:	Disagree
Comment	None
Proposal 10–2	The workforce capability plan for the family law system should identify: <ul style="list-style-type: none"> • 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.
Response:	Disagree
Comment	None
Proposal 10–3	The identification of core competencies for the family law system workforce should include consideration of the need for family law system professionals to have: <ul style="list-style-type: none"> • an understanding of family violence;

	<ul style="list-style-type: none"> • an understanding of child abuse, including child sexual abuse and neglect; • an understanding of trauma-informed practice, including an understanding of the impacts of trauma on adults and children; • an ability to identify and respond to risk, including the risk of suicide; • an understanding of the impact on children of exposure to ongoing conflict; • cultural competency, in relation to Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities and LGBTIQ people; • disability awareness; and • an understanding of the family violence and child protection systems and their intersections with the family law system.
Response:	Disagree
Comment	None
Question 10–1	Are there any additional core competencies that should be considered in the workforce capability plan for the family law system?
Response:	Disagree
Comment	FLPAWA does not support the workforce capability plan.
Proposal 10–4	The Family Law Commission proposed in Proposal 12–1 should oversee the implementation of the workforce capability plan through training— including cross-disciplinary training—and accreditation of family law system professionals.
Response:	Disagree
Comment	None
Proposal 10–5	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.
Response:	Disagree with the plan
Comment	
Question 10–2	What qualifications and training should be required for family dispute resolution practitioners in relation to family law disputes involving property and financial issues?
Response:	Disagree with the plan
Comment	FLPAWA disagrees with the proposal however, agree those people involved in family dispute resolution for property and financial issues need to be legally qualified.
Proposal 10–6	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.
Response:	Disagree

Comment	None
Proposal 10-7	The <i>Family Law Act 1975</i> (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.
Response:	Agree
Comment	There needs to be accreditation and training for people and this is not necessarily limited to children's contact service centres.
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?
Response:	No comment
Comment	
Proposal 10-8	All future appointments of federal judicial officers exercising family law jurisdiction should include consideration of the person's knowledge, experience and aptitude in relation to family violence.
Response:	Agree
Comment	None
Question 10-4	What, if any, other changes should be made to the criteria for appointment of federal judicial officers exercising family law jurisdiction?
Response:	
Comment	All Judicial Officers exercising family law jurisdiction should have knowledge, experience and aptitude in family law. As provided for in the <i>Family Law Act</i> , at the time of their appointment, a person should be practicing as a family lawyer (or be a Judicial Officer in the family law jurisdiction in a lower Court) or have substantial experience in the area by virtue of academic positions held in the family law area.
Question 10-5	What, if any, changes should be made to the process for appointment of federal judicial officers exercising family law jurisdiction?
Response:	
Comment	FLPAWA supports a process for the appointment of Judicial Officers exercising family law jurisdiction to be based on the candidate's knowledge, skill and aptitude for a family law appointment.
Proposal 10-9	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.
Response:	Disagree
Comment	None
Proposal 10-10	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.
Response:	Disagree

Comment	None
Proposal 10–11	When requesting the preparation of a report under s 62G of the <i>Family Law Act 1975</i> (Cth), the family courts should provide clear instructions about why the report is being sought and the particular issues that should be reported on.
Response:	Disagree
Comment	None
Proposal 10–12	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.
Response:	Disagree
Comment	None
Proposal 10–13	The <i>Family Law Act 1975</i> (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: <ul style="list-style-type: none"> • 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.
Response:	Agree
Comment	Save this should apply for all families and not just some.
Proposal 10–14	The <i>Family Law Act 1975</i> (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.
Response:	Agree
Comment	Subject to the focus being on all families and culture.
Question 10–6	Should cultural reports be mandatory in all parenting proceedings involving an Aboriginal or Torres Strait Islander child?
Response:	Disagree
Comment	None
Proposal 10–15	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.
Response:	Agree
Comment	None
11. INFORMATION SHARING	
Proposal	State and territory child protection, family violence and other relevant

<p>11-1</p>	<p>legislation should be amended to:</p> <ul style="list-style-type: none"> • remove any provisions that prevent state and territory agencies from disclosing relevant information, including experts' reports, to courts, bodies and agencies in the family law system in appropriate circumstances; and • include provisions that explicitly authorise state and territory agencies to disclose relevant information to courts, bodies and agencies in the family law system in appropriate circumstances. <p>The relevant agencies can be identified through the proposed information sharing framework (Proposals 11-2 and 11-3).</p>
<p>Response:</p>	<p>Agree</p>
<p>Comment</p>	<p>None</p>
<p>Question 11-1</p>	<p>What other information should be shared or sought about persons involved in family law proceedings? For example, should:</p> <ul style="list-style-type: none"> • State and territory police be required to enquire about whether a person is currently involved in family law proceedings before they issue or renew a gun licence? • State and territory legislation require police to inform family courts if a person makes an application for a gun licence and they have disclosed they are involved in family law proceedings? • The <i>Family Law Act 1975</i> (Cth) require family courts to notify police if a party to proceedings makes an allegation of current family violence? • The <i>Family Law Act 1975</i> (Cth) give family law professionals discretion to notify police if they fear for a person's safety and should such professionals be provided with immunity against actions against them, including defamation, if they make such a notification?
<p>Response:</p>	<p>Generally agree</p>
<p>Comment</p>	<p>None</p>
<p>Proposal 11-2</p>	<p>The Australian Government should work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare and wellbeing of families and children between the family law, family violence and child protection systems. The framework should include:</p> <ul style="list-style-type: none"> • relevant federal, state and territory court documents; • child protection records; • police records; • experts' reports; and • other relevant information.
<p>Response:</p>	<p>Agree</p>
<p>Comment</p>	<p>None</p>
<p>Proposal 11-3</p>	<p>The information sharing framework should include the legal framework for sharing information and information sharing principles, as well as guidance about:</p> <ul style="list-style-type: none"> • why information needs to be shared; • what information should be shared; • circumstances when information should be shared; • mechanisms for information sharing, including technological solutions;

	<ul style="list-style-type: none"> • how information that is shared can be used; • who is able to share information; • roles and responsibilities of professionals in the system in relation to information sharing; • interagency education and training; • interagency collaboration; and • monitoring and evaluation of information sharing initiatives.
Response:	Agree
Comment	None
Question 11-2	Should the information sharing framework include health records? If so, what health records should be shared?
Response:	No
Comment	None
Question 11-3	Should records be shared with family relationships services such as family dispute resolution services, Children's Contact Services, and parenting order program services?
Response:	No
Comment	None
Proposal 11-4	The Australian Government and state and territory governments should consider expanding the information sharing platform as part of the National Domestic Violence Order Scheme to include family court orders and orders issued under state and territory child protection legislation.
Response:	Agree
Comment	None
Proposal 11-5	State and territory governments should consider providing access for family courts and appropriate bodies and agencies in the family law system to relevant inter-jurisdictional and intra-jurisdictional child protection and family violence information sharing platforms.
Response:	Agree
Comment	None
Proposal 11-6	The family courts should provide relevant professionals in the family violence and child protection systems with access to the Commonwealth Courts Portal to enable them to have reliable and timely access to relevant information about existing family court orders and pending proceedings.
Response:	Agree
Comment	Save that FLPWA says this should be limited to information about existing family Court Orders.
Proposal 11-7	The Australian Government should work with states and territory governments to co-locate child protection and family violence support workers at each of the family law court premises.
Response:	Agree
Comment	The Family Court of Western Australia has several Memorandums of Understanding in place including with the Department of Communities,

	<p>Western Australia Police, Children's Court of Western Australia and Legal Aid WA.</p> <p>FLPAWA also participated in the State Government Review of <i>The Children and Community Services Act 2004 (WA)</i> undertaken in 2017. FLPAWA supports the recommendations of the Report tabled in the WA State Parliament, in particular recommendations 27 to 34 contained in the Report. These recommendations are in Chapter 6, "<i>The intersection between child protection proceedings and proceedings in the Family Court of Western Australia</i>"</p>
Proposal 11–8	The Australian Government and state and territory governments should work together to facilitate relevant entities, including courts and agencies in the family law, family violence and child protection systems, entering into information sharing agreements for the sharing of relevant information about families and children.
Response:	Agree
Comment	None
Proposal 11–9	The Australian Government and state and territory governments should work together to develop a template document to support the provision of a brief summary of child protection department or police involvement with a child and family to family courts.
Response:	Agree
Comment	None
Question 11–4	If a child protection agency has referred a parent to the family courts to obtain parenting orders, what, if any, evidence should they provide the courts? For example, should they provide the courts with any recommendations they may have in relation to the care arrangements of the children?
Response:	Not agreed
Comment	None
Proposal 11–10	The Australian Government should develop and implement an information sharing scheme to guide the sharing of relevant information about families and children between courts, bodies, agencies and services within the family law system.
Response:	Agree
Comment	None
Proposal 11–11	<p>The <i>Family Law Act 1975 (Cth)</i> should support the sharing of relevant information between entities within the family law system. The information sharing scheme should include such matters as:</p> <ul style="list-style-type: none"> • what information should be shared; • why information should be shared; • circumstances when information should be shared; • mechanisms for information sharing; • how information that is shared can be used; • who is able to share information; and • roles and responsibilities of professionals in the system in relation to

	information sharing.
Response:	Agree
Comment	None
Proposal 11–12	The Australian Government should work with states and territories to ensure that the family relationships services they fund are captured by, and comply with, the information sharing scheme.
Response:	Agree
Comment	None
Question 11–5	<p>What information should be shared between the Families Hubs (Proposals 4–1 to 4–4) and the family courts, and what safeguards should be put in place to protect privacy? For example:</p> <ul style="list-style-type: none"> • Should all the information about services within the Families Hubs that were accessed by parties be able to be shared freely with the family courts? • What information should the family courts receive (ie services accessed, number of times accessed, or more detailed information about treatment plans etc)? • Should client consent be needed to share this information? • Who would have access to the information at the family courts? • Would the other party get access to any information provided by the Families Hubs services to the family courts? • Should there be capacity for services provided through the Families Hubs to provide written or verbal evidence to the family courts?
Response:	FLPAWA does not support the establishment of families hubs.
Comment	
12. SYSTEM OVERSIGHT AND REFORM EVALUATION	
Proposal 12–1	<p>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 <i>Family Law Act 1975</i> (Cth) and to promote public confidence in the family law system. The responsibilities of the Family Law Commission should be to:</p> <ul style="list-style-type: none"> • monitor the performance of the system; • manage accreditation of professionals and agencies across the system, including oversight of training requirements; • issue guidelines to family law professionals and service providers to assist them to understand their legislative duties; • resolve complaints about professionals and services within the family law system, including through the use of enforcement powers; • improve the functioning of the family law system through inquiries, either of its own motion or at the request of government; • be informed by the work of the Children and Young People's Advisory Board (Proposal 7–13); • raise public awareness about the roles and responsibilities of professionals and service providers within the family law system; and • make recommendations about research and law reform proposals to improve the system.

Response:	Disagree
Comment	<p>There is significant existing regulation. For example, in Western Australia:</p> <ul style="list-style-type: none"> a) Legal Practice Board of WA; b) Legal Practitioner's Complaints Committee; c) Legal Costs Committee. <p>Additional regulation is likely to lead to higher costs for users of the family law system.</p> <p>Lawyers providing services to family law clients already voluntarily become members of various professional organisations and participate in ongoing education and training. Participation in these existing programs contributes to the improvement of services provided to family law clients. For example, in Western Australia:</p> <ul style="list-style-type: none"> a) FLPAWA b) Law Mutual; c) Law Society of Western Australia, including the Accreditation Programme. d) AIFLAM; e) Family Law Section Law Council of Australia <p>FLPAWA also supports the comments of the Law Council of Australia as to this proposal.</p>
Proposal 12-2	<p>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:</p> <ul style="list-style-type: none"> • develop Accreditation Rules; • administer the Accreditation Rules including the establishment and maintenance of an Accreditation Register; • establish standards and other obligations that accredited persons must continue to meet to remain accredited, including oversight of training requirements; • establish and administer processes for the suspension or cancellation of accreditation; and • establish and administer a process for receiving and resolving complaints against practitioners accredited under the Accreditation Rules.
Response:	Disagree
Comment	None
Proposal 12-3	<p>The Family Law Commission should have power to:</p> <ul style="list-style-type: none"> • conduct own motion inquiries into issues relevant to the performance of any aspect of the family law system; • conduct inquiries into issues referred by government relevant to the performance of any aspect of the family law system; and • make recommendations to improve the performance of an aspect of the family law system as a result of an inquiry.
Response:	Disagree
Comment	None

Proposal 12-4	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.
Response:	Disagree
Comment	None
Proposal 12-5	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.
Response:	Disagree
Comment	None
Proposal 12-6	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.
Response:	Disagree
Comment	None
Proposal 12-7	The Australian Government should build into its reform implementation plan a rigorous evaluation program to be conducted by an appropriate organisation.
Response:	Agree
Comment	None
Proposal 12-8	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.
Response:	Agree
Comment	None
Proposal 12-9	The cultural safety framework should address: <ul style="list-style-type: none"> • the provision of community education about the family law system; • the development of a culturally diverse and culturally competent workforce; • the provision of, and access to, culturally safe and responsive legal and support services; and • the provision of, and access to, culturally safe and responsive dispute resolution and adjudication processes.
Response:	Agree
Comment	None
Proposal 12-10	Family law service providers should be required to provide services that are compliant with relevant parts of the cultural safety framework.
Response:	Agree

Comment	None
Proposal 12–11	<p>Privacy provisions that restrict publication of family law proceedings to the public, currently contained in s 121 of the <i>Family Law Act 1975</i> (Cth) should be maintained, with the following amendments:</p> <ul style="list-style-type: none"> • s 121 should be redrafted to make the obligations it imposes easier to understand; • 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; • 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; • 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 • 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.
Response:	Agree
Comment	None
Question 12–1	Should privacy provisions in the <i>Family Law Act 1975</i> (Cth) be amended explicitly to apply to parties who disseminate identifying information about family law proceedings on social media or other internet-based media?
Response:	Yes
Comment	None
Question 12–2	Should a Judicial Commission be established to cover at least Commonwealth judicial officers exercising jurisdiction under the <i>Family Law Act 1975</i> (Cth)? If so, what should the functions of the Commission be?
Response:	Yes
Comment	None

Dated: 27 November 2018



William Sloan

President

Family Law Practitioners' Association of Western Australia (Inc)

Appendix: About the Family Law Practitioners' Association of Western Australia (Inc)

The Family Law Practitioners' Association of Western Australia (Inc) ("**FLPAWA**") is a not for profit association incorporated in Western Australia.

FLPAWA was first incorporated in 1980 and has been in continuous active operation from that time through to the present day.

Membership

Membership of FLPAWA is open to legal practitioners (both barristers and solicitors) practising in the field of family law in Western Australia.

FLPAWA has 485 ordinary members.¹ So far as the Association is aware, there are not any formal statistics available as to the total number of family lawyers in Western Australia. However, the anecdotal view is that most of the legal practitioners who have a significant portion of their practice in the field of family law in Western Australia are members of FLPAWA.

Objectives

The objects and purposes of FLPAWA include:

- (a) To promote public welfare by improving knowledge of family law and the standard of representation available to the public in family law within the legal profession generally by the organization of lectures, seminars and dissemination of material to the legal profession as a whole, and otherwise by the application of the other objectives of this Association.
- (a) To promote high standards of ethical conduct and excellence of representation available to the public in the field of family law.
- (b) To promote the professional interest of members by: -
 - (i) furthering their knowledge of developments in family law;
 - (ii) providing a forum for mutual study and discussion of family law;
 - (iii) organising seminars and lectures to provide opportunities for such study and discussion.
- (c) To establish a method by which recognition may be given to legal practitioners with a specific knowledge of or interest in or experience of family law.

¹ Figure shown is the number of paid ordinary members as at October 2018. There are other classes of membership including life members. The Judiciary also participate in FLPAWA.
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- (d) To provide a means by which outstanding contribution to the knowledge or understanding of family law may be recognised.
- (e) To represent legal practitioners practising in the field of family law in negotiations with Federal and State Governments, law reform bodies, public enquiries concerned with family law, Government instrumentalities, Courts, Registries, and all other persons or bodies to whom it is appropriate that representations be made from time to time on behalf of the public and on behalf of legal practitioners with a special interest in the field of family law.
- (f) To make recommendations to members as to the mode of carrying on their practice, the establishment of a recommended scale of fees, and otherwise to assist members in the conduct of their practice in family law.
- (g) To co-ordinate, foster and encourage liaison, mutual co-operation and understanding between legal practitioners practising in the field of family law.
- (h) To promote or conduct studies and research projects and courses of lectures or other instructions, of relevance to family law.
- (i) To publish and assist in publishing magazines, journal articles and other publications of special interest to practitioners in family law.
- (j) To establish and maintain funds for the purposes of financing legal education or research in the field of family law.
- (k) To promote the interest of members.
- (l) To promote public understanding of the role of the legal practitioner in family law.
- (m) To do all such other things as may be necessary or conducive to the objects of the Association.

Activities

Activities undertaken by FLPAWA include:

1. Presenting seminars and conferences for members to attend (including for meeting the continuing professional development obligations imposed on legal practitioners in Western Australia).
2. Representing the interests of members in consultations with external bodies including the courts and government.

Most of the work of FLPAWA is performed by members of FLPAWA on a voluntary basis.

Governance

The members of FLPAWA elect a Council and the Council then conducts the business of FLPAWA during the year. The office bearers of FLPAWA for 2018-2019 are:

1. President – William Sloan;
2. Vice Presidents – Linda Richardson and Stacey Wellings;
3. Secretary – Andrea Sassella;
4. Treasurer – Nicola Jansen;
5. Assistant Secretary and Treasurer – Sam Fahey.

FLPAWA relative to other organisations

Lawyers who are members of FLPAWA may also be members of other organisations, including:

1. The Family Law Section of the Law Council of Australia. (FLPAWA represents family lawyers at a state level, whereas FLS represents family lawyers at a national level.)
2. The Law Society of Western Australia. (FLPAWA is specific to family lawyers, whereas the Society represents lawyers more generally.)

FLPAWA is independent of these other organisations but enjoys constructive working relationships with each of them.

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