

16 November 2018

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Canberra 2600  
By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary

**Inquiry into the Federal Circuit Court and Family Court of Australia Bill 2018 and the Federal Circuit Court and Family Court of Australia (Consequential and Transitional Provisions) Bill 2018 ('the Bills')**

I am writing to you to provide comments from Relationships Australia on these Bills.

**The work of Relationships Australia**

This submission is written on behalf of Relationships Australia's eight member organisations.

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of family services to Australian families, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others.

Relationships Australia has provided family relationships services for 70 years. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service. The core of our work is relationships – through our programs we work with people to enhance and improve relationships in the family, whether or not the family is together, with friends and colleagues, and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable.

We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

We work with those affected by violence in families, as well as those who use violence in their relationships. We firmly believe that children need support whenever there is family violence, whether or not they are the intended recipients of the coercion, control or abuse, because there will always be consequences for them when family violence is present.

Relationships Australia supports integrated cross-sector, multi-disciplinary responses to family and domestic violence which focus foremost on the safety of the victim. Freedom from violence in the family is a human right and Relationships Australia supports a legal framework to respond to inequality, coercion and control, and the use of violence in families.

Relationships Australia is committed to:

- Working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with elders, men, women, young people and children. We recognise that often a complex suite of supports (for example, drug and alcohol services, family support programs, mental health services, gambling services, and public housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships, including providing support to parents, and encouraging positive and respectful communication.
- Ensuring that social and financial disadvantage is not a barrier to accessing services.
- Contributing its practice evidence and skills to research projects, to the development of public policy and to the provision of effective supports to families.

This submission draws upon:

- our direct service delivery experience across urban, regional, rural and remote locations
- our experience in delivering programs in a range of communities, including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, and people who identify as part of the LGBTIQ community
- evidence-based programs and research
- our leadership and policy development experience
- the voices of our practitioners, and
- the experiences and voices of the people with whom we work to bring to attention to a range of issues affecting the policy and community actions aimed at supporting strong relationships.

Relationships Australia welcomes the opportunity to comment on the Bills. Our comments draw on the recent submission made by Relationships Australia to Discussion Paper 86 of the Australian Law Reform Commission on its Inquiry into the Family Law System.

## **Introductory remarks – family law or family wellbeing?**

Relationships Australia considers that, in light of

- the paramountcy of children's best interests in parenting *and* finance/property matters
- the future focus and clinical orientation of an inquiry into how those best interests can be promoted (for example, by considering the development needs of each child)
- the prevalence of psycho-social co-morbidities in the overwhelming proportion of families now presenting to family law courts
- the amply-documented harm to children arising from parental conflict, and
- the equally well-documented institutionalisation of that conflict through court-centric processes,

the current system is innately and irretrievably unsuited to meet the needs and legitimate expectations of families. It must be replaced by a system that

- offers effective and therapeutic means of establishing the child's best interests
- prioritises safety and harm prevention in both parenting and finance/property disputes
- makes it easy for families to get the kinds of help they need (ease relating to matters *including* cultural safety, geographical location and physical ease of access, safe and confidential access to clinical services, comprehensibility of information, and range and choice of services)
- helps families to build their capacity to have safe, loving and healthy relationships, and
- is sufficiently resourced to ensure that families do not languish for years, waiting for resolution of their disputes.

This would not be a 'family law system'. It would be a 'family wellbeing system'.

Relationships Australia does not have a particular view on the structure of the federal judiciary. It matters less how the federal family courts are structured and more how they, and courts exercising family violence and child protection jurisdictions, work together to give expert support to families affected by separation.

## **Psycho-social and relational complexities confronting family law courts**

Services working with separating families recognise that:

The dynamics involved in family conflict have complex emotional, cultural, social, health and economic underpinnings. *Characterisation of family conflict as a 'legal problem' does not assist, and frequently exacerbates, dispute....*<sup>1</sup> [emphasis added]

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<sup>1</sup> Marrickville Legal Centre, submission 137 in response to Issues Paper 48 of the ALRC inquiry into the family law system, p 4.

Robust empirical evidence and research backs that up (see, for example, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report*, 2015, at 16).

### The core work of contemporary family law courts

The families presenting with complex psycho-social and relational co-morbidities are emphatically *not* part of a minority or fringe demographic. They are the bread and butter clientele of courts exercising federal family law jurisdiction, and of courts exercising state and territory child protection and family violence jurisdictions. By way of illustration, Relationships Australia refers to an audit of data collected by Relationships Australia South Australia. The audit analysed over 3,200 files from 2013-2018, and found that clients reported mental health, violence and harm to children.

#### Summary of audit findings

DOOR1 wording	Clients saying 'Yes'	Sample size	Risk indicator
In the past 2 years, have you seen a doctor, psychologist or psychiatrist for a mental health problem or drug/alcohol problem?	33.9%	3232	Mental health problem
Have things in your life ever felt so bad that you have thought about hurting yourself, or even killing yourself?	18.8%	3189	Mental health
If yes, do you feel that way lately?	9.5%	599 (Yes only)	Suicide risk
In the past year, have you drunk alcohol and/or used drugs more than you meant to?	10.3%	3245	Alcohol or drug abuse
In the past year, have you felt you wanted or needed to cut down on your drinking and/or drug use?	9.4%	3177	Alcohol or drug abuse
Does your young child(ren) have any serious health or developmental problems?	10.5%	1452	Developmental risk (child <5 years)
In the past 6 months, has any professional (teacher, doctor, etc.) been concerned about how your young child(ren) was doing?	14.0%	1411	Developmental risk (child <5 years)
Does your child(ren) have any serious health or developmental problems?	20.6%	2107	Developmental risk (child >=5 years)

In the past 6 months, has any professional (teacher, doctor etc.) been concerned about how your child was doing?	33.7%	2028	Developmental risk (child >=5 years)
Have any child protection reports ever been made about your child(ren)?	13.1%	3095	Child abuse
As a result of the other parent's behaviour, have the police ever been called, a criminal charge been laid, or intervention/restraining order been made against him/her?	28.4%	3228	Family violence (victimisation)
Is there now an intervention/restraining order against other parent?	5.1%	3131	Family violence (victimisation)
As a result of your behaviour, have the police ever been called, a criminal charge been laid, or intervention/restraining order been made against you?	14.3%	3244	Family violence (perpetration)
Is there now an intervention/restraining order in place against you?	4.5%	3130	Family violence (perpetration)

\*DOOR 1 was developed by J E McIntosh

Family violence, in the experience of Relationships Australia, is rarely present in isolation from other psycho-social/health complexities such as substance abuse, mental health problems or personality disorders.<sup>2</sup>

### The need for specialist decision-makers

Relationships Australia strongly believes that specialist expertise is vital for a family law (family wellbeing) system. Accordingly, Relationships Australia supports Proposal 10-1 in Discussion Paper 86, to develop a workforce capability plan. We recommend that state and territory governments be involved in development of the proposed plan, given the many and close connections between Commonwealth, state and territory functions in this area. We consider the following to be core competencies of all professionals in the family law (wellbeing) system, including judicial officers:

- family violence
- understanding of a broad range of risks, including suicide risk
- trauma-informed practice<sup>3</sup>
- understanding of the impact on children of conflict and family violence
- vicarious trauma

<sup>2</sup> See, for example, the submission of Relationships Australia South Australia in response to ALRC IP48 (submission 62), 4.

<sup>3</sup> See Fallot and Harris, 2006, for the five principles of trauma-informed practice: safety, transparency and trustworthiness, choice, collaboration and mutuality, and empowerment.

- an understanding of child abuse, including child sexual abuse and neglect
- cultural competence in relation to Aboriginal and Torres Strait Islander people, LGBTIQ+ families, and culturally and linguistically diverse communities
- disability awareness
- intersectional disadvantage and discrimination
- elder abuse and intergenerational conflict
- lateral violence
- substance abuse and mental health issues (including as these affect children and young people, and how they affect older people)
- problem gambling
- child-inclusive and child-focused practice, and
- child development<sup>4</sup> and parent-child attachment,<sup>5</sup> and how attachment needs evolve<sup>6</sup> as children develop.

By way of clarification, Relationships Australia considers it useful to explain our conception of child-inclusive practice and its difference from child-focussed practice. *Child-inclusive practice* is where a child who is deemed to be developmentally able (generally, over six years of age) meets with a child consultant. The consultant explores what the family situation looks like through the child's eyes, their experiences of the separation, and how this affects the child. Children are not asked any questions about things that parents need to decide. This is to be contrasted with *child-focussed practice*, which is used where the child is too young to meet with the child consultant (generally this applies to children under six years of age). The child consultant meets with the parents to obtain information about the child and provides the parents with information about the likely developmental needs of the child.<sup>7</sup>

Relationships Australia would also draw to the Committee's attention the views expressed by survey respondents to its online survey, *The voices of children in the family court*.<sup>8</sup> More than 50% of survey respondents thought that people working with children during family disputes should be a psychologist or social worker with experience and skills in working with children. More than 13% thought the minimum requirement should be a three-year psychology or social work degree and a further 10% reported that people

<sup>4</sup> In Lieberman et al, 2011, Zeanah notes (at 535): 'It is peculiar, the lack of developmental thinking in the legal system, and it is a huge problem for children. The fact that it's completely, by its nature, un-developmental. So we see the same arrangements ordered for 15-year-olds and 15-month olds. And that is just on its base crazy.'

<sup>5</sup> In Bretherton et al, 2011, Crowell observes that 'Attachment speaks to the logistics of development, not emotional touchy-feely matters. I think that is where people get mixed up in attachment, and the law does too. Attachment theory if anything encourages us to think on a more practical and organizational level.' (at 546)

<sup>6</sup> Noting the observation by Seligman that 'As clinicians, we have to actively move family law professionals away from thinking of attachment as if it were acquired at a certain time, or as if one parent-child relationship ticks the box and the other does not. Patterns of early contact are important, but there is a *wide variation between being a parent who is not the primary attachment figure in the beginning, and being someone who is marginalised*.' (See Bretherton et al, 2011, 543-544, emphasis added). Relationships Australia notes that various submitters responding to ALRC IP48 drew attention to what they regarded as misapplication of attachment theory, to the detriment of children; see, for example, Family and Relationship Services Australia, submission 53 in response to ALRC IP48, p 21.

<sup>7</sup> Relationships Australia agrees with Birnbaum (2017) that reports from family consultants/single experts are not a substitute for child-inclusive and child-focused practice.

<sup>8</sup> Conducted in September 2018.

working with children during family disputes should have a minimum of five years' experience in working with children. Only 6% of survey respondents considered a legal or dispute resolution qualification was sufficient.

Qualifications and skills of workers	%*
Working with vulnerable people police check	6
At least 2 years' experience working with children	9
At least 5 years' experience working with children	10
Psychology or social work diploma (2 years)	8
Psychology or social work degree (3 years)	13
Legal or dispute resolution qualification	6
Psychologist or social worker with experience and skills in working with children	51
Other	6

\*Respondents may have chosen more than one qualification/skill

Relationships Australia strongly agrees with the Law Council of Australia that candidates for judicial office in a specialist family wellbeing system should be assessed for their 'willingness and enthusiasm to participate in training throughout their judicial careers'.<sup>9</sup> We note that the National Judicial College of Australia has invited the ALRC to recommend that

...judicial officers working in the family law jurisdiction should be supported and encouraged to attend programs within other relevant disciplines...[not so] judges should attempt to become experts in such fields but, rather, that they be assisted to more easily understand these areas.<sup>10</sup>

### **What kind of judicial structures would support a family-centred, problem-solving Family Wellbeing System?**

The use of court-centric, adversarial processes to serve separating families is an artefact of a time when the main objective of Australian family law was to provide a private and dignified process of legal separation, and when there was little or no expectation that separated spouses would have an ongoing co-parenting relationship. Now, however, Australia has a once-in-a-generation opportunity to identify and implement an approach that better reflects:

- community expectations of co-parenting as the norm (subject to safety concerns)
- the evolved understanding of how parental conflict and family violence affects children
- the focus on safety and the necessity for effective harm prevention, and
- the contemporary awareness of the agency of children and young people.

<sup>9</sup> Submission 43 responding to ALRC IP48, paragraph 431.

<sup>10</sup> Submission 113 responding to ALRC IP48, 6.

Australians should not have to wait another 21 years before the issue is re-examined, and the previous research of the preceding 60 years canvassed yet again.

Relationships Australia urges transformation from a court-centric family law system to a family wellbeing system, while maintaining that it is imperative for courts to be an accessible and well-resourced service to articulate and enforce norms.<sup>11</sup> Such courts must be specialist bodies, equipped to respond to situations 'where behavioural problems complicate the resolution of legal disputes.'<sup>12</sup> Such courts are effectively used in other jurisdictions, as noted by the ALRC, which observes that

The benefits of a problem-solving adjudication process include the capacity to address behaviours that *underlie and complicate* the legal issues, with a view to reducing the level of risk to others and the potential for ongoing litigation. Such processes are particularly indicated where an *ongoing relationship between the parties needs to be preserved*, such as is the case in most disputes about the care of children....A problem-solving court process harnesses the authority of the court to effect behavioural change (and reduce risk) in two ways. The first is by empowering judges to connect litigants with relevant services....The second mechanism involves judicial oversight of the person's engagement and progress in making behavioural change, typically via the use of part-heard proceedings. Underpinning each of these components is the use of a therapeutic justice court craft, which seeks to minimise the potential adverse mental health impacts of legal processes on those who use the courts.<sup>13</sup> [emphasis added]

#### *Specialist body for parenting matters*

Relationships Australia notes that Australia is subject to international obligations to protect and promote children's safety and wellbeing. Australia's domestic law and community standards reinforce these obligations; indeed, the paramountcy of children's best interests is a rare point of consensus across all users of the system and in the broader community. Practice experience of social scientists and lawyers over the past four decades demonstrates that separating families need access to an array of multi-disciplinary services.

However, courts established under Chapter III cannot, as a matter of law, deliver these services (see *R v Kirby; Ex parte Boilermakers Society of Australia*).<sup>14</sup> Even with the most lavish funding, courts could never fully meet the needs of the demographic which most needs multi-disciplinary support, because so many of these needs are simply not susceptible to resolution by a judicial response strictly constrained by Chapter III of the Constitution. They are psycho-social, and relational issues. Unless users with such issues receive suitable therapeutic responses, legal issues are likely to become entrenched and recurrent, inflicting further burden on the already over-stretched courts.

Current arrangements, criss-crossing multiple Acts, jurisdictions and courts, are barriers not only to separating families but also to Australia in meeting its obligations to children.

<sup>11</sup> See ALRC DP 86, paragraphs 6.61-6.62.

<sup>12</sup> See ALRC DP 86, paragraph 6.62.

<sup>13</sup> ALRC DP paragraphs 6.63-6.65, references omitted.

<sup>14</sup> (1956) 94 CLR 254.



Relationships Australia urges Commonwealth, State and Territory governments to work together to establish whatever body or combination of bodies is necessary to perform these functions. Such a body should be empowered and resourced to:

- inquire directly into children's wellbeing and needs, including by gathering evidence from relevant people including teachers, doctors, and other adults with whom children have meaningful relationships, as well as from courts and other authorities (eg police and child protection agencies) about the family (including through instructing a family consultant to undertake inquiries on behalf of the body)
- require parents to undertake parenting and other therapeutic programmes (eg drug and alcohol counselling), supported by warm referrals from the body and/or co-located therapeutic services (eg the Families Hubs proposed by the ALRC in Chapter 4 of Discussion Paper 86)
- engage with children in developmentally appropriate ways, using child-inclusive and child-focused practice, as required
- resolve disputes about implementation of orders and agreements; this could be the function of a Parenting Coordinator, as described in the submission of Relationships Australia responding to ALRC IP48 (see Appendix I of submission 11, at [https://www.alrc.gov.au/sites/default/files/subs/family-law\\_-\\_11\\_relationships\\_australia\\_national\\_office\\_submission.compressed.pdf](https://www.alrc.gov.au/sites/default/files/subs/family-law_-_11_relationships_australia_national_office_submission.compressed.pdf))
- require parents to trial temporary arrangements, where appropriate
- where necessary, provide ongoing monitoring and support while parental capacity is being developed
- use a range of problem-solving modalities, and
- employ appropriate staff including accredited Family Consultants, Aboriginal and Torres Strait Islander staff, and staff with expertise working with culturally and linguistically diverse communities.

The idea of establishing a multi-disciplinary tribunal to provide a more comprehensive and holistic response in parenting matters is hardly new. It was a key recommendation of the 2003 report, *Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation*.<sup>15</sup> Currently, Parliament has before it a Bill to amend the *Family Law Act 1975* (Cth) to establish Parenting Management Hearings, which would involve parties agreeing to come before a multi-disciplinary panel to deal with parenting matters.<sup>16</sup>

A specialist body, established to inquire into the child's best interests would closely resemble guardianship or child protection inquiries. Crucially for children's wellbeing, parents/caregivers would be witnesses, not adversaries. Tribunal members should be drawn from a range of specialisations, including family violence, child development and

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<sup>15</sup> House of Representatives Standing Committee on Family and Community Affairs (2003). Rathus, 2018, notes that 'Family law is inevitably, irrevocably and appropriately interdisciplinary.' (at 10) See also the submissions from Caxton Legal Centre, submission 51 to ALRC IP48, 19 and the Hon Diana Bryant AO QC, submission 35 to ALRC IP48, Part 2.

<sup>16</sup> See

[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_before\\_Parliament?page=10&drt=2&drv=7&drvH=7&pnu=45&pnuH=45&f=30%2f08%2f2016&to=16%2f11%2f2018&ps=10&ito=1&q=&bs=1&pbh=1&bhor=1&pmb=1&g=1&st=2](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_before_Parliament?page=10&drt=2&drv=7&drvH=7&pnu=45&pnuH=45&f=30%2f08%2f2016&to=16%2f11%2f2018&ps=10&ito=1&q=&bs=1&pbh=1&bhor=1&pmb=1&g=1&st=2)

social work.<sup>17</sup> The tribunal should be given access to information about court orders and existing agreements, as well as expert reports, including medical reports and family reports.

A counsel assisting would manage the processes, including (with the assistance of Family Consultants) gathering evidence, and would examine witnesses. The strong opposition by the Law Council of Australia to a counsel assisting role seems to be predicated on the difficulties - which Relationships Australia agrees would be considerable – in importing that model into adversarial litigation. The hurdles that are now faced by self-representing litigants would readily be addressed by a counsel assisting approach (including cross-examination of or by vulnerable individuals). This approach would better support ongoing co-parenting than locking parents in a win/lose dynamic, as has been comprehensively explained in numerous submissions responding to ALRC IP48.<sup>18</sup> This is not a matter of speculation. Our practice experience, over several decades, has demonstrated that skilful clinical practitioners can, even in high conflict families, work with parents to support them in shifting to a child-centred lens.

### *High conflict families*

For high conflict families, Relationships Australia further recommends the Government consider piloting a service along the lines of Parenting Co-ordination, which is in use in parts of the United States of America and Canada, as well as in South Africa.<sup>19</sup> Relationships Australia Western Australia is currently running an unfunded pilot of Parenting Co-ordination. Essentially, a family with a court order, or a parenting agreement, can access a Parenting Co-ordinator for assistance in applying the order or agreement.<sup>20</sup> It provides a simpler, faster and less expensive response to families' needs for some assistance in giving effect to orders and agreements, and frees up court resources.

An important outcome that has thus far been achieved by Parenting Coordination is reduction of the demand on court services and more timely resolution of issues. It has been the experience of Relationships Australia Western Australia that high conflict families often have multiple court events. We provided detail on this service model in Relationships Australia's submission in response to IP48.

### *Triaging*

In Discussion Paper 86, the ALRC proposes that family courts establish a triage process to ensure that matters are directed to appropriate alternative dispute resolution processes and specialist pathways within the court, as needed (see Proposal 6-1). Relationships Australia supports this proposal. We concur with the observation of the Law Council of Australia that

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<sup>17</sup> See also the Australian Psychological Society, submission 55 to ALRC IP48, recommendations 16, 18; p 24.

<sup>18</sup> Law Council of Australia (submission 43 to ALRC IP48), paragraph 148.

<sup>19</sup> See also Co-parenting for situations of domestic violence, a treatment program based on parental consent and reporting back to the court: Lieberman et al, 2011, 537. Lieberman notes that '...it is very time-consuming, and very expensive ... *But this is what it takes.*' [emphasis added]

<sup>20</sup> Eg resolving day to day conflicts about application of the order or agreement, or facilitating the variation of an order or agreement that may have become unworkable because of a change in circumstances.

The current family law litigation process imposes the same pathway on each litigated matter, regardless of the complexities of each case.<sup>21</sup>

This is unhelpful, unnecessary and inefficient, and contributes significantly to the unsustainable demands made of the courts.

The ALRC further proposes (Proposal 6-2) that the triage process be undertaken by a multi-disciplinary team including court registrars and family consultants. Relationships Australia supports this proposal.

### *Simplified court processes*

The *Family Law Act 1975* (Cth) includes a range of provisions conferring on judges various powers to modify usual court procedures, including using less adversarial approaches and case management strategies.<sup>22</sup> It is unclear why these are not used more extensively, and Relationships Australia supports the suggestion by Marrickville Legal Centre that a root cause investigation be undertaken as to why the Less Adversarial Trial approach has not had greater take up.<sup>23</sup> There may be a connection between judges' unwillingness to deploy these to their full potential and the excessive workload of judges. If this is the case, then adequate judicial resourcing could make an immediate positive impact.

Other reforms which could have a positive effect on simplifying and streamlining court processes and events include, for example:

- simplifying Part VII of the Act
- a single point of entry into the family court system and a single first instance court
- a single set of rules of court<sup>24</sup>
- registry practices that are nationally consistent<sup>25</sup>
- a single set of court forms
- a single interface through which to transmit and enter user data
- use of Easy English to provide court users with comprehensive, accurate and up-to-date information about the courts
- consistent processes across individual judges and registries, and
- revision and re-numbering of the Act as a whole.

### *Other specialist lists*

At Proposal 6-3 of Discussion Paper 86, the ALRC suggests specialist lists for:

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<sup>21</sup> Law Council of Australia, submission 43 responding to ALRC IP48, paragraph 132.

<sup>22</sup> See, for example, the measures identified by the Law Council at paragraphs 26ff and 147 of submission 43 in response to IP48.

<sup>23</sup> Submission 137 in response to IP48.

<sup>24</sup> Harmonisation of court rules was suggested in the PwC report, 2018, 59; see also pages 73-74, 80.

Streamlining the court system was supported by Family Law Committee of NSW Young Lawyers, submission 108 in response to IP48, 3. See also submission 35 in response to IP48, from the Hon Diana Bryant AO QC.

<sup>25</sup> See Family Law Committee of NSW Young Lawyers, submission 108 in response to IP48, pp 4-5, noting that diverse registry practices cause 'confusion and the risk of inconsistency of experience and outcome in the court system.'

- small property claims
- high risk family violence matters
- Indigenous families.

Relationships Australia supports this proposal, with the caveat that judicial officers hearing matters in any of these should, before having such matters listed before them, undergo relevant specialist training (eg in child development, family violence, cultural safety and trauma-informed practice).

In the past, several family court registries were staffed by Aboriginal and Torres Strait Islander people to act as liaison officers. This resource was withdrawn in response to budgetary pressures. Relationships Australia would urge Government to provide the funding necessary to re-instatement of such roles.

### *Cultural safety*

Relationships Australia supports ALRC's proposal (Proposal 12-8) for a cultural safety framework for the family law (or family wellbeing) system, subject to consulting organisations representing older and younger members of these cohorts, and those with a focus on experience of migrants (in addition to organisations more broadly representing culturally and linguistically diverse communities). We concur with the Commission's proposal of a community-informed co-design model for the development of the framework.

### **Investment**

Some commentary on Discussion Paper 86 argues that proposals to transform (rather than merely alter, refine or add to) existing structures would be too costly, and that improved outcomes could be gained simply by giving those structures more funding. That would indeed soften the loud clamour of those seeking to retain the *status quo*. Temporarily. And it would not help children and their families to access necessary supports. It is, in the view of Relationships Australia, unconscionable to continue propping up a system that institutionalises parental conflict.

Nevertheless, Relationships Australia would add its voice to others calling for governments to ensure that adequate and ongoing resourcing of all components of the system (whether it is a family law system or a family wellbeing system). Courts, in combination with therapeutic and supportive services, have an integral role in society's response to family conflict. Concerns about underfunding the family courts are by no means new. In 1991, Brennan J remarked that

It seems the pressures on the Family Court are such that there is no time to pay more than lip service to the lofty rhetoric of s. 43 of the Act...It is a matter of public notoriety that the Family Court has frequently been embarrassed by a failure of government to provide the resources needed to perform the vast functions expected of the Court under the Act.<sup>26</sup>

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<sup>26</sup> *Harris v Caladine* (1991) 172 CLR 84, 112.

We share the concerns of the Law Council of Australia about delays in obtaining interim hearings,<sup>27</sup> and delays in obtaining family consultant reports (because of lack of availability of family consultants).<sup>28</sup> Relationships Australia agrees that the situation in which families find themselves could be significantly improved by boosted funding to provide more court services (including timely replacement of judges, funding for more judges, registrars and family consultants, and funding to enable more families to access supportive and therapeutic services). However, Relationships Australia maintains that:

- increasing court funding – while necessary - can never be a complete answer to the question of how best to support separating families
- a court-centred process will never be the best option through which to work through the relationship issues emerging from family separation (although, in some instances, it will be the necessary last resort), and
- well-funded supportive and therapeutic services, sitting alongside courts, offer a more complete, helpful and durable response to the range of needs presented by families.

Relationships Australia cautions that it is not necessarily the case that an inquiry model for parenting matters would be less expensive to Government; this is not a 'cheap option'. We further caution that a counsel assisting, employed or engaged by the Court, would reduce legal costs to parents but would be paid for by government (although there might well be an argument for cost recovery or contribution measures to apply on a means-tested basis).

The Government has the following options:

- **do nothing.** This is indefensible when so many are dying by family violence or by their own hand because of stresses associated with family separation, while others are driven into poverty and chronic welfare dependency in the aftermath of separation. Existing research demonstrates clearly that family separation embeds poverty, most particularly with the primary caregiver of any child/ren. Poverty, in turn, is associated with poor outcomes for children.<sup>29</sup>

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<sup>27</sup> Noting the observation in the 2018 PwC report that, in both the Family Court of Australia (FCoA) and the Federal Circuit Court (FCC), interim orders are the second largest category of applications. PwC noted, at p 30, of its report, that interim orders 'are a proxy for cases requiring judicial direction but which are backlogged...use of multiple interim orders indicates a lack of resolution among the parties pending finalisation.' Further, the use of interim orders has increased over the past five years, particularly in FCoA Canberra, Newcastle, Parramatta, Sydney, Townsville and Cairns: p 104. The Australian Bar Association notes that interim orders can contribute to uncertainty which, in the ABA's view, can incur unnecessary costs (see submission 13 in response to ALRC IP48, paragraph 10).

<sup>28</sup> See, eg, Law Council of Australia (submission 43 to ALRC IP48), paragraphs 12, 138-143.

<sup>29</sup> Cf Joan B. Kelly, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 *J. A.M. ACAD.CHILD & ADOLESCENT PSYCHIATRY* 963 (2000). Relationships Australia notes that 84% of Australian single parent families are single mother families. In 50% of single parent families with dependants, the age of the youngest child is between 0-9 years of age: Australian Bureau of Statistics (2012), *Labour Force, Australia: Labour Force Status and Other Characteristics of Families*, Cat. No. 6224.0.55.001. There is a strong negative association between poverty and children's developmental outcomes. The negative effects associated with low income and poverty carry a significant cost for individuals and families, as well as the broader community. There are also clear costs associated with children's development and wellbeing - the impacts of which are likely to be amplified later in life for the children who experienced poverty and also the wider society. See Warren, D, *Low*

- **spend significant amounts of money**, as suggested in 2014 by the Productivity Commission, to **fix the current arrangements**. This would provide temporary relief, but require taxpayers to invest heavily in a system that is inherently unable to do what taxpayers now expect of it. This option would be akin to banning handwashing in hospitals, then spending vast amounts of money on antibiotics and hospital beds to treat the inevitable infections and manage ongoing harm caused by the infections
- spend **significant amounts of money and exercise policy leadership by transforming** a court-centric and highly siloed edifice to a wraparound family-focused service that could make proper inquiry into children's development needs and offer ongoing multi-disciplinary support to children and their families to build capacity, and address the psycho-social and relational needs at the heart of family separation.

### Concluding remarks

The situation for many children, enmeshed in their parents' litigation against each other, is dire and its effects will echo throughout their lives, bleeding into their relationships with their partners and their own children. It is imperative for governments to find a way through. An advanced society should not be paralysed and unable to protect its children because of blind insistence, in the face of all evidence, on a model that institutionalises and rewards parental conflict. Australia needs the same kind of co-ordinated effort, energy and attention to this as is dedicated to national security and counter-terrorism. Threats to our children's wellbeing are existential threats to the nation.

Thank you again for the opportunity to comment on the Bills. Should you require any clarification of any aspect of this submission, or need information on the services that Relationships Australia provides, please contact me or Dr Susan Cochrane, National Policy Manager, Family Law, Relationships Australia.

Yours sincerely,



Alison Brook  
National Executive Officer

16 November

2018

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*Income and Poverty Dynamics - Implications for Child Outcomes*. Social Policy Research Paper Number 47 (2017). Available at <https://www.dss.gov.au/publications-articles/research-publications/social-policy-research-paper-series/social-policy-research-paper-number-47-low-income-and-poverty-dynamics-implications-for-child-outcomes>; Stock, Corlyon et al, *Personal Relationships and Poverty: An Evidence and Policy Review*, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014