

Rethinking family law proceedings

Effective reform of Family Court litigation is a significant and continuing challenge facing the federal government, the Court and the legal profession.

Family disputes involve more clients and have a more direct impact on the well-being of individuals in the community than any other litigation in the country. It is because of their importance in the lives of so many Australians that family law processes should work fairly, efficiently and in a cost-effective way.

As part of its inquiry into the adversarial inquiry, the ALRC published an issues paper *Rethinking family law proceedings* (IP 22, November 1997), which discussed whether costs and delays act as barriers for people trying to access the Family Court, and whether they result in further difficulties in the lives of traumatised and disrupted families.

The issues paper looks at the 'nuts and bolts' of the way the Family Court operates and seeks views on possible ways to improve access to and the delivery of family law justice. In essence, the Commission is asking what processes are available to help achieve a more accessible and user-friendly court system.

An important component of reform of family law proceedings is ensuring that people have sufficient information about the costs and consequences of litigation and alternative dispute resolution. Such information is vital to the growing number of people in the Family Court who do not have legal representation.

Delay is also a major issue of concern, as undue delays in family law proceedings can have a lasting detrimental impact on relationships, particularly between parents living outside the family home and their children.

The Family Court, in recent years, has been closely and repeatedly examined, and utilised as the training site for a number of social and policy experiments. The ALRC review takes up where these investigations left off.

In some important respects, the Commission's review is different from past inquiries. First, it comes at a time of significant change to the litigation system. Judge and government-led reforms have seen the practice of law and litigation dramatically altered by competition policies, by judicial and case management and the co-option of alternate, often privatised justice arrangements, for dispute resolution.

Further, in the wings, there are litigation support technologies, electronic law libraries, paperless or virtual courtrooms, developing artificial intelligence and global communications systems set to usher in unprecedented changes to all legal systems.

Finally, the Commission's inquiry is a national, federal inquiry, directed not just to one of the federal judicial and administrative entities but to all of them. The ALRC issues paper on family proceedings focuses on the workings of the family litigation system and is designed to raise issues for discussion. It is published within the context of a thorough review of the federal litigation and review system.

Submissions from people who have used the family law system, or from professionals who work in family law are welcome.

For a further discussion on the workings of the Family Court, see 'Children in family law systems - some thoughts on Seen and heard' by Chief Justice Alastair Nicholson, on page 55.