Queensland Law Society

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Office of the President

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Our ref: (NDC - FLC)

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

By post and by email: [redacted]

Dear Executive Director

Review of the Family Law System

Thank you for the opportunity to provide comments on the Review of the Family Law System.

The Queensland Law Society is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The Queensland Law Society also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The Queensland Law Society assists legal practitioners to continually improve their services, while monitoring their practices to ensure they meet the high standards set for the profession in Queensland. The Queensland Law Society assists the public by advising government on improvements to laws affecting Queenslanders, and working to improve their access to the law.

This response has been compiled with the assistance of the Family Law Committee, with contributions from members of the Children's Law Committee, the Access to Justice/Pro Bono Law Committee, Reconciliation and First Nations Advancement Committee and Equity and Diversity Committee.

Overall, the Queensland Law Society (**QLS**) supports the policy response by the Law Council of Australia **(LCA**) to the questions outlined in the Australian Law Reform Commission's Issues Paper.

We note that we also provided feedback directly to the LCA and were pleased to see that our contribution was largely adopted throughout the LCA submission.

We make the following additional comments:

Objectives and Principles

Question 1. What should be the role and objectives of the modern family law system?

QLS generally supports the LCA response in relation to the role and objectives of the family law system.

However, in our view, the operation of the adversarial system can be problematic, particularly in parenting matters where the objective should be to reduce ongoing conflict between parties for the benefit of children. There are advantages to adopting less adversarial court processes in a family law context. In our view, less adversarial processes may be more likely to facilitate cooperative and respectful engagement between parties to aid more expedient resolution of a matter, as well as after a matter has been resolved.[1]

While the *Family Law Act 1975* (Cth) (the **Act**) provides powers to judges to tailor the style of hearing to the needs of the parties, these provisions are significantly underused. In our view, the family law system would become 'less adversarial' were these existing powers more liberally and frequently exercised. QLS strongly supports the view that lawyers and the judiciary ought to be proactive in employing measures to protect self-represented parties from the trauma of cross-examination in matters involving family violence.

QLS raised significant concerns with the model proposed under the Family Law Amendment (Parenting Management Hearings) Bill 2017. While this represents a less adversarial dispute resolution process, the proposal has not been rigorously considered. Our particular concerns with this inquisitorial model include:

- The new layer of complexity that would be introduced into the family law system, in a context where fragmentation and complexity is one of the greatest challenges for litigants navigating the system. Family law system reforms should instead be considered in a holistic manner.
- The limits on legal representation. Legal practitioners play an important role in resolving family law matters, including by identifying relevant issues and providing relevant information to the Court. Access to legal advice and representation is crucial in the resolution of matters and helps to ensure vulnerable and disadvantaged litigants are properly informed and understand legal matters. In our view, there is a significant unacceptable risk that the complex needs of litigants will not be identified where neither party is represented.

[1] This understanding led to the establishment of Less Adversarial Trials in the Family Court. Family Court of Australia, (2009) *Less Adversarial Trial Handbook*.

Question 2. What principles should guide any redevelopment of the family law system?

QLS supports the principles relevant to the redevelopment of the family law courts proposed by the LCA.

The principles should reflect the diversity of family structures and backgrounds of Australian families and should promote the welfare of all children without reference to their family structure.

Access and Engagement

Question 3. In what ways could access to information about family law and family law related services, including family law violence services, be improved?

Question 4. How might people with family related needs be assisted to navigate the family law system?

Information availability is critical for those involved in family law disputes. QLS notes that there is an abundance of family law information available from numerous sources, including:

- Authoritative websites such as government websites, court websites, Legal Aid Commission websites and Community Legal Centre websites.
- Legislation and case law available online by government and private publishers.
- Information published by private law firms.

However, it may be difficult to identify relevant information, as much of the available content is irrelevant, inaccurate, out-dated or misleading.

Access to current and accurate family law information is critical for those engaged in the system. Court and government websites should be well maintained and provide up to date, clear and comprehensive information to the community. These websites should be simplified as much as possible so that they are easy to use and understand. These sites should also be monitored regularly and updated as necessary.

Improvements to assist in navigating the family law system ought to be considered particularly with respect to the groups most in need of access to accurate and relevant information and navigation support. In our view, these groups include victims of family violence, self-represented litigants and vulnerable and disadvantaged groups. We support the improvements to Court websites as suggested by the LCA, which would greatly improve the accessibility of information for these groups.

QLS does not support the concept of a 'navigator', as outlined in the Issues Paper. In our view, advice and assistance in navigating the family law system can and should most appropriately be provided by a legal practitioner.

QLS acknowledges that, for many people with family law issues, legal needs may be just one of several complex and interrelated needs. The assistance by non-lawyers should be in addition to, rather than instead of, assistance by lawyers in legal processes. QLS notes that there are many successful examples of collaboration between lawyers and non-lawyers to achieve better outcomes for this client group.

Question 5. How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

As noted in the Issues Paper, numerous reviews have found that mainstream family law services are not designed or delivered in a way that recognised the lived experiences of Aboriginal and Torres Strait Islander people.

Resistance to engaging with the family law system must be viewed within the historical context of colonisation, dispossession of land and forced removal from country and the separation of children from families as a result of government policies.

Importantly, resistance to engagement may also be the result of the lack of commitment to previous reviews and implementation of recommendations; lack of meaningful consultation and engagement with Aboriginal and Torres Strait Islander communities and organisations; hostile physical environments, policies and legislation that are not culturally safe and a lack of Aboriginal and Torres Strait Islander people working within the system.

Some of the previous recommendations that should be considered as part of this inquiry include:

- Implementation of strategies for the appointment of Aboriginal and Torres Strait Islander solicitors, barristers, judicial officers, registrars, counsellors, dispute resolution practitioners and liaison officers in the family law court;
- Development of education programs about the family law system for Aboriginal and Torres Strait Islander communities. Given the prevalence of domestic and family violence in Aboriginal and Torres Strait Islander communities, additional support and education specific to violence impacting Aboriginal and Torres Strait Islander people is critical;
- Inclusion of Aboriginal and Torres Strait Islander communities and/or organisations in facilitating dispute resolution processes;
- Development of a 'Best Practice Guide' for those working with Aboriginal and Torres Strait Islander clients; and
- Adoption of similar structure and protocols of Queensland Murri Court for Aboriginal and Torres Strait Islander families in the family law courts.

Access to family law advice and representation through Aboriginal and Torres Strait Islander Legal Services (ATSILS) is essential to facilitate access to the family law system. From a practical perspective, the capacity for ATSILS to meet the family law needs of Aboriginal and Torres Strait Islander people is often limited by a lack of resources and conflict issues. For this reason, culturally competent services outside ATSILS should also be available.

Legal assistance service providers, including Legal Aid, ATSILS, Community Legal Centres and Family Violence Prevention Legal Services must be established and appropriately funded, including in remote communities, to provide family law support and advice to Aboriginal and Torres Strait Islander people.

QLS further recommends that a system be created, similar to the Legal Aid system, whereby ATSILS develop partnerships with private legal practitioners. These practitioners could undertake legal work for Aboriginal and Torres Strait Islander clients where ATSILS are

unable to take on a matter, for example due to a conflict of interest or lack of capacity, and would be remunerated through government funding, according to a scale of fees. It is important that payment be reasonable and appropriate for the work undertaken. In Queensland, for a private legal practitioner to undertake legal aid work, they are required to meet certain criteria and make certain undertakings. We recommend that practitioners who work in partnership with ATSILS similarly be required to meet certain criteria, including demonstrated cultural competency. This would ensure that only practitioners who are competent in undertaking this work are assigned.

Ongoing, appropriate and culturally safe community legal education must be developed with and delivered by Aboriginal and Torres Strait Islander organisations and legal practitioners to all areas around Australia, and in particular, in rural and regional areas.

The experience of going to court is likely to be particularly traumatic for Aboriginal and Torres Strait Islander people. The benefits of an alternative setting for dispute resolution are significant. In the experience of our members, it is not uncommon for Aboriginal and Torres Strait Islander litigants to simply stop attending court for their matter after some time because they are disengaged with and traumatised by the process. In turn, this causes further delays within the court system.

In parenting matters, section 60CC(3)(h) provides that the Court must consider a child's right to enjoy his or her Aboriginal or Torres Strait Islander culture. However, in the experience of our members, meaningful consideration of this right can be limited. Often, there is insufficient evidence, including expert evidence, to demonstrate how this right could be properly exercised.

While cultural reports are infrequently used, QLS strongly agrees with the LCA view that these reports would be of immeasurable assistance to the Court in matters involving Aboriginal and Torres Strait Islander children. QLS recommends that additional funding be provided to the Court for the preparation of cultural reports.

We emphasise the importance of building on systems and programs that are already working well. For example, our members have had positive experiences with the Relationships Australia ATSI program, which facilitates alternative dispute resolution processes for Aboriginal and Torres Strait Islander people in a culturally safe manner. We also note the 'Indigenous list' pilot in the Sydney and Adelaide registries of the Federal Circuit Court and consider that other registries could benefit from adopting this model. QLS members have expressed strong support for the adoption of an 'Indigenous list' in the Brisbane registry as well as throughout other Queensland registries.

QLS strongly recommends that, as part of the ALRC inquiry, direct consultations be undertaken with Aboriginal and Torres Strait Islander individuals and communities, as well at NATSILS and Aboriginal Legal Services around Australia.

Question 6. How can the accessibility of the family law system be improved from culturally and linguistically diverse communities?

QLS supports the comments made by the LCA in relation to culturally and linguistically diverse communities.

Interpreters play a critical role in the family law system. QLS supports the allocation of additional resources for interpreters, as well as for specific training in family law.

The ineffective use of an interpreter during court proceedings may result in a power imbalance between parties and ultimately a miscarriage of justice. QLS supports the implementation and monitoring of the 'Recommended National Standards for Working with Interpreters in Courts and Tribunals', published in October 2017 by the Judicial Council on Cultural Diversity.[2]

QLS specifically emphasises the importance of Standards 5 and 14 of the Recommendation:

> ***Standard 5 — Training of Judicial Officers and Court Staff***
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> *5.1 Judicial officers and court staff should be familiar with the role of the interpreter as an officer of the court.*
> *5.2 Training should be provided for judicial officers on assessing the need for interpreters and working with interpreters in accordance with these Standards and the Model Rules and Practice Note as enacted in their jurisdiction.*
> *5.3 Training should be provided for court staff on assessing the need for interpreters and working with interpreters in accordance with these Standards.*
>
> ***Standard 14 — Plain English***
>
> *14.1 Judicial officers should use their best endeavours to use plain English to communicate clearly and articulately during court proceedings.*

QLS strongly recommends that the ALRC directly consult with individuals from culturally and linguistically diverse backgrounds who have engaged in the family law system, wherever possible, to inform this inquiry.

Question 7. How can the accessibility of the family law system be improved for people with disability?

QLS supports the comments made by the LCA on this issue as well as the suggestions set out in the Issues Paper[3] on addressing access to justice issues for people with disability, including:

- Improved awareness of the types of violence experienced by people with disability, particularly the impact of violence on women and girls with disability; and
- Training and accreditation for family law system professionals to enhance their competency in working with parents and children with disability.

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[2] Judicial Council on Cultural Diversity, (2017) *Recommended National Standards for Working with Interpreters in Courts and Tribunals*, retrieved from: https://www.naati.com.au/media/1680/mca04694-national-standards-web-171025pdf.pdf.
[3] Australian Law Reform Commission, *Review of the Family Law System – Issues Paper,* IP 48, (2018) 30.

QLS supports the introduction of the provisions of the Convention on the Rights of Persons with Disabilities into the Act around supported decision making. From a practical perspective, however, the introduction of such provisions would need to be accompanied by appropriate funding to be effective.

Question 8. How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

The family law system has historically discriminated against LGBTIQ individuals and families. Any proposals to improve the accessibility of the family law system for this group must be considered in light of the legacy of the discrimination which continues to be felt by this group.

Even very recently, overt prejudice formed part of the debate around changes to the *Marriage Act 1961* (Cth). The real and harmful consequences of this must be acknowledged for progress to be made. These consequences may include, for example, a reluctance to engage with the family law system by some LGBTIQ individuals.

While LGBTIQ individuals and families should be treated in the same way as any other family under the law and by family law professionals, this group faces particular challenges within the family law system. Parentage issues, in particular, disproportionately impact on this group. The Act does not adequately deal with parentage issues for LGBTI families.

By way of example, the children of transgender men, who are born with reproductive anatomy that allows them to become pregnant and give birth, are not considered within the current scope of the Act and any determinations around parentage for these children are unclear.[4]

Similarly, same-sex parents of children born overseas via surrogate may not be recognised as parents within the scope of the Act. The consequences of this for LGBTI families, who often bear significant cost and overcome enormous challenges to create a family, can be devastating.

Further, section 69P sets out presumptions of parentage arising from marriage but refers only to "a child born to a woman" and "her husband". It is unclear why this section should not apply to children born to married same-sex parents. If parentage provisions are to remain within the Act, these provision require amendment.

Discussion around parentage often excludes same-sex families. For example, QLS notes references to parents as either 'biological or adoptive' in the Issues Paper.[5] Parents in same-sex do not necessarily fall into these categories. The female partner of a birth mother is presumed to be a parent, for example, without the need for formal adoption or biological connection, as a consequence of section 60H of the Act.[6] Accordingly, the reference here should be to 'legal parents' or simply, 'parents'.

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[4] Rosie Charter et al. 'The transgender parent: Experiences and constructions of pregnancy and parenthood for transgender men in Australia' (2018) *International Journal of Transgenderism.* Retrieved from: https://doi.org/10.1080/15532739.2017.1399496.

[5] Part VII is certainly not limited to 'biological or adoptive' parents but refers simply to 'parent'. Australian Law Reform Commission, *Review of the Family Law System – Issues Paper,* IP 48, (2018) 47.

[6] We note that, to be considered a parent, section 60H requires that the de facto partner consented to the carrying out of an artificial conception procedure.

The issue of who may be considered a parent is dealt with differently across various federal legislation, including the *Family Law Act 1975*, *Child Support Assessment Act 1989* and *Passports Act 1938*. The issue is dealt with differently again throughout various state statutes. These discrepancies require urgent resolution.

We note the 2013 Family Law Council report on parentage and the Family Law Act.[7] Many of these recommendations continue to warrant consideration as part of this inquiry. Specifically, QLS supports the implementation of national status of children legislation. This legislation would create a consistent approach to parentage. We recommend such legislation adopt gender neutral terms, such as "spouse" and "person who gives birth", so as to accommodate various family structures.

QLS supports amendments to court forms offering alternatives to binary genders, as submitted by the LCA. We further note with concern that many family law forms continue to be tailored to heterosexual couples and families with a 'mother' and 'father', including Initiating Applications.[8] It is most concerning that the Application for Divorce continues to list categories of 'Husband' and 'Wife', despite changes to the *Marriage Act 1951* (Cth), which allow same-sex couples to marry in Australia and, consequently, to divorce. The notion that same-sex parties should simply 'cross-out' descriptions that do not apply is highly offensive and perpetuates the discrimination which amendments to the Marriage Act sought to remove.[9]

QLS recommends resources be allocated to community education around parentage, donors and donor agreements. LGBTIQ families may not seek the assistance of a fertility clinic in having a child and therefore may not be provided with information around the ramifications of entering into a donor agreement, for example, with a friend. The Act provides scope for a person concerned with the welfare of a child to make an application to the Court in relation to the parenting arrangements for that child. In these circumstances, a donor may have standing to seek orders in relation to, for example, living arrangements. Families entering into these agreements should be aware of this possibility, as well as other possible outcomes of the arrangement.

Finally, QLS strongly recommends the ALRC directly consult with LGBTIQ organisations and individuals who have experience engaging with the family law system.

Question 9. How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

QLS supports the comments made by LCA in relation to the need for the Federal Government to commit to additional funding for courts in regional areas, noting the importance of purpose-built court rooms which ensure the safety of court users and provide the infrastructure necessary for vulnerable witnesses to provide evidence in a safe way.

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[7] Family Law Council (2013) *Report on Parentage and The Family Law Act.* Retrieved from: https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/family-law-council-report-on-parentage-and-the-family-law-act-december2013.pdf

[8] Part D of an Initiating Application set out details for Children. Applicants must complete 'Mother's name' and 'Father's name'.

[9] This was the advice provided through the National Enquiry Centre and provided to Queensland legal practitioners via *QLS Update* (14 March, 2018) 'Applications for divorce: Same sex parties'.

QLS supports funding for increased community education in rural, regional and remote areas of Australia. Ideally, this education could be provided in person by experienced practitioners.

In the experience of QLS members, there is considerable inconsistency in the willingness of judges to embrace technology, including facilitating attendance by telephone and video-link. In our view, the Court's approach to using technology to facilitate access for those in rural, regional and remote areas of Australia should be consistent.

QLS members strongly support increased circuiting to regional areas of Queensland and the prompt appointment of judges to regional registries.

Resources must also be allocated to fund the availability of legal and support services in rural, regional and remote areas of Australia, including in person and via telephone.

Question 10. What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

Access to legal assistance in the early stages of a dispute can prevent or reduce the escalation of legal problems and reduce cost to the justice system overall. Private legal practitioners generally provide high quality, tailored family law advice and play an important role in resolving family law matters, including by identifying relevant issues and providing relevant information to the Court. Access to legal advice and representation is key in the resolution of matters and helps to ensure litigants are properly informed and understand legal matters.

While it is reasonable for private legal practitioners to charge a professional fee commensurate to the work undertaken, we acknowledge that the cost of private legal representation can be prohibitive for some people.

Sustained cuts to the legal assistance sector, including Legal Aid, Community Legal Centres and Aboriginal and Torres Strait Island Legal Services have impacted the ability of a significant proportion of the community to obtain access to specialist family law advice. Additional funding to the legal assistance sector is essential to improving accessibility to the family law system and reducing cost to clients.

QLS supports comments made by the LCA in relation to family reports and family report writers. As noted by the LCA, the work involved in the preparation of a family report is considerable. The fees charged by private family report writers are largely reasonable, and reflect the expertise of these professionals and the considerable work involved in the preparation of reports. Further, in the event that parties are unable to afford a private family report, family consultants employed by the Court may prepare a family report.

"Unbundled" or discrete task legal services offer a possible means of filling part of the 'justice gap' between those who are eligible for legal aid and those who can afford full private representation. A number of family law solicitors have adopted this approach in an attempt to meet the legal needs of a significant proportion of the community. However, QLS notes that there are some obstacles to the greater use of discrete task assistance, including:

- A lack of understanding from courts around the limits of a lawyer's retainer;

- Issues around professional indemnity insurance in the circumstances of limited retainers; and
- A lack of understanding from clients around the scope of a limited retainer.

QLS supports alternative dispute resolution processes, as well as a range of other measures, to reducing cost for clients. These are discussed further below.

Question 11. What changes can be made to court procedures to improve accessibility for litigants who are not legally represented?

Question 12. What other changes are needed to support people who do not have legal representation to resolve their family law problems?

A significant volume of litigants engaged in the family law system are self-represented. It is more difficult for the Court to be provided with all the relevant evidence and hear relevant arguments necessary in making an informed decision where one or both of the parties are self-represented.[10]

QLS strongly supports the changes proposed by the LCA to improve accessibility for self-represented litigants, including:

- Simplification of Part VII of the Act;
- Creation of a single court (which may comprise internal divisions);
- A single set of rules, written in plain English;
- A single set of forms;
- Revision and renumbering of the Act;
- Simplification of Part VII of the Act;
- A transparent and consistent process within the Court and among judicial officers; and
- Ongoing training of judicial officers in communicating with litigants and less-adversarial features of the Act.

Despite the issues identified with the current family law system, we note that the overwhelming majority of people who separate are able to come to an agreement and relatively few matters require resolution through the family law courts. Legal practitioners are instrumental in resolving matters before they reach the Court.

However, we note that this inquiry takes place in a context where legal assistance services continue to be chronically underfunded and are forced to turn away a significant number of people each year. Across Australia, Community Legal Centres are forced to turn away around 170,000 people each year, primarily due to insufficient resources.[11] Again, access to legal assistance in the early stages of a dispute can prevent or reduce the escalation of legal problems and reduce cost to the justice system overall.

[10] Australian Government, *Access to Justice Arrangements: Productivity Commission Inquiry Report*, Report No 72 (2014) Vol 2, 863.
[11] NACLC, (2016) *National Census of Community Legal Centres (CLCs) 2016*, retrieved from: http://www.naclc.org.au/resources/NAC008%20NACLC%20Census%202016%20Infographic%20FA%20LR.pdf.

We reiterate comments made above in relation to the benefits of legal assistance and representation and the importance of adequate government funding to the legal assistance sector.

Even where initial advice has been provided by a legal assistance service, these services are often unable to provide support throughout the litigation process, due to inadequate resourcing. To meaningfully engage in family law proceedings, a party must have capacity to pay for basic litigation costs including filing fees (where no exemption applies), process server fees, conduct money to issue subpoenas and costs associated with copying material produced under subpoena. These costs can be prohibitive for people seeking resolution of their family law matters through the court system. We recommend that legal assistance providers, in particular Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services, be provided with sufficient funding to assist their clients in meeting basic litigation costs in addition to advice and representation.

The inability for litigants to access legal representation in matters involving family violence is of particular concern. Self-represented victims of family violence often lack the capacity to properly gather evidence and draft affidavit material.[12] A victim of family violence is also likely to find the experience of court stressful and traumatic. While testing the evidence is essential to ensure procedural fairness in legal processes, these factors will impede a victim's capacity to properly present their case. Although many judicial officers are experienced at hearing matters involving family violence, the adversarial culture of the family law system means that these litigants are nonetheless disadvantaged.

Further, appropriate resourcing for family law courts is critical to improving accessibility for litigants who are not legally represented. The current demand on court services is such that the capacity to hear family law matters in a timely and effective manner is limited. It often takes considerable time for parties to receive a first return date, secure trial dates and, following trial, to receive judgment. In matters involving family violence, these delays potentially expose a person experiencing family violence to greater risk. The Society strongly recommends that family law courts be provided with additional resources to allow matters to be heard and determined in a timely manner.

Question 13. What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

QLS supports implementation of the improvements suggested by the LCA.

QLS members have expressed support for the implementation of recommendations from the Victorian Royal Commission into family violence, as set out in the Issues Paper, including:

- Safe waiting areas and rooms for co-located service providers;
- Adequate security staffing and equipment;
- Separate entry and exit points for applicants and respondents; and

[12] Queensland Law Society, 3276, to Attorney-General's Department, *Proposed amendments to the Family Law Act to respond to family violence*, (2016).

- Private interview rooms for use by registrars and service providers.

QLS recommends higher staffing levels among both security and Court staff.

We note that the Court regularly sits outside of normal business hours and that security is required outside these hours whenever this is the case.

Sophisticated security strategies should be employed wherever possible to mitigate security risks, including identifying matters involving risk and prioritising staffing these areas, placing security staff strategically throughout the Court building and generally maintaining an increased presence.

Legal principles in relation to parenting and property

Question 14. What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?

QLS supports the response of the LCA. Specifically, QLS supports a simplification of Part VII of the Act, including the 'legislative pathway' currently provided.

Importantly, any amendments to Part VII of the Act must maintain the principle that the child's best interest is the paramount consideration.

We support consideration of the proposal set out by Professor Richard Chisholm in *Rewriting Part VII of the Family Law Act: A modest proposal.*[13] Importantly, this proposal removes any link between the presumption of parental responsibility and the need for the Court to consider a particular care arrangement. Provisions around parenting should not prioritise or favour any particular parenting arrangement, as is currently the case. As noted by Professor Chisholm,

> *"the paramount consideration principle logically requires that the weight to be given to any considerations depends on their importance for the child in the particular consideration. Giving artificial weight or preference to any particular outcome involves a departure from that fundamental principle".*[14]

Similarly, presumptions in relation to parental responsibility unreasonably fetter the discretion of the Court. In our view, parental responsibility should be a matter for the Court to determine in the circumstances of each case, guided by the paramount consideration principle. While many parents may be able to exercise equal shared parental responsibility without issue, this arrangement may not accurately represent the best interests of all children.[15]

In some circumstances, ongoing conflict over decision-making in the exercise of equal shared parental responsibility may be more harmful to a child than one parent exercising sole parental responsibility. Further, as noted in the Issues Paper, the presumption of equal shared parental

[13] Prof Richard Chisholm, 'Rewriting Part VII of the Family Law Act: A modest proposal', (2015) 24/3 *Australian Family Lawyer.*
[14] Ibid, 7.
[15] We acknowledge this is a rebuttable presumption.

responsibility has been widely misunderstood as a requirement that children should spend equal amounts of time with each parent.[16]

Finally, in relocation matters, legal practitioners and the Court are largely guided by case law in making determinations. For self-represented litigants in particular, there may be some benefit to the Court making specific practice directions to guide litigants in relation to the evidence they provide to the Court.

Question 15. What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?

QLS strongly supports the response of the LCA in relation to the changes that could be made to the Act to better support decision making about the safety of children and their families.

QLS supports the definition of family violence suggested by the LCA. However, in our view, unreasonably denying financial autonomy and unreasonably withholding financial support should remain within the definition of family violence.[17] Similarly, preventing the making or keeping of connections with his or her family, friends or culture should remain within the definition of family violence.[18] These types of behaviour are common within the dynamics of a relationship involving family violence and should be recognised.

We acknowledge the significant work that has already been undertaken by the ALRC in relation to the definition of family violence under the Act.[19]

As noted above, QLS agrees that parenting determinations should be made with regard to the paramount consideration of a child's best interests. The family law courts must have the discretion to determine what arrangement will best promote a child's best interests in the circumstances. Post-separation arrangements should protect a child from being exposed to harm, abuse or violence. Importantly, exposure to harm can include being subject to continuing conflict between parties.

We refer to our previous comments in relation to matters involving family violence as well as comments below in relation to Independent Children's Lawyer's.

Question 16. What changes could be made to Part VII of the Family Law Act to enable it to apply consistently to all children irrespective of family structure?

QLS acknowledges diversity in family structures and supports amendments to Part VII which enable the Act to apply consistently to all children irrespective of their family structure.

As discussed above, the application of Part VII to children from LGBTI families can be significantly more complicated as a result of uncertainty that can arise around parentage. QLS

[16] Prof Richard Chisholm, 'Rewriting Part VII of the Family Law Act: A modest proposal', (2015) 24/3 *Australian Family Lawyer* 42.
[17] As currently set out in *Family Law Act 1975* (Cth), s4AB(g) and (h).
[18] Ibid, s4AB(2)(i).
[19] ALRC, 'Family Violence – A National Legal Response – Final Report', (2010) 114 *ALRC Report*, retrieved from https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf.

supports the current presumption that the spouse or de facto partner of a birth parent be presumed a parent. This presumption helps to resolve parentages issues for some LGBTI families. However, parenting arrangements can be considerably more complex for same-sex parents, particularly where there is a surrogacy arrangement or known donor. Again, QLS recommends the implementation of national legislation on the status of children to resolve these issues.

Aboriginal and Torres Strait Islander family structures are not strictly nuclear and it is not unusual for extended family members to be closely involved in the care of children. The structure of Aboriginal families reflects cultural values and kinship ties and responsibilities. The Act must recognise and provide scope for these important relationships. We support the amendments to Part VII suggested by the LCA in this regard.

Question 17. What changes could be made to the provisions in the Family Law Act governing property division to improve clarity and comprehensibility of the law for parties and to promote fair outcomes?

Question 18. What changes could be made to the provisions in the Family Law Act governing spousal maintenance to improve the clarity and comprehensibility of the law for parties to promote fair outcomes?

Question 19. What changes could be made to the provisions in the Family Law Act governing binding financial agreements to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

QLS supports the position of LCA with respect to property division, spousal maintenance and binding financial agreements.

Question 20. What changes to court processes could be made to facilitate the timely and cost-effective resolution for family law disputes?

Question 21. Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

As noted above, the current demand on court services is such that it often takes considerable time for a matter to be resolved.

Case management processes directly impact on the timely and cost-effective resolution of family law disputes. Commencing 4 June 2018, the Brisbane Registry of the Federal Circuit Court will be introducing a pilot, running initially until the end of 2018, in an effort to facilitate the timely resolution of family law disputes.

Under the pilot, the docket system would be replaced with three duty judges, who would have carriage of all matters from the first return date until the day of trial. The remaining judges would predominately undertake trial work, cost applications and stays. The duty judges will take on a robust role in assisting parties to resolve matters at an early stage. This model is hoped to create consistency in case management and to eliminate any issues around the potential need for judges to disqualify themselves at a subsequent trial.

QLS will seek views from its members once the pilot has commenced and will be in a position to provide further comment at this time.

QLS supports the LCA view that the existence of two separate courts, with different rules, procedures and processes produces unnecessary complexity. The creation of a single court with one set of rules, procedures and processes as well as simplification of the law, as set out above, would better facilitate timely and cost-effective resolution of disputes.

Question 22. How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?

For a range of reasons, the resolution of property matters through the Courts has the potential to consume a significant proportion of the parties' property pool.

QLS acknowledges the need for effective, low-cost options to resolving small property matters and supports the comments provided by the LCA in this regard.

Question 23. How can parties who have experienced family violence or abuse be better supported at court?

Question 24. Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

Unfortunately, a substantial proportion of matters before the family law courts involve family violence. There is significant scope for improvement in terms of how parties who have experienced family violence can be supported at Court. QLS supports the comments made by the LCA in response to these issues.

We refer to our previous comments in relation to the challenges self-represented victims of family violence face in presenting their matter in Court. Again, the Act already provides powers to judges to tailor the style of hearing to the needs of the parties. In effect, these provisions allow for proceedings to be 'less adversarial' where appropriate. Parties who have experienced family violence or abuse would be better supported through more liberal and frequent use of these powers.

In the experience of our members, each judge differs in their approach and consistency in applying the Family Violence Best Practice Principles.[20] Importantly, the Principles set out the Courts general powers in regulating its own processes. As indicated above, these provisions are generally underused by the Court. Consideration ought to be given to adopting some of the Family Violence Best Practice Principles within the Family Law Rules and Federal Circuit Court Rules.

Finally, QLS supports ongoing family violence training for all family law professionals, including legal practitioners, family report writers, mediators, registrars and judicial officers.

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[20] Family Court of Australia, (2016) *Family Violence Best Practice Principles*, (4th ed), retrieved from http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles.

Question 25. How should the family law system address misuse of process as a form of abuse in family law matters?

QLS acknowledges that litigation can be used as a form of abuse. There are advantages and disadvantages to including misuse of process as a form of abuse in family law matters. QLS supports the position of the LCA in this regard.

In the experience of our members, it is not uncommon for evidence gathering processes to be used as a form of abuse. This can include issuing subpoenas to obtain access to sensitive personal material. In addressing this, QLS suggests that any subpoena for the therapeutic, counselling or criminal records of a party be referred to a Registrar for approval prior to being filed.

QLS strongly supports measures to protect vulnerable witnesses from direct cross-examination in matters involving family violence. Lawyers and the judiciary ought to be proactive in employing measures to protect self-represented parties from the trauma of cross-examination in matters involving family violence.

QLS acknowledges that certain conduct by legal practitioners can contribute to misuse of process. However, we recommend that any proposed amendments to Australian Solicitors Conduct Rules (**ASCR**) be referred to and considered as part of the review of the ASCR that is currently taking place by the Law Council's Professional Ethics Committee.

Question 26. In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expended to better support families to resolve disputes in a timely and cost-effective way?

Question 27. Is there scope to increase the use of arbitration in family disputes? How could this be done?

The enormous demand on the family law courts means that matters can take several years to be determined. Arbitration is a timely and cost effective method of resolving financial disputes and allows parties to take greater control and ownership of the dispute resolution process. In our view, there is significant scope to increase the use of arbitration in family law matters, particularly in property matters.

As noted by the LCA, there is currently some uncertainty around the stamp duty relief associated with transfers of property under an arbitration award. In Queensland, the *Duties Act 2001* (Qld) contains provision for the exemption from stamp duty of matrimonial and de facto relationship instruments. Under section 424 of the Duties Act, duty is not imposed on a transaction to the extent that it gives effect to a matrimonial instrument or a de facto relationship instrument. A "matrimonial instrument" is defined in section 420. However, it remains unclear from these provisions whether the transfer of property as a result of a financial arbitration award will be exempt from stamp duty.

Section 13H of the *Family Law Act 1975* (Cth) provides that an award registered with the Court has effect as if it were a decree made by that Court. Therefore, where registered, it appears an award would have effect as if it were a Court order and it is arguable that it may be

exempt from stamp duty. However, this is not explicitly set out in the *Duties Act 2001*, nor is it clear how an unregistered award would be treated, where parties have privately agreed to participate in arbitration without engaging the Court.

There has been some concern that people will be disinclined to resolve financial disputes through arbitration where there is uncertainty around whether they will have access to stamp duty relief, as is available to give effect to a court order or financial agreement made under sections 90, 90L or 90WA of the *Family Law Act 1975*.

QLS recently consulted with the Queensland Office of State Revenue, seeking clarification around this issue. Consistent with relevant legislation, the Office of State Revenue indicated that an arbitration award will be deemed an order of the Court if it has been registered with the Court.

In circumstances where the arbitration award has not been registered with the Court, it will not be considered a matrimonial instrument under section 420(2)(a) or (b) and consequently, is unlikely to be a matrimonial instrument under section 420(1)(c) of the Duties Act. However, if a Court proceeding for the dissolution or annulment of the marriage has commenced, and an unregistered financial arbitration award or another unregistered award made under the Family Law Act is made after the start of a proceeding, then it will qualify as a matrimonial instrument as described under section 420(2)(d) of the Duties Act. Therefore, a transfer of matrimonial property resulting from the unregistered award will be exempt from duty under section 424 of the Duties Act.

QLS has advised members to register their arbitration awards, as best practice, to ensure that it is recognised as a matrimonial instrument under section 420(2)(b) of the Duties Act.

Question 30. Should family inclusive decision-making processes be incorporated into the family law system? How could this be done?

QLS supports the views of the LCA on family inclusive decision-making.

While it is possible that family-inclusive decision making processes will suit some families in resolving their family law dispute, any assumptions that this process will particularly suit specific cultural groups should be avoided. Matters involving family violence are also not inherently well suited to these types of processes. We refer to the comments made by the LCA in this regard.

We emphasise that there a fundamental difference between the operation of this approach in a child protection context and a family law context, which must be considered. The inter-family dynamics involved in family law matters are completely different to those in child protection matters, where generally all participants seeks the early return of children out of care and back to the family as a common objective. There is no such common objective in family law matters.

In determining whether a matter is suited to family inclusive decision-making processes, QLS recommends consideration be given to whether the matter involves a certain set of facts or characteristics, as set out by the LCA. These include whether the children have a history of being cared for by a member of their extended family and whether one or both parties have experienced drug and alcohol issues or mental illness.

Integration and collaboration

Question 31. How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

QLS supports the response provided by the LCA in relation to families with complex needs.

Question 32. What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

QLS supports the response provided by the LCA in relation to this issue.

QLS acknowledges the difficulty litigants may experience in navigating multiple courts, particularly in matters involving family violence. In these circumstances, there are clear benefits in allowing state and territory courts, including children's courts, to make orders under the *Family Law Act 1975*. This would hopefully contribute to greater consistency and, in some circumstances, will better protect families from family violence.

Importantly, however, family law is a highly specialised jurisdiction and the determination of family law disputes requires considerable expertise. Judicial officers in state and territory courts may not have the expertise necessary to properly hear and determine family law matters. Further, the support services currently provided in the family law courts are essential to the resolution of family law matters and reflect the unique nature of family law disputes.

QLS strongly recommends the Federal Government make additional funding available to the legal assistance sector to respond to the growing need for family law assistance and to assist families in circumstances where engaging with multiple courts in unavoidable. We also refer to our previous comments around the importance of providing easily accessible, accurate and comprehensive family law information to the community.

The Family Law Council's final report on families with complex needs and the intersection of the family law and child protection systems made a number of recommendations that would reduce the need for families to engage with multiple courts. Recommendations 6 and 7 in particular should be considered as part of this inquiry.[21]

Question 33. How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

In Queensland, the extent of collaboration and information sharing between the family courts, child protection system and family violence courts is extremely limited. The information produced by child safety under subpoena is often so heavily redacted that it has lost any value. We understand this information is more easily accessible in other jurisdictions. In our view, the approach taken by state and territory child safety agencies in providing information

[21] Family Law Council, submission to the Attorney-General, *Families with Complex Needs and the Intersection of the Family Law System and Child Protection Systems: Final report*, (2016), retrieved from https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF.

to the family law courts should be consistent and should be provided on the understanding that the information is critical to the Court's capacity to understand context and assess risk.

In previous submissions, QLS has advocated for a robust information sharing regime between child protection agencies, police and state health authorities which would enhance the Court's capacity to properly assess the risk of family violence.

In matters referred to the Family Court's Magellan list, the Court can order a report from the relevant child protection agency, which outlines whether the agency intends to intervene in the proceedings, whether there have been any relevant investigations and any conclusions from those investigations, as well as any recommendations or other relevant material. In the Society's view, a similar procedure should be introduced where the Court can order a report from relevant authorities, including child protection agencies, police and state health departments in matters involving family violence which would outline information relevant to the Court's assessment of family violence. Given the sensitive nature of this material, particularly in family violence matters, we recommend that the Court retain discretion around whether or not parties should view this material. We note that additional resources would be required to support government agencies in providing these reports.

This information would undoubtedly assist the Court in properly determining the risk of harm or violence and would not be available to the Court in circumstances where, for example, a self-represented litigant is not aware of the material and does not understand the procedure for issuing a subpoena or cannot afford the relevant filing fee and conduct money. We note, for example, that Queensland Police currently require $77.65 in conduct money to provide subpoenaed material.

We refer to our comments below in relation to judicial officer training and note that education around family violence is crucial to the Court's capacity to properly assess any risk of family violence or child abuse identified in documents provided by child safety authorities.

Children's experiences and perspectives

Question 34. How can children's experiences of participation in court processes be improved?

QLS strongly supports the views of the LCA in relation to children's experiences of participation in court processes.

Children's views are critical to the proper resolution of parenting matters and QLS acknowledges the rights children have to make their views known and participate in processes relevant to their care.[22] However, family law disputes must be differentiated from other legal proceedings where children's views are sought. Expert evidence consistently confirms that the direct involvement of children in family law proceedings can be harmful to children. We refer to our response to Question 36 in this regard.

In our view, children's experiences of participation in court processes can be improved and we support the suggestions provided by the LCA in this regard. Specifically, decisions involving

[22] United Nations Human Rights Committee, *Convention on the Rights of the Child*, opened for signature 20 November 1989, (entered into force 2 September 1990, art 9 & 12. (1990) UN Doc 44/25 Art 9 and 12, UN CROC.

children should be made without undue delay and appropriate funding should be provided to Independent Children's Lawyers and family consultants.

The Independent Children's Lawyer (ICL) is a best interest's representative rather than an advocate for the wishes of the child and is not obliged to act on a child's instructions under section 68LA of the Act. QLS supports this model and recognises that in stressful situations the wishes of a child and their best interests may be divergent.

However, in our member's experience, there can be inconsistency in the approach taken by an ICL. For example, under the guidelines which inform ICL practice,[23] ICLs are generally expected to meet the child unless there are exceptional circumstances or significant practical limitations. Despite this, research suggests that ICLs may be reluctant to meet a child for a range of reasons.[24] Legal Aid Commissions across Australia provide additional ICL guidelines and there is no consistent approach to direct contact. While each case is different and there may be legitimate reasons not to have direct contact with a child, in our view, ICL practice guidelines issued by each state and territory Legal Aid Commission and should be consistent.

In the experience of our members who undertake ICL work, greater collaboration between ICLs and family report writers would be useful for ICLs in forming a position that reflects the best interests of a child and this should be encouraged.

ICL work must be appropriately funded so as to facilitate the engagement of experienced private practitioners. As the LCA notes, increased funding will also allow ICLs to spend more time on each matter and will allow ICLs to meet with children more often in appropriate environments. Similarly, increasingly few family report writers are willing to undertake Legal Aid funded family reports, as the fee does not adequately reflect the expertise of the family report writer and the significant work required. In our view, more appropriate funding would better facilitate the engagement of experience family report writers.

Question 35. What changes are needed to ensure children are informed about the outcome of court processes that affect them?

QLS agrees with the LCA position that the process of keeping children informed of decisions is haphazard and, presumably, one of the parents will often explain a decision to the child.

QLS supports the view that, when an ICL is not appointed to a matter, the family consultant is likely to be the best person to explain outcomes to the children. These experts are appropriately qualified, will understand the context of the decision and will be equipped to manage any response. In cases where an ICL is appointed, the ICL may also be an appropriate person to explain outcomes to the children. Importantly, the ICL should liaise with the family consultant and seek advice about how matters should be appropriately explained.

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[23] Family Court of Australia (2013) *Guidelines for Independent Children's Lawyer.* Retrieved from http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer.

[24] Pam Hemphill & Dr. Jacqueline Beall, (2012) *Report on Independent Children's Lawyers' Survey*, retrieved from https://www.flpa.org.au/wp-content/uploads/2015/10/2012-11-26-ICL-survey-report.pdf.

Question 36. What mechanisms are best adapted to ensure children's views are heard in court proceedings?

QLS strongly supports the views of the LCA with respect to ensuring children's views are heard in court proceedings.

The Act obliges the Court to take into account any views expressed by the child and any factors, such as the child's maturity and level of understanding, that the Court believes are relevant to the weight it should give to the child's views.[25]

The way in which a child's view comes before the Court must be carefully managed, under the guidance of an appropriately qualified expert. Crucially, children's views must be heard in a manner that does not further expose children to conflict and burden children with adult responsibilities.

While the views of a child are important and should be known to the Court, the context of family breakdown mean that these views are expressed within a very particular dynamic. Unfortunately, children with parents involved in parenting disputes may be trying to manage conflicting loyalties and balance the competing needs of their parents. A child's view may be unduly influenced by one party and they may lack the capacity to appreciate the long term impacts of any particular arrangement.

QLS proposes children's views be elicited by experts who have a sound understanding of post-separation dynamics and the possible consequences of high conflict separation.

QLS supports the LCA view that government commitment to appropriate resources for family consultants, family reports and ICLs is the best way of ensuring children's views are heard and understood.

Question 37. How can children be supported to participate in family dispute resolution processes?

Question 38. Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?

QLS supports the response provided by the LCA. QLS shares the concerns expressed by the LCA in relation to the direct participation of children in family dispute resolution processes.

The serious, long-term developmental impacts of parental conflict on children are well documented.[26] Consistently, expert evidence indicates that a key predictor of poor outcomes for children with separated parents is ongoing exposure to parental conflict.

We emphasise the importance of expert guidance and participation in dispute resolution processes wherever children are involved.

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[25] *Family Law Act 1975* (Cth) s 60CC(3)(a).

[26] See Jennifer McIntoch research J McIntosh, *Children's responses to divorce and parental conflict: a brief guide for family lawyers*, Family Law Education Reform Project, AFCC and the Center for Children, Families and the Law at Hofstra Law School, New York, 2009.

Question 39. What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?

QLS supports the LCA position on how children may participate in family law processes in a way that is culturally safe and responsive to their needs.

Question 40. How can efforts to improve children's experiences in the family law system best learn from children and young people who have experience of its processes?

QLS supports ongoing research into all areas of family law, including the experiences of children and young people in the family law system. Extensive research on these issues already exists and this area is likely to continue to be of interest to researchers.

The Australian Institute of Family Studies, in particular, plays a key role in researching various family law issues. QLS acknowledges the importance of this research in improving outcomes for children and their families.

Professional skills and wellbeing

Question 41. What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

QLS acknowledges that not all practitioners who engage in family law work demonstrate the sensitivity and understanding of complex dynamics relating to family violence. QLS agrees that this skill is vital to practitioners' ability to identify risk.

Ideally, practitioners who engage in family law practice would undertake ongoing education around issues including family violence, child development and family dynamics. However, there are significant practical challenges involved in implementing and enforcing mandatory continuing professional development in these areas. Family law solicitors are not necessarily an easily identifiable cohort, which would make monitoring the scheme difficult. Many generalist solicitors undertake family law work, particularly in rural and regional areas.

As noted by the LCA, many family law practitioners voluntarily undertake training in these areas. QLS offers a range of training opportunities for practitioners to enhance their skills in these areas.

Question 42. What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

QLS supports the view of the LCA in relation to core competencies of judicial officers who exercise family law jurisdiction. In the experience of our members, a lack of expertise in family

law can result in erroneous decisions and comments from the bench which are not founded in applicable law.

QLS supports ongoing training by judicial officers on matters including family violence, child development, post-separation family dynamics, diverse family structures and cultural awareness.

Question 43. How should concerns about professional practices that exacerbate conflict be addressed?

QLS supports the proper regulation of all professionals working in the family law system. Solicitors operate under a range of professional obligations, which inform conduct with clients, the Court, fellow practitioners and the community. A robust disciplinary process is in place in Queensland, to respond to allegations about unprofessional conduct or professional misconduct by solicitors.

In addition, QLS supports professional practices in a number of ways. The QLS Professional Standards division regulates the issuing and holding of practising certificates by solicitors and takes action in cases of inappropriate conduct.

The QLS Ethics Centre supports solicitors through the promotion and maintenance of professional standards. The Ethics Centre's objective is to guide and improve the ethical conduct of the profession and support better practice by:

- Raising the awareness of ethical issues affecting the profession;
- Engaging with the profession;
- Managing the QLS Senior Counsellors' Service; and
- Delivering the practice support Consultancy Service.

QLS recognises that family law is a complex and emotional area of law. Solicitors are encouraged to take extra care in matters involving children and are reminded of their particular obligations as solicitors practicing in this area.

QLS notes and supports the view of the LCA that poor professional practices should not be viewed in isolation from the systemic issues, including extensive delays in the family law courts, which exacerbate frustration and conflict.

QLS supports the LCA view in relation to complaints about family report writers. The use of complaints by some litigants against family report writers as a means to frustrate the timely resolution of matters is a reality in this area of law. We support the requirement that litigants obtain leave of the Court prior to lodging a formal complaint against a family report writer during the course of litigation.

Question 44. What approaches are needed to promote the wellbeing of family law system professional and judicial officers?

QLS supports the proposal that targeted research be undertaken into the impact of vicarious trauma on family law system professionals, including judicial officers, noting the lack of

empirical research on the impact of the subject matter of lawyer's work upon their wellbeing. In the experience of our members, the impact of long term exposure to clients experiencing family breakdown, family violence and child abuse is significant.

Additionally, QLS suggests resilience training and counselling services be made available to family law professionals, including judicial officers. QLS currently offers a complimentary, confidential counselling service to its members, known as 'LawCare'. A similar scheme should be considered for family law professionals more generally, in acknowledgement of the impact of long term exposure to client's experiencing family breakdown, family violence, child abuse and other complex and difficult issues.

Finally, solicitors who undertake family law work benefit from regular stakeholder meetings between family law professionals and Courts to provide an opportunity for feedback and information sharing and to facilitate collaboration.

Governance and accountability

Question 45. Should s121 of the Family Law Act be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of family and children?

Question 46. What other changes should be made to enhance the transparency of the family law system?

Question 47. What changes should be made to the family law system's governance and regulatory processes to improve public confidence in the family law system?

QLS Supports the views of the LCA on these issues.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Natalie De Campo by phone on [redacted] or by email to [redacted]

Yours faithfully

[redacted]

Ken Taylor
President