AUSTRALIAN LAW REFORM COMMISSION
REVIEW OF THE FAMILY LAW SYSTEM
Overview

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Terms of Reference

Asks the ALRC to consider the appropriate role of the family law system in contemporary Australia and how it can be more responsive to the families who need its services.

Includes questions about the need for reform in relation to:

• the affordable and safe resolution of family law disputes;
• the substantive law governing decisions about parenting and property disputes;
• whether the system’s processes for resolving and adjudicating disputes are well adapted to meet the needs of separated families;
Terms of Reference

- how best to support the involvement of children in family law processes;
- the development of integrated services for families with complex needs;
- the competencies and skills required of family law system professionals and ensuring these are maintained;
- the system’s governance practices and accountability mechanisms; the jurisdictional intersection of the federal family law system and the state and territory child protection systems, and the desirability of ensuring that, so far as is possible, children’s matters arising from family separation be dealt with in the same proceedings.
On 2 October 2018 the ALRC released a Discussion Paper and invited submissions on 124 proposals for change and requested views on 31 specific questions.

Discussion Paper responded to the terms of reference, taking into account submissions (more than 480), consultations (more than 100 around the country), research and previous reports.
• The family law system is unsafe
• The family law system does not enforce parenting orders adequately
• The family law system is overly complex
• The family law system is expensive
• The family law system is slow
• The family law system lacks accountability
Submissions called for...

- changes to the law and decision making processes to ensure children are protected from harm and their parents are safe;
- simpler and clearer legislation and information about the law to support people to sort out arrangements by themselves;
- more affordable and less confrontational processes for resolving post-separation problems;
- legal services that are delivered in a way that does not exacerbate or extend the dispute; and
- greater support to navigate the system to ensure that all of the person’s needs can be met in a timely manner
• Jurisdictional Fragmentation

“A strong theme in the submissions and consultations for this Inquiry is that the family law system can no longer operate in isolation from state and territory systems and courts, and that it is time for the family law system to work in partnership with these other parts of the broader justice system”
“Stakeholders suggested that a central part of redeveloping the family law system should involve a move away from inward-looking approaches towards practices that emphasise collaborative and joined-up service delivery, including with services and courts outside the family law system”
Complexity of the Law

“...The Family Law Act itself has, by virtue of over 40 years of constant amendment, become ‘impenetrable’ for lay people and even many lawyers. The law should be sufficiently transparent and accessible for parties to understand the parameters within which decisions will be made about their children and their property and financial interests”
“.....[T]he family law system has been deprived of resources to such an extent that it cannot deliver the quality of justice expected of a country like Australia, and to whose family law system other countries once looked and tried to emulate”
A public health approach focuses on preventing health problems in a way that extends better care and safety to entire populations rather than individuals.

An approach that aims to prevent problems from occurring in the first place, to quickly respond to problems if they do occur, to minimise any long-term effects and prevent reoccurrence.

A public health approach comprises three levels of intervention: primary, secondary and tertiary.
• **Recommendation 1** The Australian Government should consider options to establish state and territory family courts in all states and territories...

• **Recommendation 2** 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.
• **Recommendation 57** The Family Advocacy and Support Service’s social support services should be expanded to provide case management to clients who are engaged with the family law system.

• **Recommendation 58** The Australian Government should work with Legal Aid Commissions in each state and territory to expand the Family Advocacy and Support Service to court locations that have a demonstrable need and to ensure the provision of adequate and appropriate services.
• **Recommendation 59** Family Relationship Centres should be expanded to provide case management to clients with complex needs who are engaged with the family law system.
• **Recommendation 60** The Australian Government should work with Family Relationship Centres to develop services, including:
  – financial counselling services;
  – mediation in property matters;
  – legal advice and Legally Assisted Dispute Resolution services; and
  – Children’s Contact Services.
A key concern that emerged from consultations and submissions was that there is a high degree of uncertainty within the community about the current legal regime for property settlement post-separation.

... “no other family property legislation in the Western world which is both so expansive in its scope and yet so vague about its purposes” (Parkinson, 2003)
• **Recommendation 11** The *Family Law Act 1975* (Cth) should be amended to:
  – specify the steps that a court will take when considering whether to make an order to alter the interests of the parties to the relationship in any property; and
  – simplify the list of matters that a court may take into account when considering whether to make an order to alter the interests of the parties to the relationship in any property.
• **Recommendation 12** The *Family Law Act 1975* (Cth) should be amended to include a presumption of equality of contributions during the relationship.

• **Recommendation 13** The *Family Law Act 1975* (Cth) should be amended to provide that the relevant date to ascertain the value of the parties’ rights, interests, and liabilities in any property is the date of separation, unless the interests of justice require otherwise.
The ALRC considers that there is scope to increase the proportion of both parenting matters, and property and financial matters, that are dealt with away from the family courts.

...with stronger legislative encouragement to avoid courts, and greater availability of FDR and, for more complex matters, LADR, more families could resolve their issues without litigation.
• **Recommendation 21** The *Family Law Act 1975* (Cth) should be amended to:
  – require that parties take genuine steps to attempt to resolve their property and financial matters prior to filing an application for court orders; and
  – specify that a court must not hear an application unless the parties have lodged a genuine steps statement.

• A failure to make a genuine effort to resolve a matter should have costs consequences.
The ALRC recommends a legislative obligation on courts not to hear an application for property and financial matters unless the parties have a lodged a ‘genuine steps’ statement at the time of filing an application.

In order to improve alignment between property and financial matters and parenting matters, the recommendation extends the requirement to parenting matters as well.
• **Recommendation 30** The *Family Law Act 1975* (Cth) should include an overarching purpose of family law practice and procedure to facilitate the just resolution of disputes according to law, as quickly, inexpensively, and efficiently as possible, and with the least acrimony so as to minimise harm to children and their families.
• **Recommendation 31** The *Family Law Act 1975* (Cth) should impose a statutory duty on parties, their lawyers, and third-parties to cooperate amongst themselves, and with the courts, to assist in achieving the overarching purpose. Breach of the duty will have costs consequences for the person who fails to act in accordance with the overarching purpose.