

15 December 2021

Family Report Writers Consultation  
Attorney-General's Department  
By email: [familyreportwriters@ag.gov.au](mailto:familyreportwriters@ag.gov.au)

Dear Family Report Writers Consultation Project Team,

**Response to Consultation Paper - Improving the Competency and Accountability of Family Report Writers**

1. Women's Legal Service NSW (**WLS NSW**) thanks the Attorney General's Department for the opportunity to comment on improving the competency and accountability of family report writers.
2. WLS NSW is a specialist accredited women-led community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. For over twenty years WLS NSW has provided a state-wide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. We provide a First Nations legal advice line, casework services including a specialised family law service to assist First Nations women access the family law courts, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.
4. An Aboriginal Women's Consultation Network supports and enhances the work of the FNWLP. It meets quarterly to ensure that Women's Legal Service NSW delivers a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

**Our work in family law**

5. We provide legal advice, assistance and representation in family law and related issues through our telephone advice lines; apprehended violence order list days at various Local Courts; outreaches at Women's Health Centres, Family Relationship Centres and Women's Correctional Centres. We regularly appear in the Federal Circuit and Family Court of Australia.
6. This work is also a key part of the work of the First Nation's Women's Legal Program – with solicitors and community access officers working together to support First Nations women to engage in the family law system. This includes supporting and representing clients through the Indigenous List operating in the Sydney Registry of the Federal Circuit and Family Court of Australia.



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7. Another important part of the FNWLP is in community development and community education across NSW. A key component of this is focused on raising awareness in First Nations communities about the importance of early access to legal advice and accessing the family law system.

### Use of language

8. While acknowledging that anyone can experience family violence, the research and our experience of more than thirty-five years clearly highlights that family violence is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.

### Introduction

9. Family reports are frequently the only form of social science evidence available for the parties and the Court to rely upon in parenting matters in the family law system. Family reports are not only regarded as vital evidence during court proceedings, but their content and recommendations can significantly influence family dispute resolution practises and negotiations throughout proceedings. It was recognised in the *Evaluation of the 2006 Family Law Reforms Report* that “family reports were identified as a very powerful settlement tool”.<sup>1</sup>
10. A number of concerns were raised in the 2013 Australian Institute of Family Studies (AIFS) *Independent Children’s Lawyer Study Final Report (ICL Study Report)*. These included the focus given to issues raised in Family Reports at the expense of giving adequate focus to the presence of family violence; the weight given to these reports; and the seeming lack of critical analysis of such reports, resulting in the reports often going untested.
11. A judicial officer who participated in the AIFS ICL Study noted “the over focus on the need to preserve the child/parent relationship, sometimes at the risk of minimising other issues of concern”<sup>2</sup> and regarded this as a “failing with some report writers, which is then carried on by the ICL”.
12. Similarly, a non-ICL lawyer commented “Too often the ICL takes the easy way out and follows the recommendations of the family report writer, whereas it should be a further, more sustained, independent assessment. I have rarely seen a matter where the ICL has disagreed with the family report writer”.<sup>3</sup>
13. Another commented “It concerns me that it is the family consultant’s report that carries so much weight in children’s matters [when they] often only spend a few hours with a family”.<sup>4</sup>
14. We note that untested Family Reports are often relied upon:
  - by the Independent Children’s Lawyer (ICL) in coming to their position and recommendations; and
  - by Legal Aid in determining legal aid funding decisions, including decisions about whether or not funding should be granted for a final hearing.

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<sup>1</sup> Kaspiew et al (2009) *Evaluation of the 2006 Family Law Reforms, Report*, Australian Institute of Family Studies, at 13.3.3, p 317.

<sup>2</sup> AIFS, *Independent Children’s Lawyer Study*, 2013 p134.

<sup>3</sup> *Ibid* p130.

<sup>4</sup> *Ibid* p130.

15. Given family reports have such substantial sway with respect to negotiations and decisions about care arrangements for children, that they are used and relied upon in the most complex of cases and have significance for decisions about funding of grants of legal aid, it is therefore crucial that this evidence be provided by nationally accredited, highly trained and experienced professionals. There should be effective oversight of their practices, with accountability mechanisms that are transparent for quality assurance purposes and to improve public confidence.
16. We provide a response to some of the Discussion questions below.
17. In summary we recommend:
  - 17.1 *The Australian Standards of Practice for Family Assessment and Reporting* (**The Standards**) and the *Family Violence Best Practice Principles* (**The Principles**) developed by the family courts be binding and enforceable.
  - 17.2 *The Standards* and the *The Principles* be reviewed and updated.
  - 17.3 *The Federal Circuit and Family Court of Australia Act 2021* be amended to include “safety” in the “overarching purpose” in section 67(1) and section 190(1) to further ensure safety is elevated in the family law system.
  - 17.4 Further consultation with Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander organisations about the establishment of a Council of Elders in each family court registry.
  - 17.5 Implementation of a workforce development strategy to increase diversity in the workforce within the family law system.
  - 17.6 A single national regulatory body which is responsible for accreditation, monitoring, quality assurance and accepting complaints relating to all cohorts of family report writers. Robust quality assurance mechanisms must include the annual auditing of family reports prepared by both court employed and private practitioners with the results to be published in a de-identified way including the steps taken to address any issues identified.
  - 17.7 The establishment of an accessible public register of family report writers.

### Concerns with family reports and family consultants

18. In WLS NSW experience, there are numerous issues with family reports, including:
  - 18.1 A lack of understanding of the complexities and dynamics of family violence;
  - 18.2 A failure to properly appreciate and gauge the impacts, effects and risks of family violence;
  - 18.3 A lack of cultural awareness and competency in relation to working with people who are Aboriginal or Torres Strait Islander, and with people from culturally and linguistically diverse backgrounds;
  - 18.4 Being prejudiced to and/or against a particular party's point of view by exhibiting bias and stereotypes in relation to race, gender or other particular attributes of one of the parties.

19. WLS NSW experiences are consistent with the stakeholders to the Inquiry, *Family Law for the Future - An Inquiry into the Family Law System* who also raised concerns regarding the adverse impacts to children where the family report writer was not suitably qualified or lacked expertise in the salient issues, including “understanding of family violence, trauma and its impacts on children, child abuse, cultural competency, or disability”.<sup>5</sup>

### Definition of family report and family report writers

#### Question 1

- (a) *Should the terms ‘family report’ and ‘family report writer’ be defined in legislation to better clarify their purpose and application? What issues would need to be considered in defining these terms?*
  - (b) *Should a legal definition of family report and family report writer apply to all cohorts of report writers (in-house and regulation 7 family consultants, and single expert witnesses) who undertake family and child assessment reports?*
  - (c) *Should a legal definition of family report writer specify which social science professionals may prepare a family report?*
  - (d) *Should a legal definition of family report include all reports prepared by family consultants under s62G of the Family Law Act 1975, including child impact reports and specific issues reports?*
  - (e) *Is it appropriate to exclude specialised reports on specific issues by single expert witnesses? Is there a way to clearly differentiate between a specialised report and a family report?*
20. We do not propose to comment in detail on the specific approach to defining the terms of a family report or family report writer. However, WLS NSW supports a legislated definition of both a family report and a family report writer. Clear articulation and use of plain language should be utilised in any definition to assist, in particular, self-represented litigants.
21. A legislated definition of a family report and family report writer provides a framework to ensure understanding of the roles and functions of a family report writer as well as the content and purpose of a family report. Assuming these terms are widely understood and well defined, this should also promote consistency and quality of the reports.
22. WLS NSW believes the definition should apply to all cohorts of report writers.

### Content of family report

#### Question 2:

- (a) *What minimum content should a family report require?*
  - (b) *Should minimum content requirements be legislated or otherwise made mandatory?*
23. We support a framework which requires report writers to consider and address at least minimum content. Such a framework would, at least, lead to greater consistency in the reports.

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<sup>5</sup> ALRC, (2019) *Family Law for the Future - An Inquiry into the Family Law System: Final Report* (Report 135,), p 411.

24. It is imperative that any minimum content includes that all report writers must be required to undertake screening and risk assessment for domestic and family violence and abuse, and such work must be informed by current evidence-based domestic and family violence research and principles. In our experience the quality of the risk assessment grounded in current evidence-based domestic and family violence research is vital to a proper understanding and assessment of family violence and this needs to be conducted by someone highly skilled in domestic and family violence and trauma informed practice.
25. We have acted in matters where report writers are highly skilled in conducting detailed screening and risk assessment of the family and who identify each of the allegations of family violence, outline the risks relating to each allegation and produce nuanced and cascading recommendations for mitigating the risk should the court make a finding of fact or risk with respect to the allegations. Reports such as these provide useful and practical guidance for the court and the parties.
26. We have acted in matters where family report writers minimise family violence, display a lack of understanding of coercive and controlling behaviour and display a lack of understanding of trauma and the impacts of violence. For example, some family report writers view the retraction of a statement about domestic violence to the police, or the mother facilitating the children's time with the father as evidence the mother holds no fears for the safety of her children and there is no risk should the children spend time with their father. Some family report writers also see these acts as undermining the mother's credibility with respect to the history of violence and abuse and any fears she raises about risk. Looking at the same issues through a domestic violence and trauma informed lens, the retraction of a police statement invites the question: was coercion and control being exerted to pressure the woman to retract her statement? Further, the mother facilitating time between a violent father and the children may be for many different reasons, including a result of the deeply entrenched pro-contact culture in family law matters so she feels she has no other choice but to do this.

### Competencies and skills

#### Question 4

- (a) *What skills and competencies should family report writers have? Please provide specific details about the skill/ competency.*
- (b) *Which should be considered essential or core competencies?*
- (c) *Which should be considered desirable or specialised (not essential) competencies?*

### The Australian Standards of Practice for Family Assessment and Reporting (The Standards)

27. WLS NSW acknowledges the *Australian Standards of Practice for Family Assessment and Reporting (The Standards)* developed by the Federal Circuit Court, Family Court of Australia and Family Court of Western Australia in 2015. As the Consultation Paper notes, *The Standards* set out a list of criteria of what functions family report writers should perform and is a useful tool in providing guidance for minimum standards of training, competency and skill.<sup>6</sup> However, *The Standards* are not binding and/or enforceable. To be a useful accountability mechanism when a family report writer falls short of their duties, *The Standards* should be binding and enforceable.
28. This current review provides a timely opportunity for the review of *The Standards*.

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<sup>6</sup> FCoA, FCC and FCWA, (2015) *Australian Standards of Practice for Family Assessments and Reporting*

29. WLS NSW recommends any revision of *The Standards* be conducted following in-depth consultation with stakeholders to ensure they are fit for purpose. We note that *The Standards* could be strengthened as follows:
- 29.1 **Family assessors must be qualified social science professionals and function as independent and impartial assessors**<sup>7</sup>. In addition to minimum qualifications, WLS NSW would welcome the inclusion of minimum capabilities for family report writers being incorporated into *The Standards*. We address which minimum capabilities a report writer should possess in more detail below and we would welcome these capabilities being incorporated into *the Standards*.
- 29.2 **Family assessors should use evidenced-based methods and methods accepted by the broader professional community for the collection of data, and methods broadly professionally accepted as suitable in forensic assessments.**<sup>8</sup> WLS NSW supports a strengthening of *the Standards* with respect to the needs and circumstances of a case that a family report writer should have regard to when determining what data collection methods are used and evaluation required. For example, we advocate for the need to improve the quality of screening and risk assessments in family reports. These risk assessments must be founded on current, evidence-based domestic and family violence research, and in-depth and current training completed by the family report writer. Similarly, it is vital family report writers are culturally safe, disability aware and aware about issues impacting non-binary and gender diverse people.

#### Family Violence Best Practice Principles

30. We also note the *Family Violence Best Practice Principles*, which were last updated in December 2016. We note reference is made in *The Standards* to these Principles. The development of an accreditation scheme for family report writers is an opportune time to review the *Family Violence Best Practice Principles*. We believe there needs to be increased awareness of these Principles amongst judiciary, legal practitioners, family report writers and other experts and information for self-represented litigants. We believe these Principles should be binding and enforceable.
31. Some areas where the Family Violence Best Practice Principles could be strengthened include:
- 31.1 Placing safety at the centre. This would involve ensuring applicants and respondents are properly screened for family violence beyond the completion of a Notice of child abuse, family violence or risk form and that the Court undertakes a comprehensive, evidence-based risk assessment with applicants and respondents as occurs in Lighthouse Project matters. There needs to be clearer information about how to access support for safety planning during family law proceedings and more broadly.
- 31.2 Clear information, early in the document, that contact details should not be disclosed if there are safety issues. This includes a person's address, email address and phone numbers. This

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<sup>7</sup> Ibid p 8.

<sup>8</sup> Ibid p 15, 11.

extends to the redacting of materials which may contain such details, for example, school reports. This may also require amendments elsewhere, such as in Practice Directions.<sup>9</sup>

- 31.3 The increased focus on dispute resolution brings the need for greater clarity on when exceptions to family dispute resolution apply, including due to family violence. There also needs to be increased accessibility to family violence and trauma informed, culturally safe, lawyer assisted family dispute resolution.
- 31.4 Since 2016 there have been amendments to the *Family Law Act* to ban direct cross-examination in specific circumstances of family violence. There should be information about s102NA of the *Family Law Act* and clear information about how to access the Family Violence and Cross-examination Scheme in family law matters. Such information also needs to be more visible in other forms – for example, Initiating Application and Response to Initiating Application forms, as a fact sheet, including on the Federal Circuit and Family Court of Australia website so survivors are informed at the earliest opportunity of this protection and how to access the protection, noting it takes time to appoint a legal practitioner for these purposes.
- 31.5 There is currently an excellent section on the impact of exposure to family violence on children and young people within Section F: The Final Hearing on page 22 of the Principles. This section acknowledges that where there has been coercive and controlling violence, violence and abuse may intensify post separation.<sup>10</sup> There is also the acknowledgement that “*Abusive ex-partners are more likely to undermine the victim’s parenting role*” and “*Diminished parenting capacity for adult victims of family violence is not uncommon*”.<sup>11</sup> This section should occur earlier in the document and not be limited to “The Final Hearing”.
- 31.6 Section C: Family and Other Expert Reports considers family violence or abuse (or risk of) as well as harm to children in relation to consideration of particular orders but also has a number of questions which focus on spending time with the alleged perpetrator. These questions include:

*Consider whether or not there would be benefits, and if so, the nature of these benefits, if the child spent time with the person against whom the allegations are made; and*

*Assess whether the physical and emotional safety of the child and the person alleging the family violence or abuse can be secured before, during and after any contact the child has with the parent or other person against whom the allegations are made.*

What isn't included is a consideration of whether a no contact arrangement would be the most appropriate and safe order in light of the risks.

<sup>9</sup> We note the reference on page 15, paragraph 28 to “*Whether the address of the party making the allegation should be suppressed*”. We believe it should be made clearer that a person alleging family violence should not disclose contact details if there are safety concerns and steps may need to be taken to redact contact details and this information be provided earlier in the document. See FCoA, FCC, (2016) [Family Violence Best Practice Principles](#)

<sup>10</sup> While welcoming this, this statement could be stronger to better acknowledge that separation can be a time of great risk for survivors, particular survivors of coercive and controlling violence and abuse. The statement currently included says “*Although in the majority of cases the risk of future family violence diminishes after separation, where there has been coercive controlling violence the intensity may escalate*”.

<sup>11</sup> We note reference to Jaffe and Johnston cited in a 2009 publication in FCoA, FCC, (2016) [Family Violence Best Practice Principles](#). We also refer to Lundy Bancroft, Jay G. Silverman and Daniel Ritchie (2012) *The Batterer as Parent*, Sage Publications and ANROWS commissioned research led by Rae Kaspiew focused on [Domestic and family violence and parenting: Mixed method insights into impact and support needs](#)

- 31.7 There are references to considering whether the person alleging family violence should be allowed to give their evidence remotely from a different location.<sup>12</sup> While welcoming this inclusion, consideration should also be given to which party/parties are permitted to give evidence remotely from another location. It may be more appropriate that the person alleged to have perpetrated family violence give evidence remotely, particularly if there are supports for victim-survivors at the court.
- 31.8 Greater judicial scrutiny of consent orders.
- 31.9 Noting the prevalence of family violence and impact on women's and children's economic security, the Principles should apply to property matters as well as parenting matters.
- 31.10 The inclusion of information about the Indigenous List.
32. We also recommend the *Federal Circuit and Family Court of Australia Act 2021* be amended to include "safety" in the "overarching purpose" in section 67(1) and section 190(1) to further ensure safety is elevated in the family law system.

**Recommendations:**

*The Australian Standards of Practice for Family Assessment and Reporting* and the *Family Violence Best Practice Principles* developed by the family courts be binding and enforceable.

*The Standards* and the *Family Violence Best Practice Principles* be reviewed and updated.

*The Federal Circuit and Family Court of Australia Act 2021* be amended to include "safety" in the "overarching purpose" in section 67(1) and section 190(1) to further ensure safety is elevated in the family law system.

33. WLS NSW strongly supports the need for improved professional competency in a number of areas. The Consultation Paper draws on stakeholder feedback provided during the ALRC *Review of the Family Law System*<sup>13</sup>. WLS NSW agrees that it is essential that family report writers have professional competencies in the following areas:

33.1 **Family Violence.** Family violence is extremely prevalent in family law matters.

- 33.11 The Australian Law Reform Commission (**ALRC**) highlighted the prevalence of family violence in its 2019 report.<sup>14</sup> The report found that studies conducted by the Australian Institute of Family Studies<sup>15</sup> in the 10 years preceding 2019 established:

- Family violence, including physical abuse and emotional abuse, was reported by approximately 60% of separated parents prior to and during separation.<sup>16</sup>

<sup>12</sup> FCoA, FCC, (2016) *Family Violence Best Practice Principles* p15.

<sup>13</sup> ALRC, (2018) *Review of the Family Law System, Discussion Paper No 86*, p 242, 243.

<sup>14</sup> ALRC (2019) *Family Law for the Future - An Inquiry into the Family Law System: Final Report* (Report 135) p 103.

<sup>15</sup> Rae Kaspiew et al (2009) *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies).

<sup>16</sup> Rae Kaspiew et al (2015) *Experiences of Separated Parents Study* (Evaluation of the 2012 Family Violence Amendments) (Australian Institute of Family Studies) p xiv.



- Up to 70% of parents also reported that children had been exposed to family violence,<sup>17</sup> and nearly one in five parents reported that they had safety concerns for themselves and/or their children as a result of ongoing contact with the other parent.<sup>18</sup>
- These experiences can be sustained after separation, with 5–17% of parents surveyed five years after separation reporting safety concerns.<sup>19</sup>

33.12 In the Federal Circuit and Family Court of Australia's (**FCFCoA**) media release *New court initiatives help uncover higher prevalence of family violence and other risks* (**Lighthouse Project media release**), initial court data showed that:

- Approximately 80% of family law cases allege at least one major risk factor (including family violence);
- 54% of the parties allege a child has been abused or is at risk of abuse;
- 64% of parties allege they have experienced family violence;
- 57% of parties allege a child has experienced family violence; and
- There has been a substantial increase in the prevalence of family violence and high risk cases than has previously been reported.<sup>20</sup>

33.13 Given the prevalence of family violence in family law matters, it is vital family report writers are experienced and trained in family violence, including its nature and dynamics and screening and responding appropriately to disclosures. Family report writers should be competent to interact and engage with priority group populations and be adept at understanding the nuances and impacts of family violence on children and adult victim-survivors. See table below for further required competencies relating to family violence.

33.2 **Responding to risk.** There are numerous factors that can pose risks to children including family violence, mental health, substance abuse, being prevented from enjoying and experiencing their culture and/or suicide. It is WLS NSW experience that multiple risk factors will often be prevalent within a family at any one time. In addition to the above statistics on family violence, the Lighthouse Project media release also highlighted the prevalence of multiple risk factors in family law cases. Initial data showed:

- Around 50% of high-risk matters screened as part of the FCFCoA's Lighthouse Project, contained four or more risk factors, from family violence to substance use and alcohol misuse or mental ill-health;
- 39% of parties allege that drug, alcohol or substance misuse has caused harm or poses harm to a child; and

<sup>17</sup> Ibid, p 41-42.

<sup>18</sup> Ibid, p 43-45.

<sup>19</sup> Lixia Qu, et al (2014) *Post-Separation Parenting, Property and Relationship Dynamics After Five Years* (Report, Australian Institute of Family Studies, Attorney-General's Department, ) p xvi.

<sup>20</sup> Federal Circuit and Family Court of Australia, *Media Release: New court initiatives help uncover higher prevalence of family violence and other risks* 10 November 2021

- 40% of parties allege that mental health of a party has caused harm or poses harm to a child.

33.21 A family report writer must be proficient at identifying such complex issues and have the knowledge and understanding to make recommendations about the ways in which these risks can be addressed and mitigated. Failure to do so can have serious and adverse consequences as highlighted in the below case study. See table below for further required competencies relating to this issue.

### **Case Study**

*Kylie\* and Paul\* were together for 15 years. The relationship was characterised by physical violence and significant psychological abuse and coercive and controlling behaviour, including Paul frequently threatening to kill himself if Kylie did not do as Paul asked. Paul has also been violent towards the children.*

*Kylie and Paul have separated several times. Each time they separate the violence escalates.*

*There are three children under 10 years.*

*Kylie and Paul were engaged in family law proceedings. Kylie wanted the children to have some sort of relationship with their father, but she also feared for the safety of the children while in their father's care. Kylie sought orders for the children to have supervised contact with Paul.*

*Despite decades of experience in preparing reports for family law proceedings, the family report writer did not have a thorough understanding of the nature and dynamics of family violence. In his report he referred to the fact the mother had separated and then reconciled with the father as evidence that she did not fear him. Based on this, he questioned the mother's credibility. Furthermore, rather than seeing the frequent threats to commit suicide as coercive and controlling behaviour, the report writer believed Paul's suicide ideation was a result of family court proceedings and could be resolved by allowing Paul contact with his children.*

*Swayed by the family report, the ICL did not believe Paul perpetrated significant family violence against Kylie and their children. The ICL also supported the children having contact with their father.*

*Interim orders were made for the children to have supervised contact with their father.*

*During one of the supervised contact visits, the father perpetrated significant domestic violence. The visit was terminated immediately.*

*Following the trial, final orders were made for the children to spend no time with their father.*

*\* This case has been de-identified, including by not using their real names.*

33.3 **Trauma informed practice.** WLS NSW agrees with the Consultation Paper that trauma can influence both children and adults. It can have significant impacts on children's attachments and development. Family report writers need to have the ability to conduct trauma-informed practice and to recognise, know and understand trauma responses in both parents and children. Furthermore, it is vital that family report writers know and understand the effects of intergenerational trauma on First Nations people and that this form part of a family report

writer's trauma informed practice. It is important that family report writers receive training and resources and deepen their understanding of the impacts of inter-generational trauma. In addition, WLS NSW recommends that reports relating to First Nations children be conducted by a First Nations person with relevant expertise who is a family report writer. In the absence of this, there must be a requirement that the report writer consult with and work closely with relevant First Nations people, for example, Elders and Respected Persons to provide cultural advice as discussed below.

The Family Law Council refers to the Victorian Children's Koori Court and reinstated Queensland Murri Courts involving the Aboriginal community in the court process "*through the participation of Elders and Respected Persons who provide cultural advice to the judge or magistrate in relation to the young person's situation*".<sup>21</sup>

WLS NSW First Nations Women's Legal Program team advocates for the participation of Elders and Respected Persons to provide cultural advice to the judge or magistrate in regard to family law matters. This could extend to others working in the family law system, such as family report writers. This could take the form of a Council of Elders that could be established in each family court registry. We support further consultation with Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander organisations about this proposal and reiterate that any reforms impacting upon Aboriginal and Torres Strait Islander people must be led and co-designed with Aboriginal and Torres Strait Islander people.

A pilot involving the participation of Elders and Respected Persons to provide cultural advice in family law matters was recommended by the Family Law Council in 2016.<sup>22</sup>

- 33.4 **Child abuse.** WLS NSW agrees with the Consultation Paper that family report writers should understand the impact of child abuse, child sexual abuse and neglect. Abuse is captured in *The Standards* at Principle 2(b) that states: "*as an expert witness, family assessors should have appropriate training, qualifications and experience to assess the impact and effects (both short and long term) of family violence or abuse, or exposure to family violence or abuse, mental health problems and drug or alcohol misuse on the children and any party to the proceedings.*" While *The Standards* are a helpful guiding tool, their inability to bind and/or be enforced severely limits their usefulness. With respect to child abuse, *The Standards* could also go further to specifically particularise child sexual abuse and neglect as being areas of competencies required by family report writers. WLS NSW would welcome child sexual abuse and neglect as areas of knowledge required of family report writers.
- 33.5 **Parental Conflict.** WLS NSW cautions that great care is taken in the use of this term. In our experience "*parental conflict*" or "*high conflict*" may be terms used to describe family violence. Great care needs to be taken to avoid minimising, masking and mutualising family violence.
- 33.6 **Diversity and cultural competency.** WLS NSW supports that "*Professionals should have an understanding of the specific family dynamics in culturally and linguistically diverse and LGBTQI+ families, and the unique challenges these families face when interacting with the family law system*".<sup>23</sup>

<sup>21</sup> Family Law Council (2016) *Families with Complex Needs and the Intersection of the Family Law and Child Protection systems, Final Report*, p 99 (p107) and p149 (p158)

<sup>22</sup> Ibid, Recommendation 16.4

<sup>23</sup> AGD, (2021) *Improving the Competency and Accountability of Family Report Writers Consultation Paper*, p 10.

Workforce development strategies are necessary to support diversity in the workforce within the family law system, including through training, recruitment, cadetships, continuing professional development, support and networking opportunities.

We note the Family Law Council recommended this in 2012.<sup>24</sup>

- 33.7 **Aboriginal and Torres Strait Islander families.** WLS NSW recommends that for First Nations families engaging with the family law system, family reports should be prepared by Aboriginal or Torres Strait Islander family report writers. This requires a First Nations workforce development strategy that includes “*sustained, pro-active measures to develop, recruit and retain an appropriately skilled and qualified Aboriginal and Torres Strait Islander workforce in the family law system*”. This includes judges, lawyers, family dispute resolution practitioners, family consultants, Indigenous Liaison Officers.<sup>25</sup>

Noting the importance of First Nations people being employed in a variety of roles across the family law system, the Family Law Council recommended:

- *scholarships, cadetships and support for education and training opportunities for Aboriginal and Torres Strait Islander professionals to work in the family law system*
- *consideration of the cultural and social experiences of potential Aboriginal and Torres Strait Islander professionals as professional attributes of significance in developing selection criteria for relevant positions*
- *funding for family law system services (courts, legal assistance and family relationship services) to proactively recruit, train and retain Aboriginal and Torres Strait Islander peoples, and*
- *resourcing and supporting service providers to develop mechanisms for continuing professional supervision, support and networking opportunities for Aboriginal and Torres Strait Islander professionals.*<sup>26</sup>

It is WLS NSW experience that family report writers can often be biased against and/or lack understanding and insight into First Nations culture and practices and fail to acknowledge and recognise cultural practices and the importance of kinship arrangements. For example, First Nations people and their parenting can be viewed in a negative light if they do not undertake parenting duties in line with mainstream views of a “nuclear family”.

Where it is currently not possible for an Aboriginal or Torres Strait Islander family report writer to prepare the report, the report writer must be culturally competent and work closely with relevant First Nations people in the production of the report.

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<sup>24</sup> Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, 2012, Recommendation 4, p 96 (103)

<sup>25</sup> Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (2012), p99 (105)

<sup>26</sup> Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (2012), Recommendation 5, p 100 (106)

We acknowledge the recent expansion of Indigenous Liaison Officers in the FCFCoA, but this needs to be expanded so there are multiple Indigenous Liaison Officers within each FCFCoA registry.

We also note the Family Law Council's recommendation in 2016 of a greater focus on cultural reports for First Nations children and the development of cultural plans within family reports.<sup>27</sup>

- 33.8 **Disability.** We support the comments made in the Consultation Paper about the need for training in relation to “*disability awareness and human rights; intersectional discrimination; the nature and impacts of violence against people with disability; and the barriers to accessing justice faced by people, with disability.*”<sup>28</sup>

### Recommendations

Further consultation with Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander organisations about the establishment of a Council of Elders in each family court registry.

Implementation of a workforce development strategy to increase diversity in the workforce within the family law system.

34. We support the inclusion of competencies outlined in Table 1 of the Consultation Paper with the following qualifiers:
- 34.1 **Children:** “*impacts of parental separation*” – great care needs to be taken to ensure family violence is not decontextualised and a situation labelled as parental alienation.<sup>29</sup>
- 34.2 **Children:** “*impacts of exposure to high conflict*” – as raised above, great care needs to be taken with the use of the term “*high conflict*” which is often used in circumstances that are more appropriately categorised as family violence.
- 34.3 **Working with diverse groups:** While acknowledging the importance of including intersectional discrimination in relation to an understanding of disability, it should not be limited to only an understanding of disability.
- 34.4 We also support the inclusion of an understanding of family law.

### Recommended additional key family violence capabilities

35. The table below outlines additional key family violence capabilities. We recommend family report writers should have:

<sup>27</sup> Family Law Council (2016) *Families with Complex Needs and the Intersection of the Family Law and Child Protection systems, Final Report*, Recommendation 16.2

<sup>28</sup> Ibid, p10.

<sup>29</sup> See Zoe Rathus (2020) “A history of the use of the concept of parental alienation in the Australian family law system: contradictions, collisions and their consequences”, *Journal of Social Welfare and Family Law*, 42:1 p 5-17

Theme	Capability	Additional key family violence capabilities that need to be included
Understanding family violence	<p>Understanding the nature and dynamics of family violence</p> <ul style="list-style-type: none"> <li>• the impact on victim-survivors</li> <li>• the impact on children</li> <li>• the impact on parenting ability</li> <li>• the different types of family violence</li> </ul>	<ul style="list-style-type: none"> <li>• We are concerned that sexual violence is not specifically referenced. We recommend specific reference to a core competency of an understanding of sexual violence. This is particularly important given the high rates of sexual violence in the context of family violence and the reluctance of those who have experienced sexual violence to disclose such violence. Naming sexual violence will help make sexual violence visible and to break down barriers to disclosing, including shame and stigma. It also helps to normalise talking about sexual violence. This could be described as <i>“an understanding of the dynamics and impacts of sexual violence, particularly sexual violence perpetrated within the context of domestic and family violence”</i>.</li> <li>• identifying the person most in need of protection and the predominant aggressor, noting the importance of context and looking at family violence holistically rather than as incidents in isolation</li> <li>• understanding of how perpetrators use violence and abuse and how to avoid collusion with perpetrators</li> <li>• understanding the impact of family violence on the parenting capacity of adult victim-survivors from a strengths-based approach, acknowledging the role of the perpetrator of violence in undermining parenting capacity of the adult victim-survivor and need for perpetrator accountability</li> <li>• understanding the principles of trauma informed practice: safety, trustworthiness, choice, collaboration and empowerment</li> </ul>
Family violence risk identification,	Identifying, assessing and responding to family violence risks	<ul style="list-style-type: none"> <li>• undertaking sexual, domestic and family violence screening and ongoing risk assessment, including how to ask about</li> </ul>

Theme	Capability	Additional key family violence capabilities that need to be included
assessment and management	<ul style="list-style-type: none"> <li>managing client safety – e.g. using provisions to safeguard parties when participating in family report writer interviews</li> </ul>	<p>sexual and domestic and family violence in a way that supports victims-survivors to feel comfortable to disclose such violence</p> <ul style="list-style-type: none"> <li>monitor and assess risk to own safety and report threats to personal safety according to employers' policy and procedures</li> </ul>
Working with victim-survivors	<ul style="list-style-type: none"> <li>Understanding the effects of trauma on victim-survivors and children</li> <li>Understanding and ability to elicit, disclosures of family violence from clients</li> <li>Ability to practice in a trauma informed way</li> </ul>	<ul style="list-style-type: none"> <li>Understanding vicarious trauma and the importance of and ways to self-care</li> <li>See also comments above – “understanding family violence”</li> </ul>
Working with perpetrators	<ul style="list-style-type: none"> <li>Understanding perpetrator behaviour</li> <li>Working/communicating appropriately with perpetrators (or alleged perpetrators) of violence</li> <li>Avoiding collusion</li> </ul>	<ul style="list-style-type: none"> <li>Role of response-based practice to ensure perpetrator violence is not obscured, perpetrator responsibility is not mitigated or minimised and/or the victim-survivor is not blamed/pathologised</li> </ul>
Working with children	<ul style="list-style-type: none"> <li>Working with children, and representing the best interests of children, in an appropriate and supportive manner</li> </ul>	<ul style="list-style-type: none"> <li>understanding of child development</li> <li>understanding the impact of family violence on children and their primary carers</li> </ul>
Cultural competency	<ul style="list-style-type: none"> <li>Culture and the intersection with family violence</li> <li>First Nations people</li> <li>clients from culturally and linguistically diverse backgrounds</li> </ul>	<ul style="list-style-type: none"> <li>having an understanding of the multiple and diverse factors contributing to the high levels of family violence in First Nations' communities and an understanding of First Nations' family structures and child rearing practices</li> <li>communicating respectfully</li> </ul>

Theme	Capability	Additional key family violence capabilities that need to be included
		<ul style="list-style-type: none"> <li>• having an understanding of different cultures</li> <li>• having an understanding of working with interpreters</li> <li>• Being aware of and analysing your own cultural biases</li> <li>• having an understanding of barriers for First Nations families and families of a culturally linguistically and diverse background engaging in the family law system</li> </ul> <p>While important, it is not enough for cultural competency to only be addressed in family violence competency training. We further acknowledge the need for training specific to First Nations culture which should be meaningful, substantive and run by appropriately trained experts as recommended by members of First Nations communities.</p> <p>Additionally, there needs to be training increasing cultural competency in working with refugee and migrant communities, gender diverse and non-binary people and families and disability awareness training.</p>



Theme	Capability	Additional key family violence capabilities that need to be included
Working with priority populations	<ul style="list-style-type: none"> <li>• Working appropriately with marginalised clients in relation to family violence                             <ul style="list-style-type: none"> <li>○ adults and children with a disability or mental illness</li> <li>○ older and younger people – including elder abuse and adolescents who use violence</li> <li>○ pregnant people</li> <li>○ gender diverse and non-binary individuals and families</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• working appropriately with women in prison and understanding women's pathway to prison as a result of child sexual abuse, sexual assault and family violence</li> <li>• Understanding practitioners' attitudes can make people vulnerable to violence rather than, for example, a person's attribute, such as a disability</li> <li>• working appropriately with people in regional, rural and remote areas</li> <li>• understanding the factors contributing to violence against gender diverse and non-binary individuals and families and barriers to disclosing such violence</li> </ul>
Legal knowledge	<ul style="list-style-type: none"> <li>• Knowledge of relevant legal frameworks and the intersections between them                             <ul style="list-style-type: none"> <li>○ e.g. family law, family violence, child protection</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• identifying and understanding intersecting areas of law and how this can impact upon families and care arrangements.</li> </ul>
Knowledge of related issues	<ul style="list-style-type: none"> <li>• An understanding of the relationship between family violence and other issues                             <ul style="list-style-type: none"> <li>○ e.g. mental illness, drug and alcohol abuse</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• A single unit on this needs to be facilitated carefully so that a connection is not made that family violence is caused by mental illness and drug and alcohol abuse.</li> </ul>

Theme	Capability	Additional key family violence capabilities that need to be included
Best practice guidelines	<ul style="list-style-type: none"> <li>• Adherence to best practice guidance where applicable                             <ul style="list-style-type: none"> <li>○ e.g. <i>The Standards</i></li> <li>○ <i>Family Court of Australia and Federal Circuit Court of Australia Family Violence Best Practice Principles</i></li> </ul> </li> </ul>	

### Training to meet competency requirements

#### Question 5

*(a) What training courses are available that cover the skills and competencies in Table 1 or other identified skills and competencies? Please provide detail on the course name, provider, and what standards they comply with (for example do they meet the Australian Qualifications Framework?)*

*(b) Are there any gaps in available skills/competency training? If so, what training modules need to be specifically developed?*

36. WLS NSW does not intend to go into detail about the training courses currently available and/or the gaps in available skills/competency training for family report writers. We have instead chosen to focus on what we believe are the core knowledge and skills required of all report writers in this submission.
37. Training must be regular, ongoing, comprehensive and meaningful.
38. Training should be developed and delivered with significant input and co-facilitation with sexual, domestic and family violence abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts.
39. Training must be developed and delivered by services, such as specialist women’s legal services, which have expertise in responding to sexual, domestic and family violence and working in a culturally safe, sexual, domestic and family violence informed and trauma informed manner with a focus on response-based practice, and in ensuring violence is not minimised or masked and the perpetrator is made visible and held accountable.<sup>30</sup>

<sup>30</sup> Women’s Legal Service Victoria (WLSV) has developed the Safer Families program which is a family violence professional development program for lawyers. WLSV receives funding through Victoria Legal Aid to undertake this work. Funding has enabled WLSV to undertake consultations with key stakeholders from the outset of the program, including with Magistrates, Victoria Legal Aid and community legal centres to inform the development of the program, facilitate “buy in” for the program as well as to ensure continuous improvement of the program. The program has been independently evaluated and we understand results have shown a positive change in practice of

40. We further acknowledge the need for training specific to First Nation people's culture which should be meaningful, substantive and run by appropriately trained experts as recommended by members of First Nations communities.
41. Additionally, there needs to be training increasing cultural competency in working with refugee and migrant communities, non-binary and gender diverse people and families and disability awareness training.
42. All these forms of training should be funded.

### Professional registration and membership

#### *Question 6: What registrations or memberships should be required for family report writers?*

43. WLS NSW would welcome the introduction of a new, centralised, national, regulatory body with which all cohorts of family report writers are required to register. It is crucial that nationally consistent oversight is provided to family report writers that operate internally and externally to the FCFCoA. WLS NSW acknowledges the practicalities in setting up and initiating such a body will be challenging. However, WLS NSW is of the view that doing so is necessary given the pivotal impact that family reports can have on the outcomes of children and families' lives and their safety.
44. The national regulatory body should have high level understanding and competency relating to the nature and dynamics of sexual, domestic, family and violence and child abuse; First Nations people and families; identifying and responding to risk; people from culturally and linguistically diverse backgrounds; people with disabilities; and gender diverse and non-binary people.
45. Each year family report writers must undertake they have completed continuing professional development (**CPD**) that include mandatory components of training. The body must conduct random auditing to ensure compliance with the CPD requirements. Further quality assurance mechanisms are discussed below.

### **Recommendation**

A single national regulatory body which is responsible for accreditation, monitoring, quality assurance and accepting complaints relating to all cohorts of family report writers.

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community lawyers responding to family violence in Victoria. Women's Legal Services across Australia, including specialist Aboriginal and Torres Strait Islander Women's Legal Services, with their nuanced understanding of sexual, domestic and family violence and wealth of experience in working with victims-survivors in a sexual, domestic and family violence informed and trauma informed way are well placed to provide training similar to the Safer Families program provided by WLSV.

## Requiring and demonstrating competencies

### Question 7:

*(a) Should the attainment of identified core competencies be mandated?*

*(b) Are existing continuing professional development requirements sufficient or should there be specific requirements for family report writers? If so, what could this include?*

46. WLS NSW would welcome the mandating of competencies for family report writers. Despite the crucial role of family report writers, there is no uniform requirement to undertake formal training, accreditation or evaluation.
47. There are significant detrimental consequences for children and adult survivors when a family report writer, for example, is not competent in identifying and responding to family violence or lacks cultural competency and makes recommendations to the Court that can put children and families' safety at risk.

## Screening

### *Question 8: Should family report writers be subject to suitability screening? If so, what type of screening is relevant?*

48. The roles and responsibilities for family report writers is immense. Given the gravity and significance that family reports have on the outcome of care-arrangements and how that impacts families' lives, WLS NSW recommends that there be suitability screening of family report writers. WLS NSW recommends this include:
  - a. Criminal history check;
  - b. Working with children check and working with vulnerable people registration; and
  - c. Fit and proper person test and a requirement that someone be of good character.

## Need for quality assurance mechanisms for family report writers

### *Question 9: Should all family report writers be subject to quality assurance mechanisms as part of their appointment/ employment?*

49. The Consultation Paper outlines a range of quality assurance mechanisms and proposes some possible entities that could provide for competency and quality assurance of family reports and report writers in Table 5 of the Consultation Paper. The proposed mechanisms can include:
  - a. Mandated and revised standards
  - b. Training, including mandatory continuing professional development
  - c. Periodic supervision and peer review
  - d. Peer or specialist review in certain circumstances, such as family reports concerning First Nations families, parents or children with disabilities or child abuse
  - e. Declaration – including specification of family report writer's education, qualifications and work experience relevant to report writing, relevant competencies and training acquired, confirm quality assurance requirements that have been met

- f. Quality assurance checklists applied by the author or by an employer
  - g. Reviews and audits
  - h. Demonstration or evidence of completion/attainment/maintenance of certain training, registration and screening requirements
50. As outlined in the earlier question, WLS NSW supports screening of family report writers, including:
- 50.1 Criminal history check;
  - 50.2 Working with children check and working with vulnerable people registration; and
  - 50.3 Fit and proper person test and a requirement that someone be of good character
51. The Consultation Paper notes that “*Regulation 7 appointments have less oversight of their work compared to in-house family consultants*” but that recently, the Federal Circuit and Family Court of Australia’s Court Children’s Service “*has made efforts to build the quality and consistency of reports prepared by regulation 7 family consultants.*”<sup>31</sup> It would be helpful to hear further about this work and determine if sufficient quality assurance mechanisms are in place and there is sufficient consistency in quality assurance mechanism for all cohorts of report writers.
52. WLS NSW supports robust quality assurance mechanisms. We believe it would be beneficial for there to be annual auditing of family reports prepared by both court employed and private practitioners with the results to be published in a de-identified way including the steps taken to address any issues identified.
53. We further support the proposal in Table 5 of the Consultation Paper for “*Auditing and review of family reports when a complaint has been made and evidence received*”. We note the proposal that this be undertaken by existing regulators of family report writer professions. To ensure a consistent approach, WLS NSW recommends there be a single, centralised, national, regulatory body responsible for accreditation of all family report writers that audits and review family reports when a complaint is made. We further support the regulatory body conducting regular random audits of family reports by court employed and private practitioners for consistent oversight of all cohorts of family report writers.
54. We believe such auditing will help build public confidence in the system.
55. WLS NSW supports the implementation of legislation to establish and underpin competency requirements (noting that *The Standards* are not binding and so not enforceable). The competency requirements must include minimum standards for family report writers, annual training requirements, complaint and other accountability mechanisms (such as annual random auditing by a regulatory body). If the Government proceeds with this, WLS NSW recommends there be further consultation on draft legislation.

### Recommendation

Robust quality assurance mechanisms must include the annual auditing of family reports prepared by both court employed and private practitioners with the results to be published in a de-identified way

<sup>31</sup> AGD, (2021) *Improving the Competency and Accountability of Family Report Writers Consultation Paper*, p 19.

including the steps taken to address any issues identified.

## Public sources of information on family report writers

### Question 10:

- (a) *Is there sufficient information available to families about the skills and qualifications of family report writers? Where is this information available?*
- (b) *What information should be available to the public and parties about family report writers that is not currently available?*

### Question 12

*What approaches would best ensure that information about family report writer qualifications/skills/competencies is made available for family law system users (for example, a public register, a declaration)?*

56. WLS NSW is of the view that there is insufficient information available to enable parties to familiarise themselves with and understand the skills and qualifications of family report writers. This issue is exacerbated for self-represented litigants who would have difficulty in finding and accessing the various sources of information available about family report writers as this is not listed in one centralised location.
57. WLS NSW would welcome the introduction of a single, comprehensive public register of accredited family report writers that outlines as a minimum:
- Name, registration type and expiry date;
  - Accreditation;
  - Qualifications, experience and training, including recent training;
  - Any negative findings, undertakings and/or reprimands following complaints investigations.
58. All cohorts of report writers seeking to produce family and child assessment reports must be included on the public register.
59. WLS NSW also supports the Joint Select Committee's (**JSC**) proposal that any public register should make it clear and easy to ascertain whether a family report writer has specific accreditation and/or training in areas such as family violence.<sup>32</sup> In addition to training in relation to family violence, WLS recommends that the list make it easy to identify whether the report writer is trained, qualified and/or experienced in the following areas:
- Trauma-informed practice;
  - Identifying and responding to risk;
  - Child abuse;

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<sup>32</sup> JSC, Parliament of Australia, *Improvements in Family Law Proceedings, Second Interim Report*, March 2021, paragraph 2.140

- Cultural competency for First Nations people;
- Cultural competency for people from culturally and linguistically diverse backgrounds;
- Engaging with people with disabilities; and
- Engaging with non-binary and gender diverse people

### Recommendation

The establishment of an accessible public register of family report writers.

### Mechanisms to ensure competent writers and quality reports

#### Question 11:

- (a) What approaches would best assure family report writer competency and report quality?*
- (b) To what extent can existing approaches be utilised or enhanced, or do new ones need to be established?*
- (c) How would the approach(es) apply consistently and fairly for all report writers and manage the risk of deterring qualified professionals from undertaking the family report writer role? Do different mechanisms need to apply based on appointment type or profession?*

60. WLS NSW would welcome the introduction of improved mechanisms to ensure the competency of report writers and quality of family reports. WLS NSW supports the introduction of:
- 60.1 **A National Accreditation Scheme.** All cohorts of report writers (in-house and regulation 7 family consultants and single expert witnesses) who undertake family and child assessment reports should be subject to a national accreditation scheme and undergo a process of formal recognition that they meet a pre-determined set of minimum quality standards. This would promote fundamentals for those undertaking family report writer work and help to provide a minimum of quality assurance.
  - 60.2 **Public register.** A requirement that family report writers outline their relevant accreditation, qualifications, experience, training (including recent training) and any negative findings, undertakings and/or reprimands following complaints investigations.
  - 60.3 **Auditing of reports.** That an oversight body conduct random auditing of reports on a prescribed basis to ensure that the family reports being produced are of sufficient quality and the publishing of a report outlining the results and action taken to address issues identified.
  - 60.4 **Training and CPD.** Family report writers should undertake and maintain training in key performance areas, including family violence, cultural competency, trauma informed-practice, child abuse, disability awareness and awareness about issues impacting non-binary and gender diverse people. WLS NSW would welcome the introduction of specific yearly CPD requirements to be fulfilled with the compliance monitored and verified by an oversight body.
  - 60.5 **Standards.** *The Standards* should be made binding and enforceable on all cohorts of report writers for accountability and quality assurance purposes. WLS NSW recommends a revision of *The Standards* be conducted following in-depth consultation with stakeholders to ensure they

are fit for purpose. We also recommend the Family Violence Best Practice Principles be made binding and enforceable.

### Complaints mechanisms

#### Question 14:

- (a) Are improved avenues for complaints about family report writers required?*
- (b) Which entity or combination of entities is best placed to investigate complaints about family report writers? Why?*
- (c) Could existing regulatory complaints mechanisms (Ahpra and state complaints bodies) be more effectively utilised to investigate complaints about psychologists and psychiatrists who are family report writers? If yes, what enhanced role could they play?*
- (d) What could be an appropriate complaints mechanism for social workers undertaking family reports?*
- (e) How would any proposed mechanism(s) best manage the issues and risks that have been identified, such as efficiently identifying and responding to vexatious complaints?*

61. The current complaints mechanisms for family report writers are inadequate and unclear and WLS NSW would warmly welcome strengthening of the complaints framework.
62. The inadequate nature of the complaints system for family report writers has been an issue for many years. In 2017, it was raised in a submission by Women's Legal Services Australia (**WLSA**) to the Senate Community Affairs Committee Inquiry on the complaints mechanism administered under the Health Practitioner Regulation National Law.<sup>33</sup>
63. WLSA recommended:
  - 63.1 *That the Health Practitioner Regulation National Law is amended to provide a clear, simple, and accessible complaints mechanism for complaints in relation to health practitioners acting as family consultants or expert witnesses in a family law proceeding.*
  - 63.2 *That section 121 of the Family Law Act is amended to make clear that disclosures of accounts of a family law proceeding for the purposes of making a complaint against a health practitioner under the Health Practitioner Regulation National Law are excluded from the prohibition under section 121.*
64. Information about how to make a complaint about a report writer is unclear. This is exacerbated by the fact that some report writers are private practitioners while others are employed by the Court. It is not sufficient to rely on the cross-examination process as a complaint mechanism.

### Access to evidence

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<sup>33</sup> Women Legal Services Australia (WLSA), *Submission to inquiry on the complaints mechanism administered under the Health Practitioner Regulation National Law*, 24 February, 2017



### **Question 15 Which entities should be able to receive family reports for the purpose of investigating complaints?**

65. WLS NSW prefers a single regulatory body to oversee accreditation and complaints relating to family report writers.
66. WLS NSW recommends that any oversight body intended to receive complaints about family report writers will need access to the family reports produced to enable proper assessment and consideration of the complaint made.
67. WLS NSW agrees with the ALRC that section 121 of the *Family Law Act* has caused confusion amongst family law professionals, disciplining bodies and/or medical regulators. There are varying interpretations and implementation of section 121. For example, the Australian Association of Social Workers Ltd (**AASW**) produced a policy in relation to complaints relating to social workers and the Family Court of Australia and the Federal Circuit Court of Australia which states:

*The AASW is generally prohibited by virtue of section 121 of the Family Law Act 1975 from receiving and responding to complaints about social workers (whether a Family Consultant or not) that relate to proceedings of the Family Court of Australia and Federal Circuit Court including anything relating to the content of a report prepared for the purposes of the court proceedings. This includes complaints relating to a court-ordered activity.<sup>34</sup>*

68. While it is not clear if this policy is still current, it indicates the need for amendment of section 121 of the *Family Law Act* to make clear there is an explicit exemption to the restriction on publication or dissemination of accounts of proceedings to regulators in connection with their regulatory functions, including the receiving of complaints.
69. We note the Australian Government agreed to the ALRC recommendation that section 121 of the *Family Law Act* be redrafted. This is relevant to this discussion.

### **Publicly identifying a family report writer**

#### **Question 16:**

- (a) **Should section 121 be amended to enable the names of family report writers to be published?**
- (b) **Should this be limited to situations where a report writer has been convicted of an offence and/or subject to an adverse finding by a regulator?**

70. Similar to the position taken by the JSC<sup>35</sup>, WLS NSW supports amendments to section 121 of the *Family Law Act* to allow publication of any negative findings with respect to family report writers.
71. Parties should be given the opportunity to know, understand and make informed decisions about family report writers that are engaged in their cases. WLS NSW concurs with the JSC<sup>36</sup> that the

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<sup>34</sup> Australian Association of Social Workers, *Complaints relating to Social Workers and the Family Court of Australia & Federal Circuit Court of Australia*, at p 1

<sup>35</sup> JSC (2021) Parliament of Australia, *Improvements in Family Law Proceedings, Second Interim Report*, paragraph 2.133.

<sup>36</sup> *Ibid*, paragraph 2.146

identification of the family report writers who have had negative findings made about them is in the public interest as it promotes accountability, transparency and which will in turn engender parties' confidence in the family report writer.

**Conclusion**

- 72. Family reports and family report writers are crucial to family law proceedings and can have immense impacts on their outcomes.
- 73. Given the gravity attributed to family reports, it is vital that this evidence be provided by nationally accredited, highly trained and experienced professionals.
- 74. Further, there should be sufficient scrutiny of their practices, with accountability mechanisms that are transparent for quality assurance purposes and to improve public confidence.

If you would like to discuss any aspect of this submission, please contact Amy Power, Solicitor, Liz Snell, Law Reform and Policy Coordinator or Philippa Davis, Principal Solicitor on (02) 8745 6900.

Yours faithfully,  
**Women's Legal Service NSW**

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