



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: DHnh/FLC

6 November 2018

The Law Council of Australia
Attn: Mr. Jonathan Smithers
Chief Executive Officer
GPO Box 1989
Canberra ACT 2601

By email: Jonathan.Smithers@lawcouncil.asn.au

Dear Mr. Smithers,

Australian Law Reform Commission – Family Law Review Release of Discussion Paper

Thank you for the opportunity to provide feedback on the Discussion Paper and to comment on the Family Law Section's (FLS) summary responses to each of the 124 proposals and 33 questions.

We would first and foremost like to acknowledge the immense and extensive response prepared by the FLS in such a short period of time.

The Discussion Paper in its sheer volume alone poses significant challenges, along with the complexity and detail it contains. The summary response is extremely detailed and helpful.

Our comments in relation to the draft responses are included in the attached table – we have only included those sections where we had comments to make. We make the following additional comments.

Funding

We would like to emphasise the need for these proposals to be adequately funded, both in the immediate future and on an ongoing basis. The proposals are very impressive on paper, but without the injection of considerable funds, it is difficult to see many of them achieving significant change. There is also the concern that existing services might be impacted and further depleted as a result of funding of new services. The current system is so chronically under-resourced that it is not hard to imagine that new initiatives will also fail to function efficiently.

The Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018

Whilst the structure of the Court was outside the remit of the ALRC review, it cannot be entirely excluded from the discussion. This is especially so now that the above named Bill has been introduced into Parliament. While the timeframe for the passage and

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implementation of the Bill remains unclear, it may be beneficial for the ALRC to at least consider how their proposals would interact with the proposed new Court.

Prioritising the proposals

Not every proposal will be adopted and it may be worthwhile determining a priority list of proposals. Whilst this is extremely difficult, we ask that priority be given to those proposals that are going to assist with limiting the impact of family separation on children, assisting to reduce child abuse and domestic violence and providing alternatives to litigation for families.

Indigenous access to justice

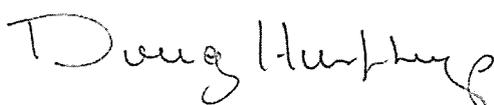
The over-representation of Indigenous children in the care and protection system is well-known, and underscores the critical importance of improving access to the family law system for Indigenous families and children. Too many Indigenous children are disconnected from their family, community and culture as a result of care proceedings. The family law system can assist with keeping a child safe and maintaining connection to family and culture if applications are brought early, when families break down and children are at risk or potentially at risk.

It is clear from the Discussion Paper that the ALRC recognises the need for improvement, however, the proposals require more. In particular, greater explicit acknowledgement that if Indigenous access to family courts is to be effectively improved, Indigenous people must be central to the education of Indigenous communities, Indigenous people and organisations must be resourced to form a specific part of the pathways to the family law system for Indigenous families, and cultural competency education of the family law workforce must be meaningful in order that those service providers can provide effective services to Indigenous peoples. Further specific comments are included in the attached table. We also make the following general comments:

- The proposals refer to “consultation with Aboriginal and Torres Strait Islanders” together with a list of other minority groups. In the Law Society’s view, consideration of the accessibility of the family law system should separately and explicitly consider the needs of Indigenous families, given the particular history of colonisation, Stolen Generations and other related intergenerational trauma that have a specific impact on the relationship that many Indigenous peoples have with courts and other State institutions.
- While we support references to consultation with Indigenous peoples, we note that commonly in public policy making, decision-making nearly always falls to non-Indigenous people after the consultation process is complete. In our view, this is an unsatisfactory practice. Indigenous people must be part of the co-design and implementation of any initiative affecting Indigenous people.

Thank you again for the opportunity to comment. Further inquiries should be directed in the first instance to Nerida Harvey, Principal Solicitor, Community Referral Service, on 9926 0379 or at Nerida.harvey@lawsociety.com.au.

Yours sincerely,



Doug Humphreys OAM
President

DRAFT Response by the FLS of the LCA
Proposals and Questions in the ALRC Discussion Paper
Saturday, 20 October 2018

Ledger colour	Topic	Presenters from FLS
	Parenting	Minal Vohra SC (Vic Bar) Jaquie Palavra (NT Legal Aid)
	Financial	Paul Doolan (Barkus Doolan, Sydney)
	Process	Michael Kearney SC (NSW Bar) Jacoba Brasch QC (QLD Bar)
	Other issues	Wendy Kayler-Thomson (Forte Lawyers, Melbourne) Di Simpson (DDCS Lawyers, Canberra)

Proposal / Question	Proposal/Question	Agree/ Disagree	Other matters
2. EDUCATION, AWARENESS AND INFORMATION			
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.	Agree	The Law Society strongly agrees that Indigenous communities should receive targeted education about the family law system, and how it can assist Indigenous families. However, such education must be done by Indigenous people in safe Indigenous spaces, by indigenous people who understand the system and are respected by community. At the moment, those people are fairly rare, so we need to educate the potential educators by addressing the right support agencies who can then identify the families who need help, and explain the potential benefits of the family law system in an effective way that indigenous people trust. Indigenous people are accustomed to being taken to court by the police or by FACS. They are used to bad things happening at courts so their attitude is that it's best to stay well away. And it's therefore one thing to be handed an information package or consulted by well meaning people, and quite another to have a trusted elder or Indigenous community health worker who knows your family, to explain how an approach to the family law system, whether to an FRC or Families Hub or a court, might really help.

<p>Proposal 2-3</p>	<p>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.</p>	<p>Agree</p>	<p>That information needs to incorporate the family violence laws/system applicable in each state and territory.</p> <p>In respect of any campaign to educate Indigenous communities, and in addition to the Law Society's comments at Proposal 2-2, we note the valuable work that has already been carried out in NSW by the Aboriginal Family Law Pathways Network.</p> <p>Indigenous family law pathways networks in each state and regional area and they should set up and fund roadshows in all those areas, just as the Greater Sydney Family Law Pathways Network did all over Sydney a number of years ago.</p> <p>Any Indigenous family law pathways network should be minimum 50% indigenous membership.</p>
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<p>Proposal 2–4</p>	<p>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:</p>	<p>Agree</p>	<p>The Law Society’s view is that for Indigenous families, it is critical to appoint indigenous liaison officers to each court registry, preferably located in community health or other agencies relied on and used by indigenous people, to build the link between the court and community. The system used to have indigenous liaison officers, but their funding stopped when the FRC's were set up. In our view this was a retrograde step.</p> <p>In the Sydney list, the FCC relied on the 6 or so Indigenous support people who attended court each list day to support the litigants, to connect with community and explain the proceedings. The FCC’s Indigenous policy officer at the Sydney registry has been actively promoting the Indigenous list. But even so, the majority of the cases were identified in the community by an Indigenous community worker, referred to a known and trusted solicitor at the Family Law Early Intervention Unit of Legal Aid who would file or arrange the filing of the application. The usual practice when Indigenous families break down and risk issues arise, is put your head down, and hope FACS don't take any action. The practice of recognising the problems early, initiating action in the family law system to ensure children are safe and properly cared for, <u>is a practice that must be encouraged and promoted.</u> It is going to take a long time for the Indigenous community to build trust in the system, but it won't happen without a strong Indigenous presence at the education stage, the support agencies stage and the Court stage.</p>
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Proposal / Question	Proposal/Question	Agree/ Disagree	Other matters
	<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. 		<p>The Law Society notes that in Cairns, the only FCC indigenous liaison officer employed in either court works with the court and community and provides the link. With his help, a programme called Law Yarn was launched a few months ago initiated by community. It is led by LawRight, a community legal service and delivered in collaboration with Wuchopperen Health Service and Queensland Indigenous Family Violence Legal Service (QIFVLS). Law Yarn helps health workers to yarn with members of remote and urban communities about their legal problems and connect them to legal help. This is a positive example of a health/justice partnership, the holistic approach that the ALRC appears to envisage, but it is an Indigenous community initiative, within an Indigenous framework using Indigenous services.</p>

4. GETTING ADVICE AND SUPPORT			
Proposal 4-1	<p>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:</p> <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. 	<p>Agree</p>	<p>But note that this would require significant additional government funding at a time when governments have underfunded other existing, critical parts of the family law system. Funding for new initiatives should not take priority over increased and guaranteed future funding for existing parts of the system, including courts and associated court services.</p> <p>Relationship with services offered by FRC’s also requires further consideration to</p>

		<p>ensure that there is no duplication of services and best use of scarce government resources.</p> <p>The proposal also assumes a range of relevant and important referral services are available – to be available, they must be funded.</p> <p>It would appear that the Families Hubs will be heavily reliant upon resourcing from agencies who receive funding from State and Territory governments; there may be some suggestion that this new service will result in cost shifting from commonwealth reserves to state and Territory reserves.</p> <p>The Law Society supports the concept of Families Hubs, but Indigenous family hubs need to be staffed by Indigenous people respected and trusted by their communities. Those hubs should be located in existing Indigenous agencies (perhaps AMS's or Aboriginal drug and alcohol service, or The Men's Shed at Mt Druitt, staffed by Indigenous people). We strongly propose using existing infrastructure and establish hubs in those familiar places. Indigenous people will listen to those people. Very few will use white-run services. A mediation pathway designed by Indigenous people with an Indigenous support presence at every mediation would be ideal.</p>
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Proposal / Question	Proposal/Question	Agree/ Disagree	Other matters
Proposal 10-3	<p>The identification of core competencies for the family law system workforce should include consideration of the need for family law system professionals to have:</p> <ul style="list-style-type: none"> • an understanding of family violence; • 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. 	Agree	<p>The Law Society supports the list of core competencies for the family law system workforce, including "cultural competency, in relation to Aboriginal and Torres Strait Islander people" but suggest that one hour of training by watching a video is not enough. There should be minimum and meaningful requirements such that the family law system workforce can provide effective services to Indigenous peoples.</p>

<p>Proposal 10–14</p>	<p>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.</p>	<p>Agree</p>	<p>This is consistent with LCA’s IP48 submission #405.</p> <p>Cultural Plans would be of assistance to the family in determining arrangements for Aboriginal and Torres Strait Islander Children.</p> <p>LCA notes this notion is consistent with the creation of care plans in child protection matters which must provide details of how children’s ongoing connection with kinship networks and country will be maintained.</p> <p>The Law Society supports the proposal for a cultural plan in parenting proceedings involving an Indigenous child, if the dispute might result in a child not being placed with a family member in his/her community group. In many cases when a child will be placed with an Indigenous parent, aunt or grandparent, a cultural plan will not be necessary.</p>
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