

Australian Law Reform Commission **Family Law Review**

13 November 2018

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Submission

Baptist Care Australia welcomes the opportunity to provide feedback to the Australian Law Reform Commission's *Review of the Family Law System* discussion paper. Baptist Care Australia broadly supports the proposals made within the discussion paper and comments here on a few areas where our membership has particular expertise and experience.

Since the introduction of the *Family Law Act 1975* (Cth) there has been significant change to the ways Australian families live and operate. This review provides an excellent opportunity to make a substantial change for Australian families who through one means or another are required to interact with the family law system.

The current client base of the family law system is very different from the one that was envisaged at the time the legislation was created, and Australian family life has changed significantly over the past four decades. The most significant change is changes to family structures, with growing numbers of unmarried families, stepfamilies, blended families, same-sex families and kinship-care arrangements. While the vast majority of separating families are able to work out their arrangements with limited or no interaction with the family law system, many of the families who do engage with the system have increasingly complex needs.

The system needs to support these people in a way that is easy to understand, therapeutic, restorative, and timely. The family law system should provide holistic support to separating families as they make decisions about their separation. The system's decisions, and the manner in which they are reached, should enhance family relationships to the greatest extent possible, reduce conflict between adults and most importantly ensure the long-term wellbeing of children.

Education, awareness and information

Baptist Care Australia supports the proposal to develop a national education and awareness campaign to enhance community understanding of the family law system. The awareness campaign should be designed with the organisations operating within the sector and should provide practical information to families to help them gain an understanding of how the system operates. This will help families to have more realistic expectations of how the system operates and the likely outcomes.

This awareness and early intervention campaign should include information on better managing relationships after separation. It is also important that campaigns look to increase public awareness of existing programs that sit outside the family court, such as dispute resolution services. This is from both the perspective of families who may be able to manage their disputes without having to go to court, and as a way to reduce some of the demand on an already burdened family court system.

In addition, Baptist Care Australia believes that it would be appropriate for the awareness campaign to tie in with existing campaigns focused on raising the awareness and changing attitudes around domestic and family violence, in particular highlighting the different forms of domestic and family violence and providing information on where to seek support.

Simpler and clearer legislation

Baptist Care Australia supports the proposal to substantially redraft the current *Family Law Act 1975* in a way to simplify meaning and assist readability. The family law system must be easy to understand and navigate, and any ambiguities should be removed wherever possible. As highlighted within the discussion paper, there is currently significant confusion about different parental responsibilities within the existing legislation, as well as what matters and how matters between parents should be resolved. Amending the legislation to clearly set out in plain language the expectations and requirements is essential if we want people to engage with the system properly.

Having unified and nationally consistent definitions within the broader family law system is also important. Currently, each state and territory has different definitions for what parenting means and looks like within their separate systems. While unifying these definitions would not be an easy task and would require a high degree of co-operation between the states, territories and the commonwealth, nationally consistent definitions provide the legislative framework to enable courts to help families meet their parenting obligations more effectively.

Domestic and family violence provisions

Baptist Care Australia is pleased that there are several proposals that highlight the importance of the family law system properly understanding and catering for the needs of people who have experienced family and domestic violence.

Family and domestic violence can be a difficult issue for the courts to deal with, but those who have experienced violence must be protected by the system as far as possible in order to not cause further harm. One current limitation of the existing definition is that while it does provide examples of the types of abuse that are considered family violence, the list is not comprehensive or representative of the broad scope of abuses that can occur within the family dynamic. The current definition of family violence in the legislation should be updated to include definitions and examples of psychological, emotional, spiritual, and reproductive abuse and should highlight the fact that violence can occur outside of the parent-parent, parent-child relationship.

Baptist Care Australia believes it is a positive step forward to create a triage list for the hearing of high risk family violence matters in each registry, where all staff members will have specialist family violence knowledge and experience. When assessing eligibility for this list it is important to protect those coming forward who have experienced violence. Special priority should be given to cases where children have witnessed or experienced family violence.

Baptist Care Australia would also like to highlight the importance of designing family court facilities with people who have experienced domestic and family violence in mind. There were no concrete proposals made within the discussion paper that recognised the importance of ensuring the physical and emotional safety of this group of family law participants. Available rooms, safe spaces and exit plans for people where there is an allegation of family or domestic violence are essential. These facilities also need adequate security, staffing and equipment, including security staff who have a thorough understanding of interpersonal violence and the ability to assist clients coming into and exiting the court and accessing facilities such as toilets, smoking areas and safe rooms.

Ensuring children's voices are heard and respected

As many of the submissions to this review indicate, children must be better supported to have their experiences and perspectives heard, and incorporated into the decision making process of the family law system.

Children are often the most affected by the decisions made, and they deserve a voice. In doing so, it is imperative their safety is ensured and maintained. The discussion paper makes many sensible proposals in order to better incorporate children's voices into family law matters, and Baptist Care Australia encourages the review to listen to the voices of children's representative groups in this review process. Like many other community service organisations, Baptist Care Australia is in favour of the creation of a separate body responsible for the appointment, management and coordination of children's advocates and representatives. This body needs to have expertise in child development, complex trauma, and domestic and family violence, and should operate in accordance with the Australian Human Rights Commission's National Principles for Child Safe Organisations. This would further ensure that the rights and needs of children in complex family situations are appropriately met.

An appropriately skilled workforce

Baptist Care Australia welcomes the proposals around strengthening the capability of the workforce involved in supporting the family law system, particularly around the areas of

domestic and family violence and trauma-informed practice. Baptist Care Australia also supports the recommendation in relation to Children's Contact Services staff being required to hold a minimum qualification in Community Services or similar in order to ensure that the support provided to children is informed by best practice and is therapeutically appropriate.

As Australian families change, so too should the system that is designed to support them. As part of this, it is essential that family law services provide positive outcomes for families. It is equally important that these services are appropriately resourced to ensure they are able to meet the needs of the people they serve. While this is not strictly in the scope of this review, it is important that it is recognised.

Baptist Care Australia welcomes the proposals made within the Family Law Review's discussion paper, and encourages the Australian Law Reform Commission to continue working with the many organisations that make up the family law system to ensure that the system is integrated, trauma-informed, collaborative and ultimately supports the children and families involved.

About us

Baptist Care Australia is the national representative body for Baptist community service organisations. We work to bring social justice to Australian communities, advocating nationally on issues important to our members.

Baptist Care Australia members serve people in aged care, affected by family violence, experiencing homelessness, on low incomes, experiencing relationship breakdown, living with a disability, and affected by multigenerational disadvantage. Services include crisis accommodation, social housing, out of home care for children, counselling, no and low interest low schemes, and other programs that help people rebuild their lives or live independently with the right support.

With a combined annual turnover of \$700 million, Baptist Care Australia members employ over 9,000 staff and engage with more than 2,500 volunteers annually.

Baptist Care Australia is a company limited by guarantee, a registered charity and a public benevolent institution with income tax deductible gift recipient status.