



Law Council
OF AUSTRALIA

Office of the President

26 July 2018

Senator the Hon Ian Macdonald
Chair, Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Senator Macdonald

Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018

1. Thank you for the opportunity to provide a supplementary submission to the Legal and Constitutional Affairs Legislation Committee's (**Committee**) inquiry into the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018 (**the Bill**). The views expressed in this supplementary submission are the views of the Law Society of New South Wales.
2. The Law Society of New South Wales supports the aim of the legislation, to ensure that appropriate protections for victims of family violence are in place during cross-examination in all family law proceedings. However, the Law Society of New South Wales has some concerns about the Bill, underpinned by the complex dynamics of family violence in the Indigenous context.
3. In its Issues Paper, the Australian Law Reform Commission (**ALRC**) stated that a better understanding of family violence dynamics in Indigenous families is needed in order to ensure meaningful access to the family law system for Indigenous families.¹
4. The Law Society of New South Wales agrees with this view. Please find [attached](#) the Law Society of New South Wales' 2016 submission to the Inquiry into Domestic Violence and Gender Inequality. The Law Society of New South Wales reiterates the views expressed in that submission. In the Law Society of New South Wales' view, any response to the issue of managing the litigation of matters where family violence is alleged must be designed in consultation with Indigenous organisations to ensure that the interests of Indigenous litigants are protected, or in the least, that any new legislation does not have any unintended consequences that affect the interests of

¹ Australian Law Reform Commission, *Review of the Family Law System*, Issues Paper No 48 (2018) [63]-[64].

Indigenous litigants, and the children involved. For example, the Law Society of New South Wales understands that a majority of the Indigenous matters in the family law system involve family violence, but the parties may be a grandmother and the mother of a child in question. The Law Society of New South Wales are particularly concerned about any exacerbation of the rates of Indigenous children in out of home care.

5. It is not clear whether consultation was specifically sought and carried out with Indigenous communities and Indigenous service providers in relation to this Bill. Given the historically low levels of engagement with the family law system that Indigenous families have, the Law Society of New South Wales suggests that proactive engagement should have been sought. If the Bill passes, the Law Society of New South Wales submits that further consultation with Indigenous communities and Indigenous service providers should be carried out in respect of the consequences of the passage of this Bill, both in respect of education, and to determine if any adverse unintended consequences require further legislative attention.
6. The Law Society of New South Wales wishes to further emphasise the following matters.

Meaningful access to legal assistance


7. In the NSW context, reconsideration of the grant of legal aid guidelines, particularly in the case of Indigenous families, where the guidelines should be broadened in terms of means test and to include various kinship categories. The focus of the legal assistance sector (legal aid, community legal sector and Aboriginal Legal Services) in respect of Indigenous litigants should shift from advice to representation in litigation processes.

Appropriate judicial education

8. Judicial education on the issue of managing coercive and controlling cross-examination is critical, as well as judicial education in relation to the complex dynamics of family violence in the Indigenous context

Please contact Dr Natasha Molt, Acting Director of Policy on (02) 6246 3754 or at natasha.molt@lawcouncil.asn.au in the first instance, if you require further information or clarification.

Yours sincerely



Morry Bailes
President