



Australian Law Reform Commission Review of the Family Law System ADVOCACY GUIDE

Purpose

To assist legal assistance, family violence and community services to support family violence survivors' input into this review process and to assist community organisations to make their own submission.

What is the inquiry and why is it important?

The Australian Law Reform Commission (ALRC) is undertaking the most comprehensive review of the family law system since the *Family Law Act* commenced in 1976.

The ALRC's aim is to make necessary reforms to ensure the family law system meets the contemporary needs of families, provides early and cost-effective resolution of family law disputes and effectively addresses family violence and child abuse.

This is an opportunity for those with recent experience of the family law system (especially over the past 5 years) and particularly family violence survivors to provide [direct input](#) to the ALRC on what could be done to fix the family law system.

We also encourage organisations supporting family violence survivors engaged in the family law system to also consider making a [submission](#).

What are the key messages?

- **Safety matters.** Currently, there are serious safety concerns for women and children in the family law system. Our input could make this system safer for women and children into the future. The risks include:
 - There is wide-spread misunderstanding in the community that parents have “equal rights” to children even when there is violence and abuse. The focus must be on the best interests of the child. Remove the language of “equal shared time” and “equal shared parental responsibility” in the *Family Law Act 1975* to shift culture and practice towards a greater focus on safety and risk to children. (Term of reference: protection of the best interests of children and their safety; improving the clarity of the law – Issues Paper question 14)
 - Victims-survivors of family violence can experience things like anxiety, depression, post-traumatic stress disorder, substance abuse, self-harm and cognitive and behavioural changes, which may affect their capacity to parent. (Roberts et al, ‘Women’s Experiences of the Processes Associated with

Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis' (2014) *Psychiatry, Psychology and Law*, p2). There is a growing recognition of the tactics that perpetrators of family violence use during litigation to intentionally disrupt the mother-child relationship. (ANROWS, *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*, 2016 p28,30). There needs to be better recognition that harm caused by perpetrating family violence against an adult victim-survivor is also harm perpetrated against the child and that "maintaining relationships between children and abusive fathers is likely to be harmful unless the abusive behavior ends". (ANROWS, *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report*, 2017 p13) (Term of reference: protection of the best interests of children and their safety; family violence and child abuse – Issues Paper questions 1, 2, 14, 15)

- The family law system is not always good at identifying family violence early. This means that safety risks for women and children may not be identified and managed early and throughout the process. Place domestic violence specialists in family court registries to undertake ongoing risk assessment and ensure all professionals within the family law system have ongoing training in domestic violence and trauma informed practice, cultural competency and disability awareness. (Terms of Reference: protection of the best interests of children and their safety; family violence and child abuse; best ways to inform decision-makers about the best interests of the child; skills required of professionals in the family law system – Issues Paper questions 2, 4, 13, 14, 23-25, 41-42)
- Domestic violence and family dispute resolution: Family dispute resolution (FDR) may proceed in circumstances where there is domestic violence and FDR is inappropriate which may lead to unsafe outcomes. Alternatively, cases may be screened out of non-legally assisted mediation due to safety concerns therefore they have little opportunity for early resolution. Early resolution of such matters may be possible through lawyer assisted mediation with practitioners who are domestic violence and trauma informed, culturally competent and disability aware – skills required of all professionals within the family law system. Where reforms are directly related to Aboriginal and Torres Strait Islander people they should be led and co-designed by Aboriginal and Torres Strait Islander people. (Term of reference: appropriate, early and cost-effective resolution of all family law disputes; the protection of the best interests of children and their safety; domestic violence and child abuse and protection for vulnerable witnesses; skills required of professionals in the family law system – Issues Paper questions 14, 24, 25, 41-42)
- Abusers are able to directly cross-examine family violence victims in the family law courts (although this can't be done in most other courts across Australia) Implement legislation to ban direct cross-examination by an abuser or of an abuser. (Terms of Reference: family violence and child abuse, including protection for vulnerable witnesses – Issues Paper questions 11-12)

- Barriers to receiving fair property outcomes in the family law system need to be addressed. Family law property proceedings are so complex and expensive that they are unaffordable for many poor families. The difficulties in obtaining proper financial disclosure by uncooperative partners is a real problem, despite the law saying that full disclosure is mandatory. There also needs to be better recognition of domestic violence in property matters. See WLSV's [Small Claims, Large Battles report](#) (Term of Reference: rules and legal principles for parenting and property matters; family violence and child abuse –Issues Paper questions 2, 17, 22, 23, 24, 41-42)
- This is also an opportunity to raise issues relevant to the family law system which may not have been included in the Issues Paper – eg child support; accessibility of the family law system for parents in custody where it is in the best interests of the child; need for better funding of the family law system, including: specialist domestic violence & trauma informed, culturally competent and disability aware support services; domestic violence & trauma informed, culturally competent and disability aware family dispute resolution services; gender based specialist domestic violence and trauma informed legal responses which are culturally competent and disability aware, specialist Aboriginal and Torres Strait Islander controlled legal service providers and additional funding for legal assistance services more broadly; courts; other issues you may like to raise.
- **To be serious about family violence – we have to get serious about family law.** Family law helps women recover financially from family violence. If the family law doesn't work for family violence survivors – there is a serious problem.
- **Inclusivity & accessibility** – the family law system needs to be modernised and accessibility improved for Aboriginal and Torres Strait Islander people; culturally and linguistically diverse communities; people with disability; lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people; people living in regional, rural and remote areas. The people for whom accessibility needs to be improved should have the opportunity to participate in these discussions and in decisions that affect them.
- **We need to speak out to ensure these issues are heard.**
- **You could be a part of a movement for change.** This is a chance for services and survivors to join a movement for positive change, and send a strong, united message to the ALRC and government on what needs to change in the family law system.

What are we asking services to do?

- To be familiar with the *Safety First in Family Law* [5 step plan](#) and the [ALRC review](#).
- The ALRC is keen to [hear directly](#) from people with recent experience within the family law system (especially within the last 5 years) that may illustrate some of the current problems. These stories are for the ALRC's use only and will not be published. Responses due **7 May 2018**. Word limit: 750 words. Please spread the word about [telling your story to the ALRC](#).

- That services support their clients to participate in this inquiry and if possible make their own submission. See the [ALRC Issues Paper](#). Submissions are due by **7 May 2018**. If you are writing your own submission it's a good idea to begin with a paragraph about your organisation and the expertise you bring, for example, in working with clients who have experienced family violence who are involved in the family law system. Click [here](#) to access the online submission form or email your submission to: familylaw@alrc.gov.au
- That services spread the word about the inquiry to relevant family violence services – this could be at outreach, community education, stakeholder meetings, social media, email or otherwise.

More information

- **ALRC review** website: <https://www.alrc.gov.au/inquiries/family-law-system>
- **Safety First in Family Law** website: <https://safetyinfamilylaw.org.au/>
- **WLSV's Small Claims, Large Battles** report: <http://womenslegal.org.au/creating-change/small-claims%2c-large-battles.html>