



Review of the family law court system

A submission to the:
Australian Law Reform Commission

Prepared by:
yourtown, May 2018

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About yourtown

yourtown (formally BoysTown) is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, **yourtown's** Mission is *to enable young people, especially those who are marginalised and without voice, to improve their quality of life.*

yourtown provides a range of face to face and virtual services to young people and families seeking support. These services include:

- Kids Helpline, a national 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues
- Accommodation responses to young parents with children who experience homelessness and women and children seeking refuge from domestic and family violence
- Young Parent Programs offering case work, individual and group work support and child development programs for young parents and their children
- Parentline, a telephone counselling service for parents and carers'
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse or been exposed to violence
- Employment programs and social enterprises, which support young people to re-engage with education and/or employment, including Aboriginal and Torres Strait Islander specific services.

Kids Helpline

Kids Helpline (KHL) is Australia's only national 24/7, confidential support and counselling service specifically for children and young people aged 5 to 25 years. It offers counselling support via telephone, email and a real-time web platform. Kids Helpline is staffed by a paid professional workforce, with all counsellors holding a tertiary qualification.

Since March 1991, young Australians have been contacting Kids Helpline about a diverse group of issues ranging from everyday topics such as family, friends and school to more serious issues of child abuse, bullying, mental health issues, drug and alcohol use, self-injury and suicide.

In 2017, Kids Helpline counsellors responded to over 150,000 contacts from children and young people across the nation, with an additional 600,000 unique visitors utilising materials from the website..

Introduction

yourtown strongly welcomes this wholesale review of the family law system, which is long overdue. We are also greatly encouraged by the Australian Law Reform Commission's presentation of the issues that are preventing the legal system from appropriately protecting Australia's most vulnerable individuals and communities and providing them with access to justice. Indeed, in collating the findings of past reviews, the Issues Paper has reflected many of the best solutions for reform.

We have responded to this Inquiry as a priority given that the lives of many of **yourtown's** clients are deeply affected by family separation and as such they come into contact with the legal system. We want to add their voices loudly and clearly to the calls for urgent reform. Through our work supporting disadvantaged children, young people and young parents through Kids Helpline and Parentline, through providing support accommodation to parents and children affected by family violence and homelessness and through providing specialist education and employment programs, we see firsthand the devastating and long-lasting impact that family law issues have on vulnerable young lives.

We know that children and young people experiencing family separation have poorer outcomes across the life course. We also know that for our most disadvantaged, family separation intersects with a range of other forms of disadvantage, making accessing the legal system even harder for them. Indeed, the family law system is simply not equipped to meet the needs and preferences of many of our clients and too often leaves them without the support they require. Staggeringly, in many ways the legal system further compounds their disadvantage and even at times facilitates or adds to the abuse and trauma they are experiencing. It is therefore time for changes to be made.

For too long, our governments and communities have known about the many ways that the family law system is failing Australians. We have known that the family law courts and staff are not appropriately resourced to accommodate the needs of children and young people, leaving their voices unheard and their questions unanswered. We have known that Aboriginal and Torres Strait Islander peoples are more likely to experience family violence but are less likely to be provided with the culturally competent legal support they need to address it. We have known that Lesbian, Gay, Bisexual, Trans and Intersex communities and Culturally and Linguistically Diverse communities must overcome additional barriers to access family legal assistance.

This review is Australia's opportunity to address these failings and ensure that the family law system is capable of responding to the diverse needs of modern Australians. It is Australia's opportunity to develop a national system that is flexible, person-centred, community-informed and tailored to the holistic needs of all Australians regardless of their culture, background, gender, sexuality, age or location. To do this will require significant and sustained investment to fund the many reforms needed. However, if Australia wants to ensure that every Australian can access their rights and seek protection and justice from our family law system, it is essential.

In our submission, we have responded directly to some questions only to avoid repetition but many of our responses are pertinent to other questions posed in the Issues Paper. We have not provided a summary of our responses upfront given the breadth of the review and that detail supporting our comments is needed to fully understand the points that we make. Our submission directly reflects the concerns and experiences that our clients have in relation to family law issues and we thank them for their invaluable insights.

KHL data and case studies

yourtown Kids Helpline data system hosts a wealth of data and information about the lived experiences of children and young people in Australia today. It provides invaluable insight on how our children and young people feel about, view and navigate the world and the range of issues and risks that confront them.

However, a few caveats or qualifiers must be considered when examining this data:

- The data represents analysis of the number of contacts – and not necessarily individuals – made to KHL;
- The case notes that we have analysed are not complete pictures of the lives and experiences of the contacts but rather notes counsellors have felt important to record. This means that the prevalence of issues we present may not be fully reflective of all the complexities of each contact's story.
- More of KHL contacts are from females (74 per cent of KHL contacts are from females, 24 per cent are from males and 2 per cent are intersex, trans and gender-diverse).

All case studies in our submission are based on the experiences of the children and young people who have contacted Kids Helpline and help to illustrate the diverse nature of issues responded to by the Family Court. All identifying information from case studies presented in this submission have been removed to protect client privacy.

The role and objectives of the family law system

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

yourtown believes that the role of the family law system is to provide recourse to justice for those affected by family law issues and to provide legal protection and support to those experiencing harm or who are at risk of harm. This role should include responsibility for delivering a national and joined-up legal and support system. It should aim to:

- Provide access to justice and protection to all peoples regardless of their culture, background, gender, sexuality, age or location. To achieve this will require a flexible, person-centred and community-informed approach and a system that reflects and works with the communities it serves, in conjunction with the provision of holistic support services essential to enabling Australia's most vulnerable to effectively access the system.
- A preventative and early intervention approach to justice, providing effective and timely legal assistance to prevent ongoing harm or escalation of issues as well as legal education tailored to the various needs of our communities.
- Continuously learn, review and keep up-to-date with the concerns and contexts of Australian communities so that it delivers best practice responses to supporting their legal needs.

Principles to guide the redevelopment of the family law system

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

yourtown believes that the family law system should be founded on the following principles:

- No further harm – the system should cause no further harm to the communities, families and children it serves, including harm caused directly from its structures, processes and decisions.
- Inclusivity – the system should recognise, respect and support the needs and preferences of all peoples. No one should be deterred from accessing the system.
- Person-centred – the system should move away from an ineffective, one-size-fits all principle to allow for more discretion and the use of flexible approaches and processes tailored to meet the needs of the many communities it serves.
- Joined-up – the system should support the holistic legal and other support needs of the communities and families it serves so that their experience of accessing the system is simple, easy to understand and timely.

Access and engagement, Access to information and navigation assistance

Aboriginal and Torres Strait Islander communities

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

In our response to this question, we first set out interrelated barriers to family law access for Indigenous peoples, before we offer insight from our work at **yourtown** with First Nation Australians in relation to family law matters, and then we present our recommendations for improving access.

Barriers to the family law system

- Entrenched inequalities

The high level of inequality that exists between Aboriginal and Torres Strait Islander and non-Indigenous Australians is stark. Not only do First Nation Australians have significantly lower life expectancy, education and health outcomes than their non-Indigenous peers, they also are much more likely to experience child abuse and family violence and be over-represented in the out of care system, the youth justice system and in prison.¹ A closer look at the statistics relating to this gap is startling:

- Young Indigenous Australians aged 10-16 are 16 times more likely than non-Indigenous Australians to have contact with the child protection system.²
- Aboriginal and Torres Strait Islander women are 32 times more likely than non-Indigenous females to be hospitalised as a result of family violence, and for Indigenous males the rate is 23 times the rate for non-Indigenous males.³
- Aboriginal and Torres Strait Islander children are almost 10 times more likely to be in out of home care than non-Indigenous children, a number that has significantly grown over the years, with 15,000 in out of home care in 2016, compared to 2,400 in 1997.⁴
- Indigenous young people continue to be overrepresented in the youth justice system, being 17 times more likely as non-Indigenous young people to be under supervision on an average day and 25 times more likely to be in detention than community-based supervision.⁵
- In June 2017, 11,307 prisoners identified as being Indigenous, representing 27 per cent of total prisoners and 13 times the rate for non-Indigenous Australians, increasing by 39 per cent since 2007.⁶
- Aboriginal and Torres Strait Islander women represent 34 per cent of the adult female population in prison, a rate that has increased by 148 per cent since 1991, and at double the rate from 2000 to 2016 than Aboriginal and Torres Strait Islander men.⁷

¹ Department of Prime Minister and the Cabinet, Closing the Gap, Prime Minister's Report, 2018: <https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf?a=1>

² Australian Institute of Health and Welfare 2017, Young people in child protection and under youth and justice supervision 2015-16, Data linkage series no. 23. Cat. No. CSI 25, AIHW, Canberra.

³ Steering Committee for the Review of Government Service Provision 2016, Overcoming Indigenous Disadvantage: Key Indicators 2016, Productivity Commission, Canberra

⁴ Australian Institute of Health and Welfare 2017, Supplementary Data Tables: Child Protection Australia 2015-16, AIHW, Canberra, and The Castan Centre for Human Rights Law, Castan Centre Human Rights Report 2016: https://www.monash.edu/_data/assets/pdf_file/0008/563516/2016-Castan-Human-Rights-Report.pdf

⁵ Australian Institute of Health and Welfare 2017, Young people in child protection and under youth and justice supervision 2015-16, Data linkage series no. 23. Cat. No. CSI 25, AIHW, Canberra.

⁶ Australian Bureau of Statistics 2017, Prisoners in Australia 2017, Cat. No. 4517.0, ABS, Canberra

⁷ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

- In 2016, the unemployment rate for Indigenous people of working age was 18.4 per cent, 2.7 times the non-Indigenous unemployment rate (6.8 per cent), a rise from 15.6 per cent in 2006.⁸

Family violence, parental imprisonment, low educational attainment and unemployment, and involvement with the child protection system or experience of out of home care are individual factors all related to lower child outcomes and deep and persistent, intergenerational disadvantage. These interrelated inequalities take their toll on Indigenous communities, detrimentally affecting family life, wellbeing and functioning. As a result, there is a high legal, and often unmet, need in the area of family law for Indigenous peoples.

- Historical trauma, discrimination and loss of culture

Notably distinct from the experiences of other disadvantaged families seeking legal support is the impact of historical trauma, marginalisation and discrimination that Aboriginal and Torres Strait Islanders have experienced and continue to experience today, together with the erosion of their cultural practices and tradition - naturally protective, sources of strength and community-based methods for effectively dealing with social issues.

This combination of factors means that the past's legacy creates significant distrust amongst First Nation communities towards government and its agencies (see the next point) and makes them reluctant to access services. They are also deeply affected by a range of different types of racism, preventing them from accessing the services they need, as well as leading to a number of poorer health and wellbeing outcomes itself.⁹ In addition, the decline in Indigenous culture and custom leaves communities, families and individuals ill-equipped to deal with the range of different and complex social issues that now confront them.

yourtown's Indigenous staff advised that in the past Indigenous communities would have all had cultural and community strategies to manage family issues. For example, in Balgo there is women's Lore Centre where men cannot and do not go as spiritual beliefs mean that it is widely respected as a women's sacred space. This means that women can confidently seek refuge within their community in times of need. Without such a space, women may have to make a seemingly impossible choice between remaining in the community and being at risk of further harm, or leaving the community and their critical support network.

Trauma, discrimination and cultural losses intersect with, compound Indigenous disadvantage, and must be seen as a distinct access barrier that requires specific address. The Australian Government is still learning how to appropriately accommodate the enduring impact of history in policy decision-making and service delivery to ensure that Indigenous communities are appropriately informed and can access the support they need. The poor outcomes of the Closing the Gap initiative 10 years after its launch neatly demonstrates the amount of work that still needs to be done to ensure that, for instance, Indigenous peoples lead community responses to the issues that affect their people – an approach that we know results in better outcomes.

⁸ Department of Prime Minister and the Cabinet, Closing the Gap, Prime Minister's Report, 2018:

<https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf?a=1>

⁹ <https://www.pmc.gov.au/sites/default/files/publications/indigenous/Health-Performance-Framework-2014/aboriginal-and-torres-strait-islander-health-performance-framework-2014-report/racism-and.html>

- Distrust of legal and government bodies and related support services

In relation to the legal system, we know that many Aboriginal and Torres Strait Islander communities have a deep mistrust of it for a number of reasons, and this includes the family law system in particular. These reasons include:¹⁰

- **Significant cultural, customary, communication and language differences, preferences and styles exist between many Indigenous peoples and the legal system.** The legal system was designed by non-Indigenous people accommodating long-standing, non-Indigenous practices and traditions. This clearly places Indigenous people at a distinct disadvantage when seeking to access it. They may, for example, not even relate to or consider the legal solutions on offer appropriate and even legal concepts can be untranslatable to their culture.¹¹ For example, Aboriginal and Torres Strait Islanders customs do not consider youth incarceration as a solution to youth crime and have to deal with the traumatic impact of this 'alien' concept on the individuals and families involved.¹² For example, there are some Indigenous communities where it is considered culturally inappropriate to report familial abuse and, hence, some women refrain from doing so.¹³
- **The legacy of the Stolen Generation, and the continuing high rates of child removal by child protection today, and placement of Indigenous children in unrelated or non-kin, and non-Indigenous households.** Indigenous Australians have strong and wide links with their families and raising children is seen as the responsibility of extended family. Hence removing a child from a community often contrasts with what an extended family would deem right. Despite the Aboriginal and Torres Strait Islander Child Placement Principle, which is beginning to better acknowledge and accommodate Indigenous family dynamics and kinship, the child protection system still seems to be ill-equipped to meet Indigenous needs in view of the rate of removal of children from families and the number in out-of-home care (whether this be due to lack of funding or legal restrictions). For instance, courts are currently prevented from optimising kinship placements as extended family members may not have legal or procedural rights to be able to place the child into school or childcare.
- **Agency responses to domestic violence in Indigenous households (see more in our response to Questions 23).** Police responses, such as detaining women defending themselves, are reportedly resulting in women affected by domestic violence having a greater interaction with the criminal justice system.¹⁴ The fact that family violence is also the principal reason why Indigenous children are removed from their families, causes some women to be adverse to reporting abuse for fear of having their children taken from them.¹⁵

¹⁰ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

¹¹ Ibid

¹² Ibid

¹³ Elena Marchetti, 'Access to Justice for Aboriginal and Torres Strait Islander People, (Paper presented at the 15th National Family Law Conference, Hobart, Tasmania, 14-17 October 2012) as referenced in <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

¹⁴ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

¹⁵ Ibid

- Lack of awareness about rights and how the legal system works in this area.

Some Aboriginal and Torres Strait Islander people lack knowledge and information about Australia's legal system and that it is there to help and protect their rights and family.¹⁶ As found by their non-Indigenous peers also, this is predominantly because the legal system is complex. It differs from state to state with the added layer of Federal laws, and in addition areas of law are rigidly separated – such as family and child protection law. However, the impact of this complexity is compounded for many Indigenous peoples by the system's non-Indigenous style of being extremely formal, bureaucratic and full of legal language, which makes even just accessing information difficult, particularly where literacy levels are low or English is a second or third language.

The formal separation of areas of law is extremely unhelpful for those seeking to access legal support and solutions as it can be common that cases relate to both family law and child protection matters. Yet rather than be considered together to minimise, for example, relaying difficult witness testimonies and significant costs and time for those involved, child protection issues must first be looked at by the state courts. With those seeking legal aid for family law court issues unable to do so if child protection concerns are substantiated, this further delays access to the family legal system as families have to await the outcomes of the state courts. Ultimately, this separation impacts on the wellbeing of the children and young people that the system seeks to protect as they can be placed in, often unsuitable, foster families or left to reside in dangerous family situations whilst the courts – severely hamstrung by underfunding to do their jobs in a timely manner – work through the processes to come to decisions.

- Economic barriers

Indigenous Australians must overcome significant economic barriers if they are to access the family court and supporting services. Given poorer educational and employment outcomes, they are generally less able to afford lawyers – whilst they are also generally less likely to be able to take the far cheaper option of representing themselves given low legal knowledge. The cost of legal assistance is also compounded by circumstances correlated to poorer economic pressures such as the fact that there are more single parent Indigenous families compared to non-Indigenous households, and that Indigenous parents also tend to be younger than the general population and have more children.¹⁷

In addition, Indigenous legal services, as undertaken by the Aboriginal and Torres Strait Islander Legal Service and the Family Violence Prevention Legal Services, are notably underfunded, with both services having to turn away many people in need of legal support.¹⁸ Indeed, the Government's views on the importance of specific Indigenous legal services is of concern given that sizeable cuts planned last year for the services were only reversed in the face of international pressure and the findings and recommendations of the United Nations Special Rapporteur, Victoria Tauli-Corpuz, on the rights of indigenous peoples. She found that they would have a 'major impact' on Australia's Indigenous peoples and should therefore be "immediately reversed" as they are "critical to ensure access to justice for Aboriginal and Torres Strait Islanders".¹⁹

With 44 per cent of Indigenous Australians living in regional areas and 22 per cent of the population living in remote areas of the country, many people have fewer support services options to access and sometimes no phones or internet access. There is also a distinct lack of interpreters representing an almost impossible

¹⁶ Ibid

¹⁷ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

¹⁸ Ibid

¹⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E>

hurdle to legal access for those living in remote communities to overcome.²⁰ Indeed, some service providers believe that the levels of access remote Indigenous communities have to legal services are so inadequate that it prevents them from enjoying full civil rights, and instead means they are often excluded from court processes that directly affect them.²¹

yourtown insights

yourtown delivers a range of different programs which support young Indigenous Australians, including services targeting all children and young people such as Kids Helpline, our domestic violence refuge and our refuge for homeless families. We also provide services specifically designed and delivered to Aboriginal and Torres Strait Islander children and young people that include:

- Indigenous School Based Traineeship Programs (SBT) - SBT works with Indigenous senior school students to secure and complete school-based apprenticeships and traineeships, and make a successful transition from school to work.
- Indigenous Youth Engagement and Transitions Program (IYET) - IYET works with Indigenous students aged 15-18 years who are identified as at high risk of early school leaving to re-engage in learning and complete their formal education.
- Vocational Training and Employment Centre (VTEC) - In partnership with the Federal Government and GenerationOne, VTEC provides tailored pre-employment training, personal mentoring and job placement for Aboriginal and Torres Strait Islander peoples.

Every year, between 3-6 per cent of Kids Helpline (KHL) contacts are from individuals who identify as Aboriginal and/or Torres Strait Islander, with this cohort having a rising preference for accessing the service through web chat.²² In keeping with what we know more broadly about the issues that confront Indigenous Australians, they call KHL with serious concerns, often more frequently than their non-Indigenous peers. For example, contacts from Aboriginal and Torres Strait Islander children and young people were more likely than contacts from children and young people of other cultural backgrounds (either CALD or Caucasian Australian) to focus on: suicide-related issues (20% c.f. 11% CALD, Caucasian 19%) child abuse (13% c.f. 9% or 6%), bullying (8% c.f. 4% or 3%) and loss and grief (10% c.f. 3% and 4%).

Whilst KHL data infers more evidence relating to the gap between Indigenous and non-Indigenous children and young people, it also reveals that their lives have many similarities with their non-Indigenous peers who contact us. For example, they too are affected by poor relationships with their parents' new partners or they feel guilty that they wish to live with their other parent and are making plans with them to relocate. They too have parents who do not want them to move out because they will lose family care payments if they do or they are living with a parent experiencing financial hardship. They too may be finding it difficult to make new friends following relocation. They also have to deal with a parent's alcohol or drug problems, mental health issues or physical or verbal abuse. They too have to manage these issues whilst growing up, dealing with puberty, body issues or confusion about their sexuality, attending school and the pressure of doing exams, or dealing with conflict with friends or bullying.

²⁰ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017:

<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

²¹ Ibid

²² Over the last decade, contacts from Aboriginal and Torres Strait Islanders have made up between 3% and 6% of all contacts to whom KHL counsellors have responded.

Many contacts relating to this myriad of family issues also neatly demonstrate the strength of the ties that Indigenous children and young people have to their extended family members, alongside the complexities of the legal system and the realities that familial breakdowns bring.

Case studies: KHL insights

Mia, 11 years old, currently lives with her aunty since she was taken away from her mum due to her alcohol and drug problem. She talks to her mum once a month and may get to see her in person this year. She loves living with her aunty although her sister doesn't live with her but instead lives with her cousins, uncle and nan. She misses living with her sister and seeing her mum, and when she is sad and thinking about them she talks to and hugs her teddies and aunty.

Tayla, 13 years old, is living at her grandmother's house and is sharing a bedroom with her mum and her brother as a result of her dad's violence towards them. When her parents first split up, Tayla and her brother were living with her dad but Child Protection intervened and placed the children temporarily in foster care when he was found to be physically abusing them both. She feels safe at her grandmother's and is happy to live with her mum but she doesn't like having to live in such a small space. Her dad has attended an anger management course and is following a problem drinking program and he has applied to the family law court for parental responsibility of the children.

Jack, 17 years old, was raised by his grandparents for 5 years following the family doctor's intervention as his mum has a drugs problem. He is now living with his aunty and two brothers and a sister. However, he is worried that his younger brother and sister will be taken and put into foster care as they do not have the same dad and his aunty is therefore not related to them.

The impact of family issues on the lives of children and young people can be so severe that we see it having a direct impact on key Closing the Gap targets such as educational and employment outcomes.²³ For example, our Indigenous Youth Engagement and Transitions Program (IYET) delivered a school reengagement program for a group of male students last year who were identified as at high risk of disengaging from school, most of whom were experiencing a family crisis in the home. The IYET Indigenous mentor facilitated a series of workshops over the school term to strengthen the engagement and connection these students had with their school, as well as giving clients an understanding of their careers pathways. Importantly, however, we also supported them with individual case management support to meet their holistic needs including financial support for school lunches, school equipment and uniforms and travel assistance.

Case study: yourtown insights

One young woman was referred to IYET as she was experiencing a number of different family issues that were resulting in her disengagement from school, with her stating that she wished to drop out. She had grown up with family violence, and her mother, her sibling and she had been suffered significant physical harm as a result with her father ultimately being imprisoned. Alongside dealing with the trauma of this, she had insecure accommodation and was living with her older boyfriend despite wanting to be able to live with her sibling. A family member had recently attempted suicide. She was experiencing mental health issues and was self-harming.

²³ Department of Prime Minister and the Cabinet, Closing the Gap, Prime Minister's Report, 2018: <https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf?a=1>

yourtown recommendations

yourtown is strongly supportive of the Inquiry's presentation of the issues affecting Aboriginal and Torres Strait Islanders in relation to the family law system in the Issues Paper. The paper recognises that in its current form the family law system does not accommodate the lived experiences of Indigenous people and meet their needs. It also presents a number of solutions that have emanated from the numerous reviews that have been undertaken in recent years. We firmly support these solutions as evidenced by our recommendations below. We believe that the family law system needs:

- Indigenous self-determination and community-leadership

As recently acknowledged by the Closing the Gap's Prime Minister's Report 2018, evidence has shown that effective Indigenous policy must have "Aboriginal and Torres Strait Islander people at its core" and be based on their "aspirations and priorities."²⁴ This includes listening to and incorporating the priorities of Indigenous controlled national organisations and statements, such as the Redfern Statement and the Blueprint for Change, as well local communities – their Elders, organisations and families. Whilst adopting some of these priorities should be easy, the extent of the trauma, healing, discrimination and cultural losses of Indigenous Australians means that, again as the Closing the Gap has neatly demonstrated, this is not always a straight-forward task as community agency may need to be grown, and deeply engrained mistrust repaired. Government decision-makers, agencies and service providers need to fully commit to finding ways to effectively support self-determination and facilitate Aboriginal and Torres Strait Islander community-led and culturally appropriate solutions.

To date, remote and rural Indigenous communities in particular have been overwhelmed by a multitude of, often well-meaning, short-term, piece-meal and external programs tasked with addressing deep and persistent social issues. They have frequently felt tokenistic, have not allocated sufficient or sustained funding and crucially have not sufficiently incorporated the voice, experiences and preferences of Aboriginal and Torres Strait Islanders to produce sustainable outcomes.

Evidence is building, however, and there are now many examples of effective First Nation solutions. The Justice Project details many of these successes, such as the Mornington Island Restorative Justice Project said to be effective as it is "unlike so many programs that have been 'plonked' into remote communities" and "the whole emphasis was on designing a project that was community driven and owned".²⁵

Central to the success of community-led interventions is their ability to overcome the significant access barrier of trust and instead instil not just a sense of, but real ownership.²⁶ In **yourtown's** experience, legal solutions such as Queensland's Murri Court prove to be effective. This is because they tap into the respect and influence that local Elders have in their community to mediate positive and sustainable legal responses, as well as remove some of the highly formal aspects of courts to provide a less hierarchical space more in keeping with Indigenous values.

A community-led family law court would also help devise ways to overcome current impediments to the use of the Aboriginal and Torres Strait Islander Child Placement Principle so that extended family members and kinship groups are appropriately consulted and used as suitable placements. We know that placing a child with their extended family will not always be possible, however, we are confident that if, appropriately

²⁴ Department of Prime Minister and the Cabinet, Closing the Gap, Prime Minister's Report, 2018:

<https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf?a=1>

²⁵ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, 2017:

<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

²⁶ Ibid

funded, ways can be found to ensure that Indigenous children and young people do not lose out on this critical source of strength, protection and identity.

It should also include community-led guidance on police protocols so that family law issues do not escalate into criminal law matters for the women experiencing abuse. The ultimate aim must be for Indigenous communities to have access to a legal system that represents and accommodates their realities. We know this is possible as one Elder involved in Circle Sentencing concluded “this is not white man’s law anymore, it’s the people’s law.”²⁷

- To support diverse, tailored approaches to service delivery

The family legal system and its support services must be tailored to the needs and preferences of different communities. For example, rural and remote communities have different needs to urban communities. Whilst timely legal responses to all cases is important, it is particularly important in rural and remote communities as family issues, if unresolved, can have a significant impact on and escalate quickly in small communities. **yourtown** Indigenous staff suggest that District Justices of the Peace or judicious use of Skype can be effective in mediating in such instances.

Tailored outreach services and the targeted use of services trusted in the community to act as gatekeepers to legal information and support must also be supported by the family law system. The Family Violence Prevention Legal Services has highlighted the importance of community outreach services to support and resolve issues relating to family violence given the cultural reluctance or fear of consequences that women may have if they do.

The use of services that have already been established in communities as gatekeepers is effective as they will be well-respected, trusted and used by Aboriginal and Torres Strait Islanders. The key is to training staff to recognise legal needs/the need for legal support, particularly as they may not recognise their legal need themselves. For example, many Indigenous people live in de facto relationships and are unaware that this provides them with legal rights or they may not be aware that they are entitled to child support payments. Health Justice Partnerships are an example of this in practice, whereby lawyers are stationed in health centres and hospitals so that staff can refer them when, for example, family violence may be an issue.²⁸ Gatekeeper or person-centred services are also important for highly disadvantaged groups such as Indigenous Australians given their lives are complex and the challenges they face are interconnected.

Providing services that can support holistic needs is undoubtedly worth the investment as it helps to prevent cycles of disadvantage and family issues spilling into other areas of their lives - such as family breakdown being correlated with juvenile offending - and delivers more sustainable, long-term outcomes and ultimately saves money.

- More Indigenous staff, specialist legal staff and services and cultural competency training

If Aboriginal and Torres Strait Islanders are to feel ownership of the family law system it must not just reflect their needs. It must be delivered by more Indigenous lawyers, field officers, Justices of the Peace and legal support and broader support service staff. The legal system will not resonate with Indigenous Australians if it is not appropriately delivered by their peoples also.

Recognising that it can take time to train and recruit suitable numbers of Indigenous staff, specialist lawyers and support staff responsible for assisting with cases of Aboriginal and Torres Strait Islander families,

²⁷ Doug Dick, ‘Circle Sentencing of Aboriginal Offenders: Victims Have a Say’ (2004) 7 The Judicial Review 1, 57, 72.

²⁸ Goulburn Valley Community Legal Centre, Rumbalara Health-Justice Partnership: <http://gvclc.org.au/health-justice-partnership/>

system-wide cultural training for non-Indigenous staff is also needed. Indigenous people should be able to confidently access all mainstream government and legal services knowing that the staff with whom they work understand, respect and will accommodate their cultural needs and preferences.

Importantly, there is also a need for more specific Indigenous Legal Services or greater investment into those that exist. Indigenous people have a good awareness of existing legal services tailored to them, including ATSILS and FVPLS, but there is a lack of services provided for family and civil law issues, with the focus, due to limited funding, on criminal legal concerns.²⁹

- Integration with child protection courts or single hearings for cases covering both jurisdictions

One of the most confusing and impenetrable aspects of the legal system in relation to family law, not only for Indigenous groups but all disadvantaged groups, is the separation of child protection and family law matters. As we discussed previously, this separation is costly and time-consuming and importantly puts the safety of children at risk. Indigenous legal matters frequently cover both of these legal areas and having to negotiate the complexity and bureaucracy of both systems is not conducive to ensuring that Aboriginal and Torres Strait Islanders are able to access the system to pursue their legal rights.

- Community education

Community education about family law processes and individual rights including those of children, and about how to seek help are desperately needed. As many Aboriginal and Torres Strait Islander people often seek legal assistance at crisis point, this education needs to be widely targeted throughout communities. It also needs to recognise and respond to the fact that Indigenous people may be involved with a number of different courts for a number of different issues.

Ensuring that this education is appropriately culturally and linguistically tailored to Aboriginal and Torres Strait Islanders is key to its success. Visual information, videos and photos are useful ways to engage with many Indigenous peoples. The Family Law Court's information on its website is dry and unengaging and we would advise that the Court learns from other websites targeting Indigenous groups such as the Murri Court's website and manual.³⁰

- Significantly greater and sustained levels of funding

It is widely known that the family law court is underfunded. However, given the level of often unmet need amongst Aboriginal and Torres Strait Islanders in family law access, funding solutions to increasing their access must be a priority, particularly as issues in family law spill over and affect many aspects – and often seriously – of the lives of both Indigenous children and adults.

yourtown is pleased to see that the Federal Government is currently considering introducing new targets on reducing child protection and justice targets. It is right that the Government now sees that areas of social disadvantage are interrelated and, for example, that you cannot effectively close the gap between educational and employment outcomes without keeping Indigenous children and their parents out of prison. The legal services that Indigenous people require are costly, but they are a long-term investment in better lives and outcomes for Aboriginal and Torres Strait Islanders.

²⁹ Law Council of Australia, The Justice Project: Aboriginal and Torres Strait Islander, Consultation Paper, August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples.pdf>

³⁰ <http://www.courts.qld.gov.au/courts/murri-court>

Lesbian, gay, bisexual, transgender, intersex and queer clients

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

Despite some notable progress and changing attitudes towards the lesbian, gay, bisexual, transgender and intersex (LGBTI) population, many forms of discrimination and marginalisation towards LGBTI people are stubbornly engrained in Australian minds, institutions and society. As a result, the LGBTI community face a range of interrelated and complex challenges, leading to many forms of disadvantage and poorer health, mental health, social, educational and economic outcomes than the general population. As **yourtown** provides support services to the nation's most vulnerable young people, we see the results of LGBTI discrimination and disadvantage firsthand through their use of Kids Helpline (KHL), Parentline (in Queensland and the Northern Territory) or through their access of our other support services.

yourtown insights

Many LGBTI children and young people contact Kids Helpline (KHL) seeking information, advice and support on a range of issues. With increasing numbers of contacts from children and young people identifying as neither male nor female, KHL introduced a new broad gender category for data collection in 2015 – intersex, trans and gender-diverse. In 2017, 2% of all KHL contacts for whom we recorded a gender identified with this group.³¹

This section reflects what we know from delivering our services about LGBTI children and young people, and young parents before presenting our recommendations for ways to improve the family law system to meet the needs and preferences of the LGBTI community.

- The power of data and language

Capturing information relating to all genders enables us to better understand the needs and preferences of LGBTI young people so that we can ensure that our services appropriately support them, and through our advocacy work, ensure that government and other support services are better equipped to do the same. In doing so, we also can demonstrate to young people that we are an inclusive organisation and encourage them to access our services.

Indeed, extremely small but important steps, such as just having the option for alternative gender identification options in our surveys for example, send a powerful and supportive message in recognising the diversity of our communities. They are steps that many Government organisations have still to take – for example the Census and other longitudinal, large scale surveys are not fully inclusive or representative of the LGBTI community – and the family law system should consider how it can better capture, record and use data to advance LGBTI issues.

However, meeting young LGBTI people's needs and preferences requires continuous review since language, views and best practice will continue to evolve and will often be grey areas, requiring the ability to respond sensitively and in a person-centred way to meet an individual's needs. For example, for some LGBTI colleagues in **yourtown** the word 'queer' continues to have negative connotations given its historic application and their personal experiences.

³¹ <https://www.yourtown.com.au/insights/annual-overviews>

- LGBTI communication preferences

We know from 2017 KHL data that those young people identifying as intersex, trans or gender-diverse were more likely than both males or females to contact us by web chat (48% c.f. 18% for males and 33% for females) while being less likely to contact by phone (44% c.f. 75% for males and 56% for females). We find that young people like to engage with KHL through web chat when it is an issue about which they fear being judged, and that they feel more able to express their most personal thoughts openly through this medium.

- LGBTI groups are more likely to experience suicidality or self-harm

Reflecting the findings of an array of research into this issue, KHL 2017 contacts from intersex, trans and gender-diverse clients were more likely than males or females to relate to suicide concerns (26 per cent c.f. 17 per cent females and 13 per cent males) and self-harm (10 per cent c.f. per cent females and 3 per cent males), whilst being as likely as females to relate to mental health issues (26 per cent c.f. 27 per cent females and 22 per cent males).³²

These findings further evidence the vulnerability of this group of young people and emphasise the importance that – particularly at moments of high stress and emotional trauma as interaction with the family law system is likely to represent – LGBTI groups find the environment and staff to be welcoming, supportive and inclusive so that they are neither re-traumatised nor have additional challenges of, for instance, discrimination or lack of empathy with which to deal. The family law system must offer a safe, protective environment for everyone.

- LGBTI children and young people often have complex and challenging lives

Like many of our clients, LGBTI clients have a range of intersecting legal and non-legal needs when they contact us. Their legal needs – again like other clients – include needing more information about their rights, seeking advice or further support services or looking for someone to listen to them and not judge them. Their non-legal needs – and again like other clients – can include mental health concerns, relationship issues with their friends, partner or family, family abuse or alcohol and drug issues or problems at school.

However, in addition to these concerns that other children and young people encounter, LGBTI children and young people have frequently to deal with: their parents not accepting their sexuality and/or gender, with the practicalities and legalities of transitioning gender, with discrimination or isolation at school because of their gender and/or sexuality, the subsequent ‘internalised attitudes’ that there is something wrong with them or they deserve poor treatment and trying to find somewhere they feel ‘they fit in’. Their complex lives again demonstrate how important it is to ensure that the legal system is supportive and welcoming, and is a service that facilitates and empowers legal help and information-seeking.

- Children live in diverse families

Calls to KHL, but also contact to Parentline and our other support services, demonstrate how diverse Australia’s families now are. Same-sex parenthood is increasing and it is essential for both same-sex parents and their children that all institutions embrace and support them so that they can have equal access to the same services and rights as others.

³² Roberts et al., 2013; Grossman & D’Augelli, 2006; Meyer, 2003), suicidal thoughts and behaviours (Fitzpatrick et al., 2005; LeVassuer et al., 2013; Mueller et al., 2015; Russell & Joyner, 2001; Stone et al., 2014; Walls, Potter & Van Leeuwen, 2009) and/or bullying (LeVassuer et al., 2013; Reisner et al., 2015)

yourtown recommendations

yourtown believes that the family law system should foster inclusivity by:

- considering how it can better capture, record and use data to advance LGBTI issues
- actively promoting and applying individually appropriate and inclusive language in every interaction the family law system has with LGBTI individuals
- funding information and support services for LGBTI children and young people that include web chat
- ensuring that it does no harm to LGBTI people who access its services and instead presents a source of strength and trust by:
 - ensuring that staff are appropriately and continuously educated, trained and up-to-date with the language, concepts and research relating to LGBTI issues and are culturally competent in this role in this area. This is critical to making the family law system not only accessible to the LGBTI population but also to making it a source of strength – not mistrust – for the community.
 - funding specialist and joined up support services. The LGBTI Legal Service in Brisbane is the only LGBTI specific legal service in the country. The vulnerability of LGBTI groups and their complex needs means that it is imperative that legal processes and interactions do not lead to further harm but instead are timely and accessible to the whole community.

In short, as our courts are responsible for upholding justice and protecting vulnerable people, it is imperative that the Family Law Court does not further contribute or compound LGBTI disadvantage and experiences and instead must ensure that any interaction with the LGBTI community is positive.

Appropriate dispute resolution for cases involving family violence

To avoid repetition, in this section we present all of our views on how to improve many aspects of the family law system in relation to cases of family violence. Therefore, it covers responses to several questions that the Issues Paper poses on this issue.

We refer to domestic violence – “acts of violence that occur in domestic settings between two people who are, or were, in an intimate relationship” including physical, sexual, emotional, psychological and financial abuse when we are referring to specific cases of domestic violence that we know to be confined purely to this definition.³³ More commonly, and in keeping with the Issues’ Paper, we refer to family violence – a broader term that includes domestic violence as well as violence between other family members.³⁴

Introduction

Whilst family violence is likely to be significantly underreported, it is now recognised in Australia as an issue with widespread, serious, and long-lasting impacts on the individuals, families and communities affected as well as wider social costs and implications.³⁵ Over two million Australians have experienced domestic violence since the age of 15, with women being nearly three times more likely to have experienced partner violence than men.³⁶ In addition, over one million Australians have experienced physical or sexual violence from another family member. Shockingly, statistics relating to family violence amongst Indigenous communities are even starker, with Aboriginal and Torres Strait Islander peoples being at greater risk of family violence than non-Indigenous Australians. In 2014-15, hospitalisation rates for family violence-related assaults for Aboriginal and Torres Strait Islander women were 32 times the rate of non-Indigenous females.³⁷

At **yourtown**, we support those affected by family violence in a number of different ways including through the professional counselling support we deliver through our national Kids Helpline (KHL) and our Queensland and Northern Territory Parentline. In 2017, 5,173 counselling contacts (8 per cent) were about child abuse, domestic or family violence, of these seven in 10 (3,575 contacts) called KHL because they were currently experiencing abuse or were at risk of abuse. Others were calling about concern for another person experiencing abuse, or because of the impacts of past abuse. We also provide accommodation and support for women and children seeking refuge from domestic and family violence. In addition, many of the disadvantaged children and young people we work with in our education and employment support programs have had their lives deeply shaken by the effects of family violence.

We see firsthand, therefore, not only the detrimental effects that family violence has on the health and wellbeing of the individuals targeted or who witness it, but also through providing advocacy, support and referrals we have a deep understanding of how families experiencing violence interact with the legal system and the significant challenges that accessing the system poses. For example, many women who live in the refuge will be seeking to separate from or divorce their abusive partner and to gain legal parental responsibility for their children - all matters requiring access to the family law system, and which are also likely to involve criminal justice and child protection matters.

³³ <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

³⁴ Ibid

³⁵ Ibid

³⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

³⁷ Source: Steering Committee for the Review of Government Service Provision (2016) [Overcoming Indigenous disadvantage: Key indicators 2016](#), Productivity Commission, Canberra, p.4.98, and table (table 4A.12.13).

yourtown is greatly encouraged by the Issues Paper's presentation of the issues that relate to the current context and serious shortcomings of the family law system in terms of supporting survivors of family violence, as well as the many suggested ways to improve it. As the Issues Paper notes: the family law court often falls seriously short of providing appropriate support, access to those seeking legal assistance for domestic violence has been long known and despite several reviews into its reform in the past, few changes have been implemented and severe funding gaps remain. Furthermore, reforms that have been implemented have been far from the system-wide reforms that survivors of domestic violence need if they are to appropriately benefit from the law's protection.

This review is Australia's chance to finally turn its back on outmoded legal practices that are not fit for purpose, to instead deliver a family law system that provides best practice services tailored to support the needs and preferences of vulnerable families. In this section, we draw from the insights of our staff who directly work with children, young people and women who have experienced family violence as well as from clients who have shared their experiences with us for this submission. Our aim is to further evidence the need for a suite of urgent reforms through presenting out clients' key concerns about the system.

Key concerns about the family law system for family violence survivors

A broad concern that is widely shared by not just **yourtown** clients and staff but by a range of stakeholders is that the family law system simply does not align with the realities – both practical and emotional – of family violence for its survivors. This is demonstrated as many different barriers to accessing the legal system including: lack of understanding about family violence that they encounter, wider systemic issues such as the adversarial nature of the court process which the PUV may exploit to their advantage, the multiple forms of disadvantage survivors experience and the severe lack of system and support services funding.

Lack of understanding about family violence

- Poor definition and recognition of family violence

There are several ways that the family law system seems not to understand family violence starting with the very definition of family violence and what it does and does not include, which the system too often too narrowly defined. Whilst this was acknowledged some years ago and its legal definition updated in the Family Law Act, the definition requires some further review and to be better incorporated into actual practice. The Family Law Act in its definition of family violence does not limit it to just violent or physical assault, and includes “other behaviour” as well as controlling behaviour. It also suggests that the examples of family violence are not limited to those that it lists, and they include financial abuse and social isolation for example. However, it may need to more explicitly detail what family violence includes as in the experience of our clients and staff, those responsible for interpreting and enacting the law sometimes seem to be confined to a more limited and traditional definition of family violence than the legal definition allows.

For example, we find that the most widespread forms of family violence present in many of the cases we support are emotional and economic abuse, both admittedly challenging types of abuse to provide additional evidence to the testimony of the victim. However, court representatives – often including judges – sometimes seem to be extremely dismissive of these types of abuse and of their significant repercussion on the women and children we support, with their focus seemingly fixed on physical violence.

Many legal representatives also have poor knowledge about when violence occurs, with some seeming to think that domestic violence ends when the relationship ends. Too many do not seem to have a good

understanding of separation-instigated violence and the fact there is a heightened risk of physical harm and death for a woman after she has left her partner, or of patterns of coercive control. Sexual violence seems to be an area where legal staff can also be blinkered as it is viewed as a separate form of violence.³⁸ There also seems to be evidence amongst some legal staff of an inability to grasp or accept how difficult it can be for a woman to leave an abusive partner, a fact that the person using violence (PUV) often exploits.

Too many family law legal representatives lack the ability to understand how the PUV operates and how the abusive behaviours he uses – sometimes subtle and sometimes alarmingly visible – wears his partner down so that she has severely comprised mental health and agency by the time she comes to court. Indeed, the system too frequently fails to recognise that when a survivor of family violence is accessing the legal system she is likely to be at her most vulnerable in a number of ways. She has heightened risk and fear of abuse from her partner and severe concerns over how to provide for her children and to keep them safe. She may have acquired significant emotional and mental health barriers, lost her support network and be facing pressing economic difficulties.

This lack of understanding is not confined to the legal profession. The police should be a key partner for family violence victims seeking protection but studies have revealed that victims feel unsupported by some members of the police, perceiving that they do not understand their situation and lack empathy, which further traumatises them and often can prevent them from reporting the abuse.³⁹

As demonstrated in the following sections, this lack of understanding about family violence can result in the system compounding the issues survivors face, further empowering the PUV and leading to unsafe and unjust outcomes for women and their children.

- Poor procedural accommodation of the needs of survivors and their children

There are a number of different family law procedures, which rather than support survivors at a time of heightened vulnerability, exacerbate the stress and fear they experience and too often place women and their children in danger. We set these out below.

Court procedures

In our experience of attending court with women at the refuge for a hearing relating to family violence, courts are not set up to ensure that both their emotional and physical safety is guaranteed and that no additional harm is done by this experience in the following ways:

- **No briefing on what to expect and how the process will work.** The level of emotional stress that survivors experience in attending court is exacerbated by not knowing what to expect from the hearing in terms of processes and procedures. For those self-representing, as they have no legal aid, this is particularly troubling as they may have a poor understanding of how the system works.
- **Safety rooms.** Whilst women can use safety rooms their use is neither well supported by court staff, nor by the rest of the court. For example, a security officer may escort them to the room but the PUV is free to walk up and down outside the safety room. If the hearing is long, women will need to frequently access the toilet, buy food or a drink. Every time they wish to leave the room they must be escorted by a staff member, but in our experience, they rarely seem understanding of the fear and distress that survivors will be experiencing at this time and generally make them

³⁸ Law Council of Australia, The Justice Project: People who experience family violence, Consultation Paper August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/People%20Who%20Experience%20Family%20Violence.pdf>

³⁹ Ibid

feel like they are a nuisance. Furthermore, many women will not be accompanied in court by a professional support person who understands the system, whilst no effort is made to ensure the survivors' safety outside the courthouse.

- **Lack of trauma-informed staff training, re-victimisation and system abuse.** Court staff need to be better trained in dealing with family violence survivors and receive trauma-informed training in particular. The Not Now, Not Ever training is insufficient. Recalling their abuse and being cross-examined for days on end re-traumatises victims and/or re/triggers post-traumatic stress disorder, which may undermine their credibility (e.g. the PUV may look calm and rational, whilst the victim looks mentally unwell). The very nature of being pitted against the PUV for a hearing – even cross-examined by them if they are self-representing – can be seen as an extension of the abuse they have suffered, which the system is facilitating. In addition and particularly since the PUV is there, survivors may be overwhelmed by fear and feeling vulnerable and isolated which prevents them from disclosing the abuse or the full extent of it. They may not even turn up to court, or feel pressured into agreeing with the PUV or giving their consent to settle.⁴⁰
- **Not child friendly.** **yourtown** staff have observed that legal representatives do not appear to like having children in court despite the fact that women may not have anyone with whom they can leave their children when they attend court. Even when courts have a “child friendly room” they do not seem to be welcoming, friendly or accommodating towards them, whilst there are a lack of other support services to ensure the safety of children such as supervised contact centres.

Parenting orders

yourtown works with mothers who have experienced domestic violence and/or whose partner has abused their children. If their children have not been direct targets of violence themselves then they are likely to have witnessed it or been exposed to it. Whatever the nature of the family violence, these mothers will be focused on keeping their children safe. Depending on the nature and extent of the abuse and where their children's safety is an issue, they may be keen to obtain sole parental responsibility or to ensure that any contact their children have with their father is supervised. This is undoubtedly a rational desire but perversely is not one that is well supported by the family law system due to two main issues.

Firstly, judges frequently do not take domestic violence into account when considering a parental order if there is no a Domestic Violence Order (DVO) in place. However, even when a DVO is in place, if the PUV has accepted that it be issued but maintains that domestic violence has not occurred (no admissions), then a judge may suggest that – despite the existence of the DVO – that there is no evidence of domestic violence. If the police have made the application for the DVO then they tend to be regarded as having more credibility than a private DVO, but too often judges still seem to question whether the mother is using the DVO to “manipulate” the outcome of the parenting order. Indeed, as one **yourtown** staff member said it seems that some judges feel that survivors use DVOs as “swords not shields”.

In addition, legal representatives tasked with representing children – the independent children's lawyer (where there is access to one) and the family court report writer – seem to be too frequently failing to ensure that the voices of children are appropriately listened to and captured in their reports. Indeed, legal representatives can be too quick to overlook serious accusations such as of children having disclosed sexual abuse by the PUV. Hence, as **yourtown** staff have seen in past cases, it can often be that where the child does not disclose this matter to a legal representative or another qualified professional then the judge will not consider it as evidence. This shows a system with a poor understanding of how trauma affects children and that fails to take into account how children are more likely to disclose to people they know and trust.

⁴⁰ Law Council of Australia, The Justice Project: People who experience family violence, Consultation Paper August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/People%20Who%20Experience%20Family%20Violence.pdf>

Secondly, when considering a parenting order some judges are perceived to prioritise parental access – e.g. the PUV having parental access – over the safety of the child and mother. Despite the fact that, following reforms, the courts now have a clear mandate to prioritise a child’s safety over their right to a meaningful relationship with both parents, not all legal representatives seem to have accepted it or updated their approach. As a result, a woman’s solicitor may advise her to accept consent orders based on what they know of the judge presiding over her case. However, it simply is not acceptable that “shared parental responsibility and the child having “a meaningful relationship” can trump keeping a child emotionally and physically safe, which surely is in the best interest of the child. Indeed, even gross misbehaviour such as child sexual abuse on a previous ruling does not always seem to put an insurmountable barrier in the way of a PUV having contact with a child victim.

The result of both of these issues can be highly detrimental to the welfare of these women and children, who the system should be protecting. For example, an order may grant a PUV who has abused a child continued access to the child, making the child feel betrayed since the views they shared with the family consultant or independent lawyer (often a traumatic experience itself) have not been taken into account. In addition, some cases have placed children’s attendance at the same school above their safety of the child or that of their mother forcing the survivor to return to the PUV’s community.

Interim parenting orders can often produce the same results, given that in our experience they are heavily based on the family court report writer’s report. The report uses the writer’s limited contact with a child who has experienced family violence to base their decision, yet anyone who has worked with children who have experienced family violence would know that it is highly unlikely that they will disclose to a stranger in a short time period. With no real evidence of the abuse put forward, the family law courts may feel they have to provide parental responsibility to both parents, whilst it can take up to two years for the final ruling to be made.

Other related issues we have come across include the survivor being told to discuss parenting issues outside the courtroom before dealing with the family violence, or child protection workers advising women experiencing abuse that they must leave the PUV otherwise her children will be taken from her without providing her with the support to meet the heightened risk of violence if she does.⁴¹ These operational issues can inadvertently compromise the safety of children and the rulings of the Family Courts.

yourtown insights: a case study of a survivor

In early 2012, whilst breast-feeding her son Lucy’s partner attempted to strangle her. This followed years of severe physical, emotional and sexual abuse. Her partner used drugs and alcohol and had a criminal record for assault on others. A year after the strangulation incident, Lucy left her partner.

In 2013-4, the PUV took Lucy to court seeking access through parenting orders. Lucy was not eligible for legal aid as the family home was in her name too and without legal representation and lack of court support, Lucy struggled to complete her affidavit. Subsequently, she did not detail every aspect of the domestic violence she had endured. Lucy was not advised by anyone that she could take out a safety plan for her court visits and was extremely frightened every time she attended court. She also was not provided with information on how to access the safe room.

During the hearing, Lucy felt that the judge “ripped shreds into her” and made her feel like a bad parent for leaving the relationship. Lucy ended up breaking down and crying in court and feeling traumatised by

⁴¹ Productivity Commission, Access to Justice Arrangements, Inquiry Report No 72 (5 September 2014), vol 1, 107, referencing Coumarelos et al, Legal Australia-Wide Survey (Law and Justice Foundation of New South Wales, August 2012) (‘Law Survey’)

the experience. As there was no DVO in place at the time, the judge presiding over her case did not take domestic violence into account. Instead, the onus was on maintaining a meaningful relationship with both parents and the PUV was granted shared care of their son.

As the case progressed in the legal system, the extent of family violence to which Lucy and her son had been subjected became more accepted by the court, and eventually the Judge changed the orders. The PUV received supervised contact through a contact centre. However, the PUV's sister was then granted supervision of Lucy's son by the Judge and the PUV was allowed to have access to his son through her. Over this period, there were many incidences of neglect and abuse towards her son, many of which Lucy reported.

The Judge then granted the PUV overnight access to his son and following some overnight visits with his dad, her son said he did not want to go to stay with dad anymore. Her son advised her that his dad had held a knife to his throat and had touched him inappropriately and he was terrified to go back. Lucy advised child protection of her son's revelations and the police were involved but her son did not disclose what had happened to the police.

Lucy kept sending her child to stay with his dad as she was concerned and advised that she would be in breach of the orders if she did not. Wracked with guilt and concern for his wellbeing, she decided to breach orders and put her son's safety first. The PUV has subsequently lodged a contravention order. She has recently been advised that she is next on the list for legal aid but as the next court hearing draws nearer she has no idea if she will receive support in time yet. She is currently unemployed and will have to self-represent if she does not.

Systemic issues

We have explained how the family law courts seem to too frequently give PUVs the benefit of the doubt when reaching decisions on interim and parenting orders, seriously jeopardising the safety of victims. In addition, there are a number of other systemic issues that compromise the welfare of survivors and inadvertently benefit perpetrators.

Survivors of abuse who have left a PUV are likely to be severely financially constrained as they may not have a job or home, be waiting for a legal decision on the finances relating to the family separation, and therefore, dependent on the state or their relatives. Indeed, financial concerns are often a key reason why victims do not leave their abusive partners. These financial difficulties are compounded not only by having to often cover legal fees but also by: delays in court or judges taking a long time to make their final decisions (which also have an emotional toll on the victim), delays in accessing income support from Centrelink, a lack of understanding by employers and landlords of their predicament and a lack of child support payments from their partners.⁴²

Survivors can feel that PUVs take advantage of court processes to continue their abuse by, for example, deliberately delaying proceedings, making cross applications, delaying property settlements to financially drain survivors' access to funds for legal fees, and continuing to abuse the survivor if they have joint parental responsibility of their child/ren.⁴³ In **yourtown's** experience, we see PUVs also exploit the Hague Convention to meet their own ends and bring victims who escaped to their home or another country back

⁴² Special Taskforce on Domestic and Family Violence in Queensland, Not Now, Not Ever: Putting an end to domestic and family violence in Queensland (Queensland Government, 2015), 298 ('Not Now Not Ever Report')

⁴³ Ibid

to Australia. As one woman reported to the Victorian Royal Commission into Family Violence: “I am still experiencing family violence, but it comes on a letterhead from his lawyer”.⁴⁴

In the adversarial court system, the burden of proof seems to continually lie with the survivor, who is left with little support to help keep herself and her children safe as legal processes take their lengthy course. Survivors do not appear to be able to win - if women and their children are well prepared, then the assumption is made that the woman has coached her child. In addition, little attention is given to addressing PUV behaviour, essential to preventing further violence.⁴⁵ These systemic issues are not only damaging to the wellbeing of the survivor, but in facilitating the continued power struggle between the victim and PUV, is a type of abuse itself.

yourtown insights: case study of a survivor

Anna is a New Zealand citizen who has recently returned to live in Queensland after a High Court ruling under the Hague Convention ordered that her two children return back to Australia three years ago. Anna had gone back to New Zealand following years of physical, sexual and verbal abuse from her partner. With her partner’s agreement at the time, she took her children to live there too.

Soon after arriving in New Zealand, Anna received a letter from her then partner’s lawyer requesting a divorce. At the same time, he stopped Anna from getting access to their finances and would not answer her calls, texts or emails. In addition, her five year old son disclosed that he had been physically and sexually abused by his dad. Despite this trauma, Anna and her children began to rebuild their lives in New Zealand and were supported by her family in many ways including them funding mental health support for them all.

A year later, the PUV invoked Hague proceedings, requesting fortnightly contact visits with his children. With funds from her parents, Anna had no choice but to return back to Australia prior to the court ordered return date to obtain a Domestic Violence Order for her and her children. Under the Hague Convention, the PUV was advised of her flight dates and details of her return.

She has now returned back to Australia with her children as per court orders. Since returning, her son has returned to being the introverted and angry boy that he was when they lived in Australia. He is highly anxious and missing his friends and family in New Zealand. Anna has tried to access a child mental health services to support him through this time but have been advised that an initial assessment of his needs requires the consent of both parents, which the PUV has denied. Her son has repeatedly told legal representatives that he does not want to see his dad, whilst Anna is told that if she does not facilitate the relationship between her son and his dad it will impact the outcome of the orders.

Anna’s is fortunate that her mother has accompanied her back to Australia and is currently living with her. However, as they both have no income it has been extremely difficult to find somewhere to rent. Anna is only entitled to receive \$400 family tax benefit and child support a week as she is a New Zealand citizen. She is also not entitled to legal aid and her family are funding her legal expenses. Her lawyer has requested spousal maintenance but this has been denied. When Anna was living with the PUV he used to threaten that if she left him he would make sure she had nothing. This has come true.

Anna has sought help with her current situation from the Human Rights Commission and the Commonwealth Ombudsman but have said her case is outside their jurisdiction. The Children’s Commissioner has said that they do not deal with cases like hers as the children are currently in her care.

⁴⁴ Law Council of Australia, The Justice Project: People who experience family violence, Consultation Paper August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/People%20Who%20Experience%20Family%20Violence.pdf>

⁴⁵ Ibid

The Central Authority who deemed it necessary to force her children's return to Australia have taken no responsibility in seeing that her children have their basic needs met.

Since returning, Anna has attended two interim hearings in relation to her request for sole parenting responsibility and relocation back to New Zealand. Although the family report writer and the children's lawyer supported their relocation, it was not granted. Whilst suffering PTSD, she has also attended an eight-day trial over three weeks, during which her son's abuse was not taken into account as the allegations have not been substantiated, she experienced a gruelling cross-examination by the PUV's barrister and her mental health was not supported but rather appeared to be used against her. Her children continue to be forced to see their father despite the allegations of child abuse. She is now waiting to hear the Judge's decision.

Dealing with multiple forms of disadvantage

As noted, family violence survivors are likely to be experiencing multiple forms of disadvantage, which family separation can compound or even cause. This includes financial hardship resulting from funding legal fees or in delays to accessing money from the family separation, homelessness, mental illness and poor emotional wellbeing as well as significant barriers to accessing employment. In addition, specific groups of communities may experience even greater disadvantage.

For Aboriginal and Torres Strait Islander peoples, family violence is interconnected to homelessness, poverty, imprisonment, poor health and removal of children.⁴⁶ Given the distrust they have of the legal system, the discrimination they experience within it, or cultural customs considering it inappropriate to report it (for more on this issue see our response to question 5), family violence is underreported by Indigenous survivors and services supporting Indigenous communities with legal issues are severely underfunded. The Aboriginal Family Violence Prevention Legal Services report that they have to turn away 30 to 40 per cent of women seeking assistance due to this lack of resources. Yet more Indigenous women and men are affected by family violence than the non-Indigenous population, and with the decline in their cultural responses to dealing with it owing to Australia's history, are particularly vulnerable.

Migrants to Australia are often unable to access social welfare to support them with housing and providing for their children. As a result, they are forced to stay in crises refuges for up to two years, which not only is unsuitable for their support needs post-crisis but prevents others who are in need of crisis support from accessing it.⁴⁷ Victims in remote and rural communities may be particularly disadvantaged due to the lack of legal and support services in their community, and given that the PUV may have already accessed them or be known to their staff.

The range and levels of disadvantage that survivors of family violence must deal with highlights the vulnerability of this group. It also highlights their need for support services addressing and tailored to their holistic needs to ensure they are able to effectively engage with the legal system and appropriately experience their legal rights and protection of the system, but also to ensure that family violence is not repetitive and its devastating impacts do not become intergenerational.

⁴⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E>

⁴⁷ <https://www.brisbanetimes.com.au/national/act/crisis-accommodation-for-family-violence-victims-inundated-with-migrant-women-20180414-p4z9l9.html>

Lack of funding to support the family law courts and support services

Despite a rise in numbers reporting family violence in recent years, and even the current government's drive to address family violence, critical gaps in funding of the family law system remain. For many stakeholders and particularly those who work in the system, this lack of funding is at the root of many of its failures.⁴⁸ Certainly, the system is under significant strain as it tries to deal with rising caseloads and this compounds the detrimental impact of procedural issues. For example, the lack of funding also causes long delays, which causes more stress and uncertainty or leaves women and children in precarious situations for longer. The wait time for a trial in family courts can be as much as three years, with our clients frequently encountering waits of between one to two years.⁴⁹

The lack of funding also results in the following shortages in services pivotal to assuring access to all those who need it:

- **Legal aid.** Many victims are unable to access legal aid stemming from a lack of funding. If survivors of family violence cannot access legal aid, legal fees can be cost prohibitive for many women to fund professional defence, which means they have to resort to self-representation. This is far from ideal as this means coming directly up against the PUV in the courts, whilst clearly legal representatives opposing them have an advantage over these women, who may be in a fragile emotional state and who may have a poor grasp of the legal system. In addition, where parents have not been granted legal aid or it has been withdrawn in the light of a legal outcome in the case, they may feel forced to consent to an expert's recommendation.
- **Specialist services.** This includes services targeted to meet the needs and preferences for family violence survivors broadly such as, for example, free forensic examinations of domestic violence (e.g. strangulation cases), child care during court attendance and professional services to provide support to survivors of family violence. They should also include those specifically targeted to children and young people, Aboriginal and Torres Strait Islander communities, LGBTI communities, CALD communities and for remote and rural communities.

yourtown recommendations

A series of reforms need to be urgently implemented to address the significant hurdles that survivors of family violence must overcome to seek protection, safety and justice. It is clear that too many of Australia's most vulnerable women and children are being failed by the family law system. **yourtown** recommends that the reforms should include:

- Revising the definition of family violence within the Family Law Court to provide legal representation with more clear examples of what family violence includes. This will help ensure a better understanding that family violence is not confined to physical violence. This revision should include explicitly mentioning emotional or psychological violence, as well as misuse of legal processes as suggested by the Issues Paper. It would also be helpful to develop a set of principles to guide legal representatives' decisions around what constitutes abuse to ensure the Courts can continue to effectively deal with emerging new concepts of abuse as they arise.
- Providing a minimums standard of training for legal representatives and support services (including the police) so that they have a greater understanding of how family violence affects its

⁴⁸ Law Council of Australia, The Justice Project, Progress Report, March 2018: https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/JP%20Progress%20Report_web.pdf

⁴⁹ Loddon Capaspe Community Legal Centre, Will Somebody Listen to Me: Insight, Experiences and Hope for Women Experiencing Violence in Rural Victoria (2015), 13 ('LCCLC Study'): http://lcclc.org.au/wp-content/uploads/2015/05/FV_FULL_online_v2.pdf

victims, including children and young people and other disadvantaged communities including Indigenous peoples. This should be trauma-informed, and should include education on issues such as separation-instigated violence and the reasons why women feel unable to leave abusive partners. It also should include extensive education about past updates to the Family Law Act to ensure legal representatives move away from the use of engrained traditional approaches and interpretations of the law. In addition, it should include providing timely feedback to families about what to expect in their reports (e.g. what to expect in the family court report writer's report).

- Making courts survivor and child friendly. Changes to courts could include confining alleged PUVs to a room and having them escorted throughout the hearing, as well as providing a legal support officer to the survivor who is specifically trained in family violence. Courts also need to provide appropriate mechanisms to allow children to share and disclose safely, requiring an independent children's lawyer to hear directly from the child themselves, and that a child advocate be provided to speak on behalf of the child.
- Delivering on the Federal Government's announcement that it will prohibit cross-examination of alleged family violence victims by alleged perpetrators in family law proceedings.
- Revising the Family Law Act as suggested in the Issues Paper in the following ways⁵⁰:
 - Remove the presumption of equal shared responsibility and the language of equal shared time from Part VII.
 - Amend the best interests of the child checklist to more clearly prioritise the protection of children from physical or physiological harm
 - Provide a simplified decision-making framework for determining interim parent matters
 - Provide a separate dedicated pathway for decision making in access involving family violence
 - Enact requirements that a risk assessment for family violence be undertaken upon a matter being filed and at each hearing or court event and that findings of fact be made about allegations of family violence as soon as practicable after proceedings are filed.
- Significantly increasing and providing sustained levels of funding to help address significant delays in the family law court compounded by increasing reports of family violence, and to provide urgently needed specialist services to support the holistic needs of survivors of family violence.
- Moving towards a family law system fully based on inquisitorial – not adversarial – legal processes and approaches.

⁵⁰ Review of the Family Law System – Issues Paper (IP 48): <https://www.alrc.gov.au/publications/family-law-system-ip>

Children's experience and perspectives

Again to minimise repetition, in the section that follows we present all of our views on how to reform the family law system to better support children and young people, and therefore, it includes responses to several questions that the Issues Paper poses in relation to young Australians.

Introduction

One in four young adults in Australia have experienced the divorce or permanent separation of their parents during their childhood, a statistic that does not account for the dissolution of de facto relationships.⁵¹ Significant numbers of young Australians are impacted by the breakdown of their parents' relationship therefore. This is important as children who experience changes to their family structure have a range of poorer outcomes across their life course compared to those who do not, including lower levels of school completion, participation in employment and economic outcomes, and poorer personal relationships and family outcomes in their adult lives.⁵²

Through our work delivering services to support children and young people, **yourtown** sees the impact that family breakdown can have on the lives of our youngest generations. Delivering services to support disadvantaged young people through their education and to gain employment, and services to support disadvantaged young parents and families affected by domestic violence and homelessness – we see the short and long term effects that parental separation can have on the lives of children and young people.

Over the years, contacts to Kids Helpline (KHL) have highlighted this detrimental impact and KHL callers express significant problems with emotional and mental wellbeing issues, educational and peer relationships as a result of their parents separating. They also convey how difficult it is to cope in this situation when they have additional complex and often interrelated familial issues such as parental use of drugs and alcohol and mental health issues, financial difficulties or family violence or abuse. Indeed, contacts about family relationships to KHL – which include changing family structures – has remained in the top-5 main concerns over the last 20 years, with 251,554 total contacts about this issue over that time. Children and young people clearly need support dealing with family problems.

Given the importance of this issue for the children and young people we work with, **yourtown** undertook a survey about how best to support them when they interact with the family law system. To this end, KHL partnered with the University of Sydney in the *Family Court Experiences Survey 2017 (the Experiences Survey)*. Administered between March and November 2017, the online, national survey received 616 valid responses from young Australians whose parents had separated. Its aims included identifying specific concerns that children and young people wished to talk about during their experience of and exit from the family court system, and determining children's preferences to whom they want to talk and how, why and what they hope to gain through this support.

The final research report is in the process of being completed, but in this section we draw both from the findings of the survey's draft report as well as our analysis of the case notes of the contacts KHL received about changing family structures in 2017. Together, they provide a comprehensive snapshot of the views and experiences of children and young people in this area. We then set out our recommendations for the family law system to better support children and young people during family separation.

⁵¹ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features40Sep+2010>

⁵² Ibid

Concerns of children and young people

In 2017, one in five contacts to KHL in 2017 were about family relationships (18%) – the second top concern for children and young people contacting KHL. Of these contacts, 1,545 were in relation to changes in family structure specifically. Broadly in keeping with the overall nature of callers who contact KHL, most of these contacts were female, 77 percent, with 22 per cent male and 1 per cent gender diverse.⁵³ This is similar to the respondents to the *Family Court Experiences Survey 2017*, with 78 per cent being female. Most KHL callers were aged between 10-14 years old, 60 per cent, with 11 per cent aged 5-9 years old, 24 per cent aged 15-18 years old and 5 per cent aged 19-25 years old. The average age of respondents to the *Experiences Survey* was 14 years old.

What is clear about these contacts is that children and young people of all ages are deeply affected by their parents' break up and the resulting separation of their family. Children as young as 5 and 6 years old have called KHL, aided by their parents initially, expressing for example that they are unable to sleep as they are worried about staying with the other parent the next day or sad as they are missing the other parent. Conversely, young adults (up to 25 years old) also call KHL concerned for the welfare or wellbeing of their siblings, or about how the family separation is impacting on their education or employment.

Whatever their age, children and young people call us when they have first found out about the separation, when arrangements are either legally or informally in the midst of being worked out following a break up, or weeks, months or years after arrangements have been agreed, again either legally or informally. The findings from the *Experiences Survey* echoed how children and young people are impacted by family separation before, during and after it. According to the results, respondents were most often upset when they first found out that their parents were separating (54 per cent were upset most or all the time), with many still upset while their living arrangements were being decided (45 per cent) and after their living arrangements were established (41 per cent).⁵⁴

In this section, we present the nature of the concerns of children and young people in relation to their experiences of family separation as found through KHL contact analysis and the *Experiences Survey*.

- Not coping well with family separation

Callers to KHL frequently tell our counsellors about how they are struggling to cope with their family's current, ongoing or finalised separation, with the effects of the situation sometimes enduring several years over the course of their childhoods. This difficulty in coping manifests itself in a number of different ways centring on poor emotional wellbeing and mental health, which is compounded by their inability or lack of opportunity to talk to people about their feelings, as found by the *Experiences Survey* also. It is also compounded for our most vulnerable children and young people by their experiences of multiple disadvantage with which they have to additionally cope. All three of these issues are considered below.

⁵³ 74 per cent of KHL contacts in 2017 were from females, 24 per cent were from males and 2 per cent were intersex, trans and gender-diverse.

⁵⁴ Percentages have been rounded up which means that in some cases the percentages presented from the survey will sum to over 100 per cent

Poor emotional wellbeing and mental health

Often noting the absence of any other sources of support they feel they can turn to, many callers to KHL relate the significant distress and upset that their family's separation is causing them. The majority of respondents to the *Experience Survey* who responded to a question relating to whether they had found the separation process upsetting said that stages of the separation process had upset them.⁵⁵ Ten per cent of these respondents said that all of almost all or the process had been upsetting. One respondent conveyed the extent of their emotional journey: "The separation process never ends. It is a constant battle for more parental responsibility, more time. It isn't something that stopped after my parents went through the court. It goes far beyond that. It is something that will dictate your entire life." For others, specific stages such as their parents' entering into new relationships (9 per cent), the courts long and stressful processes (3 per cent), establishing living arrangement (3 per cent) or moving home (3 per cent) were most upsetting.

During family separation, KHL callers tell us that they feel 'lost' or 'not like themselves anymore'. Often they are highly anxious or feel depressed and these feelings result in not wanting to talk to others or to be with or make friends, in difficulty in going to school or doing homework, in sleeping, or in partaking in their previously much loved hobbies and interests. Sometimes, they feel very angry and seek advice as to how to deal with this anger, or they may be having severe panic attacks which are detrimentally affecting their ability to go out. In some cases, KHL callers tell us that they have an eating disorder that helps them cope, that they are self-harming as a way to cope with this emotional distress or, most worryingly, they confide that they are feeling suicidal.

KHL insights: case studies

Depressed or anxious

Lachlan, 11 years old, has been struggling with feelings of depression and anxiety since his parents divorced 3-4 weeks ago. He currently lives with his dad who has sole parental responsibility of him as his mum did not attend court, although he does get to talk to his mum every night over the phone which makes him happy. Whilst he is happy to live with his dad, he really misses his mum. His parents argued a lot in the lead up to their divorce which Lachlan found very stressful. He is dealing with a range of different emotions including anger, feeling sad and nervous and is seeing a doctor who has prescribed him medicine and a psychologist. He is hoping to see his mum in person soon as he likes to see his mum when he feels sad as she cuddles him and makes him feel happier and safe.

Ruby, 9 years old, said her dad left their family home in January and since then she has been so upset that she can't sleep. She doesn't get to see him very often as often he doesn't show up for his visits, and sometimes he is angry with her and her mum when he does. His behaviour makes her upset and she doesn't feel she can speak to him about how she feels but she knows he must love her. Ruby asked if her mum could also speak to the KHL counsellor as she is having trouble sleeping too.

Hannah, 17 years old, has contacted KHL many times over the past several months and things have deteriorated since her last call. Her teacher contacted her parents as they are concerned about her slipping grades and her recent quietness and withdrawn behaviour. Her parents divorced last year and she chose to live with her dad whilst her sister chose to stay with her mum, and since then she has struggled to get along with her mum and sister. She feels like they hate her and blame her for splitting up the family. Even attempts to get together as a family to discuss the issue has made her feel worse. She currently finds it hard to get out of bed, finds no joy in anything anymore and doesn't want to continue to live.

⁵⁵ 214 respondents (83 per cent) identified stages of the separation process that they were upset about, only 45 respondents (17 per cent) indicated that there was no stage that had upset them.

Anger issues

Emily, 10 years old, is struggling to cope with her parents' decision to divorce. She has been losing her temper easily recently, feels lost and lonely and like no one understands or can help. She would like advice on how to manage her anger as it is affecting her relationship with everyone, even her younger brothers who she loves very much.

Zane, 10 years old, has been struggling with depression and anger since his parents separated a couple of months ago. His dad has moved back to Europe and he rarely gets to speak to him due to the time difference. When his parents first separated and his dad moved to Europe they told him his dad just had to be there for work. Although his parents did fight a lot, Zane said it was much more fun when his dad was about. He has now dreams about him still being here and wakes up crying. He feels angry towards his mum even though he knows it's not her fault. He has also felt suicidal but said talking about the situation has helped him.

Self-harming and suicide ideation

Madison, 12 years old, is currently experiencing suicidal thoughts and self-harming. Her dad and mum split up over a year ago and her dad has been ordered to stay away from her family due to domestic violence. Her mum now has a new partner and he is moving in, but she and her sister and brother are scared of him. She worries about her siblings and her dad, the family's finances and is having problems with her friends at school. As they live in a small community, she can't access a therapist face-to-face.

In some cases, KHL callers feel distressed as they consider that the family separation was their fault in some way. For example, one young caller felt that her parents having to pay for her violin lessons meant that her parents struggled with money, hence had argued and subsequently separated. The *Experiences Survey* also found that respondents worried that they were to blame for their parents' separation. One respondent said: "assurance that it was just between them would have been helpful. I heard them fighting a lot about us, so knowing that we did nothing wrong would have been a massive relief". Other issues that respondents to the *Experiences Survey* also found upsetting included the loss of the family unit, feelings of abandonment and arguments between parents.

Often, KHL clients feel distressed as they feel responsible for the wellbeing and safety of their younger siblings, and do not share how they are feeling with them as they are trying to be 'brave' about the situation for them. Some may even choose to stay in a violent or abusive family home when they could choose to move out so they can look after their siblings. Other callers feel worried about the impact the family separation has had on their parent/s, who may be struggling to deal with a partner leaving them or struggling to manage the reason that the partner left them such as alcohol or drugs. We hear from children and young people directly seeking advice about how they can help their parents, a clearly considerable emotional and, unsurprisingly, often overwhelming burden for such young minds to cope with.

KHL insights: case studies

Feels responsible for supporting parents or siblings

Jessica, 14 years old, is struggling with her parents break up but does not want to let her parents know that she is having a difficult time as she doesn't want them to think she can't cope. She also wants to be brave for her siblings. She's tired of going back and forth from their houses. Jessica feels overwhelmed by her dad because he often cries during their access time together or often calls her and talks about how he made a mistake leaving her mum. Her mum will be angry about her dad's behaviour if she tells her.

Riley, 15 years old, contacted KHL as her mum is struggling to cope with her parents' divorce which was

finalised last year and she would like some tips around how to support her better. She said she did not know what to say to her mum when she is upset and talks about her dad, although she tries to do more chores around the house and help with her younger brother.

Experiencing multiple forms of disadvantage

Many of the children and young people who contact us seeking support at some point during the separation of their family experience do not have to just cope with the impact of this significant event. Indeed, many callers experience multiple forms of disadvantage, which may have caused or exacerbated their parents' break up or which may be contributing to the complexities of the separation and its enduring impact on their health and wellbeing. These include parental use of or a new partner's use of alcohol or drugs, parental mental health issues (from depression and anxiety to bi-polar and schizophrenia) or health issues (one client's mum was terminally ill), parental suicide ideation, parental incarceration, family financial difficulties or hardship (with child support being considered by some clients as the reason why one parent may not want to give up parental responsibility of a child or why they may want parental responsibility of them), as well as significant callers with issues relating to child abuse or family violence. Respondents to the *Experience Survey* also reported having to deal with other family issues such as abuse and family violence.

KHL insights: case studies

Amy, 9 years old, was introduced to the KHL counsellor initially by her mum who advised that she has recently left Western Australia to escape Amy's dad who was violent. Her mum said that Amy had been acting out of character since then and having many tantrums. Amy told the counsellor in privacy that she was feeling extremely sad that she may not see her dad again and it makes her want to scream. She hadn't spoken to her mum about it as she didn't want to hurt her feelings. She said when her parents used to fight, she used to try to reason with them to make them stop. She has one sister who lives with her and two others who she has never met. She finds talking to her dog makes her feel better.

Mia, 15 years old, is feeling depressed and it is getting worse although she is trying not to self-harm. Her mum has a new boyfriend and she had started taking drugs again with him, and he is abusive to her mum and her and her sister. Recently, her mum was high and barged into her home at her dad's demanding to see her and her sister and the police were called. They now have taken an order out against her mum to prevent her from coming to her dad's house.

Daniel, 12 years old, lives with his nan who is physically abusive to him and this has got worse since her boyfriend died. His mum is an alcoholic so he has to live with his nan but he thinks the only reason she wants him there is for the child support. He doesn't have many friends or anyone to talk to and feels helpless and lonely.

The level of sensitivity that children and young people have about these issues is remarkable. They appear to have enormous capacity for understanding, particularly in relation to the nature and scale of harm that these issues can have on their loved ones. For example, one 11 year old boy understood that his dad's violence meant he could no longer see him, and he felt that was justified. At the same time, he felt for his dad as his dad is missing out on important milestones and family events, and was aware of his own sense of loss. Having compassion for an abusive parent and being able to relate to them in some way is not uncommon amongst our callers experiencing child abuse or family violence.

Often interrelated, these are clearly challenging issues for young minds to navigate, without having to manage the added layer of family separation and the range of complex changes this brings to a child's life and impact it has on their coping mechanisms. Yet these different forms of disadvantage affect many of

the young lives that contact KHL, highlighting the vulnerability of the children and young people who may interact with or whose lives are touched by decisions of the family law system. They also bring focus to the fact that these vulnerable families can frequently be intersecting with more than one of Australia's law courts, the child protection law courts being of particular import, adding yet another layer of complexity to their lives.

Inability or lack of opportunity to discuss their feelings

Both KHL contacts and the findings of the *Experiences Survey* reveal that many young Australians feel unable to talk about their emotional distress and interrelated issues at various stages of family separation, or that they have no one to whom they can talk about their feelings or ask for advice.

Small numbers of respondents to the *Experiences Survey* said that they did not talk about their feelings when they first found out their parents were separating as they were in shock, others that they did not have the opportunity to talk to anyone or that they were too young to talk about it at the time. One respondent stated "I was in denial or shock. I didn't register that it was happening until moved out and parental responsibility things stated happening, so I didn't talk about it".

Some KHL callers said they did not talk at various stages of the separation to their friends, siblings or parents because they feel embarrassed about their emotions, they did not think anyone would understand or they feel a sense of alienation from their normal lives preventing them from discussing their feelings. They sometimes said they are trying to be put on a "brave face" for their siblings or parents and that they did not want to be considered weak by their parents. They also feared that mentioning their emotions towards or talking about the family separation would disappoint their parents, make them feel angry or that speaking up about them would get their family in trouble in some way. One 13 year old girl told us that her parent's break up had caused her not to trust anyone anymore and that she tells them "to back off if they pry too much into secrets".

In fact, some KHL clients had experienced negative reactions to talking to their parents about being unhappy with current living arrangements and wanting to live, for example, with the other parent. As feared, their parents did get upset (in one case the client's dad did not go into work the next day) or angry (one client's dad did not speak to her for four months after she spoke up). They were yelled at or told they are ungrateful. This can make some young people confirm what they feel about this parent and their reasons for not wanting to live with them, or it can make them confused about the situation and question themselves. Having finally summoned the courage to talk to his mum about wanting to move to his dad's and in light of her adverse reaction, one 14 year old boy powerfully told us about how he feels: "I feel I'm just trapped inside a steel coffin wrapped with chains. I don't feel I have control and nothing is giving me control".

Some KHL clients' parents actively seek to try to prevent them from talking about their family issues. One 17 year old young woman told us that her mum tells her not to talk about how bad things are at home "so the lawyers don't get wind of it". Other clients feel that their parents simply dismiss their views and say they are "just kids and don't understand", creating a sense that their views and feelings are unimportant, and again contributing to a sense of powerlessness. One frustrated 11 year old girl had repeatedly tried to tell her dad why she did not want to live with him but he does not let them finish the conversation until she agrees with him. Hence, she now feels scared to talk to him as she knows how he will react.

At KHL, we know the importance and effectiveness of children and young people being able to openly share their experiences, views and feelings. Certainly, many of our contacts about changing family

structures told us that they felt better after having discussed their issues with our counsellors. Although most respondents to the *Experience Survey* stated that they did not find talking about anything useful at key stages of the family separation, some respondents did. For example, some respondents (7 per cent of those who responded to the question⁵⁶) said that they found it useful to talk about reasons for the separation. As one respondent explained who did not have this privilege: "I would have liked to have known why, other than the typical reason of 'we just don't love each other anymore. I had my theories but I needed a concrete reason so I could really process [it]'".

To one question on what they found useful, respondents also identified talking to a range of people as useful. In order of highest frequency, these included a counsellor, parents, mother, sister/s, people in the same situation, friends, GP, KHL and teachers. As one respondent confided "I found that talking through how I felt about going to each of my parents' houses made me feel better as it didn't bottle my emotions". Clearly, being invited to and supported to talk about the family situation is important to and an effective coping mechanism for some children and young people.

- Unhappy with current living or access arrangements

Another significant concern for children and young people who are experiencing family separation is not being happy with their current living or access arrangements, which have either been legally or informally agreed, and that they have no control or influence to change their circumstances. Indeed, this was one of the issues identified by respondents to the *Experiences Survey* as causing them distress in terms of having to share their time between parents, conflict over how much time they should spend with each parent and being made to see a parent. Having a choice or say over their living arrangements was also identified by 12 per cent of those participants who responded as something they would have found useful when their living arrangements were being decided.⁵⁷

Many KHL callers have strong views about why the current arrangements are far from ideal, who they want to live with and why, and have a seemingly well-developed understanding of the situation and the dynamics of their parents' relationships. Shown in responses to the *Experiences Survey* also, some KHL callers said they are tired of having to move back and forth from their parents' homes and do not like having to pack and unpack so frequently, and generally feel unsettled. Moving around so much means they miss friends, their siblings or pets, and this is particularly the case when they may have to travel interstate to be at their other parent's homes. Their lives are disrupted and their school work, hobbies and interests suffer. Whether it is because of something more sinister or because they are not coping with frequent changes to routine, they often get extremely anxious the night before having to move to or visit the other parent's home.

Some callers simply do not like the parent they live with currently or that they have to visit as they simply feel that they do not understand them or are not supportive of them. Some feel that the parent they would rather live with looks after them better, for example providing better food or being more fun, or they just really have a close and loving relationship with them. A worrying number of callers tell us they do not like living with or seeing a parent they legally have to as they are verbally abusive to them (they criticise them shout at them or call them names), they have a problem with alcohol, drugs or, most concerningly, are physically or sexually abusive. Sometimes it is their parents' new partner who is abusive towards them verbally, physically or sexually and too often their parent does not seek to protect them or stand up for them.

⁵⁶ Out of 187 responses to this question, 14 respondents said they found it useful to talk about the separation.

⁵⁷ Out of 190 responses to this question, 22 respondents said having a choice or say over living arrangements would have been useful

KHL insights: case studies

Uncaring, unsupportive parent

Paige, 11 years old, has been feeling stressed and it is affecting her physical health. She is highly anxious because she has to go to court regarding parental responsibility. She currently lives with her mum, but her dad wants full parental responsibility of her and she does not understand why. He has refused to pay child-support, he is not very loving towards her and she feels extremely uncared for by him and his behaviour has got worse since he married her step-mum, who she does not like.

Holly, 11 years old, was directed by her mum to KHL as she has asked to stay with her mum rather than following court orders and going to stay with her dad at the weekend. She wants to stay with her mum as there is better food, she has a nicer room and they do lots of fun things together like cycling and hiking. She said her younger brother lives with her dad but he gets treated well by him. Holly has avoided her dad when he came to pick her up at school last week and he got really angry and called the police.

Annabelle, 12 years old, phoned as her father has just come back into her life after leaving her mum when she was three months old. He has now gained legal parental responsibility to see her once a fortnight but he often cancels at the last minute. When she does see him all she does is watch TV and he is consumed with his new wife and baby. Her father's behaviour causes her a great deal of distress, she can't sleep and is skipping school. She feels conflicted about seeing him but then worries that she would miss him if she could no longer see him. She just wants him to be more interested in her now. Annabelle's mum is planning to go back to the courts to get full parental responsibility of her again.

Our callers are sometimes deeply unhappy with the current situation as they are missing the parent that they do not live with or get to see very much. Sometimes this can be the parent they prefer, or sometimes one who they recognise as a disruptive force who, for instance, may cancel visits at the last minute. Sometimes they only get to see this parent very infrequently, once or a few times a year or they may not have heard from them in years. In some cases, children have to deal with the emotional impact of a parent who has decided to want to see them again after many years of not being in their life and they do not know how to manage this situation or how to feel about it.

Contacts to KHL also often express how they feel left out of new family dynamics. This may be because of the attention a parent is now giving to their new partner or new partner's children. Our callers feel that their relationship with this parent has been severely undermined, whether this is through not having quality time with them or even being looked after adequately given how distracted their parent now is with their new life. Many callers struggle to like their parent's new partner and children.

Regardless of the fact that KHL callers find themselves in worryingly unsafe situations as a result of legal arrangements over parental responsibility, causing them significant fear and anxiety, many of them tell us that they do not want to tell their parents about their desire to change their living or access arrangements as they do not want to upset them. That children and young people are loyal to parents in this way is an important consideration for the family law system in terms of how the views of children and young people are sought as well as how important it is that they are sought given their insight and that they are willing to share it under the right conditions (e.g. in KHL's experience not face-to-face).

KHL insights: case studies

Abusive parent or partner

Evie, 6 years old, was supported by her dad to call KHL as she is feeling extremely anxious and physically sick about having to go back to her mum's tonight. Evie was crying during the call and said that the reason she does not want to go back to her mother's is because she always shouts at her when she gets back from her dad's. Evie spoke about some extremely worrying incidences when her mum tried to kill her. She also suggested her friend had sexually abused her. Her dad came on the line at this point as he said he felt her mannerisms suggested she is lying about her friend and he expressed his concern that her mum's new partner may be at the root of the issue.

Nathan, 12 years old, currently lives with his mum which he hates. She makes him sad as she is always swearing, calling him names and teasing him about his weight and his intelligence. His mum won't let him partake in the sports that he wants to, never treats him or gives him money and never prepares him proper meals or lunches for school. Yesterday she just gave him a bread roll for lunch. He wants someone to help him be able to live with his dad.

Jacob, 10 years old, reconnected with KHL as he still does not want to have to carry on seeing and staying with his mum as she is physically and verbally abusive towards him. The current legal parental arrangements mean that he must stay with his mum one week and then with his dad for one week. Jacob does not understand why he has to live with his mum when she is so mean to him. He is upset when he is there and worried about going there when he is at his dad's. He wants to live with his dad full time.

Ava, 10 years old, and her little sister currently have to live mostly with her dad. They both hate it as he has a quick temper, gets extremely angry with them and can be violent. He smashed Ava's phone last week and even his new partner is scared of him. She hasn't seen her mum for a month as their dad has stopped them from visiting their mum despite the court ruling that they must stay with her every other weekend. Her mum and older brother are aware of his behaviour and are in the process of are going to the courts to get parental responsibility of them.

Harriet, 10 years old, does not want to live with her mum anymore as she is always angry, criticising her and blaming her for everything that goes wrong. Her mum puts her dad and his new family down and tries to make her not like them. She also tries to make her feel guilty every time she goes to visit and stay with her dad and tries to get her to stay with her. But Harriet likes them and wants to stay with them. Harriet hopes that either her mum will get much nicer soon or much worse so then the courts will say that she can go and live with her dad.

Whilst it may be that some children and young people are incapable of understanding of grasping the complexity of the family situation as parents may be lying or seeking to manipulate the situation, it seems clear from our callers that there is great diversity in understanding and maturity regardless of a child or young person's age. We also feel that, regardless of their understanding, maturity or age, that children and young people are capable of expressing views and experiences that are an important source of evidence and clearly bring another critical perspective to decision-making relating to family separation.

- Inadequate representation in the courts and low levels of legal knowledge

It is widely accepted that children have limited agency to participate in the legal system without an adult or legal representative.⁵⁸ At the same time, it seems that as children need an adult or a legal representative to assist them in participating in decisions that affect them, that too often their parents or their lawyers, legal officers or the system more generally use this as a reason not to seek their opinions or to fully involve them in the process.

The *Experiences Survey* found that most respondents, some 37 per cent, did not know whether the court system had been involved in their parents' separation (36 per cent reported that the court system had been involved in their parents' separation, 28 per cent reported that the court system had not been involved). It may be that these respondents were too young to have been aware of this information. However, since the average age of respondents was 14 years and very few were under 10 (11 per cent), it seems more likely that they have not been well informed about the details surrounding their families' situation either by their parents or through legal or support services.

That some children and young people are not well informed about the reasons for their parents' breaking up, how it will affect them in the future, and their rights in relation to their family separation is apparent in both KHL and the *Experiences Survey* data. Indeed, trying to gain a better understanding about their family separation or more knowledge about their legal rights is often a reason why clients call KHL. For example, one 13 year old girl did not want to have to continue seeing her mother who is always angry and abusive towards her. She called KHL to find out if she can let the courts know how she feels and what she wants.

It is also clear in some cases that KHL callers have not been given the whole picture by a parent as to why they can no longer see the other parent, and although this may be to protect them, it often instead creates a sense of injustice or resentment within them. Other callers do not know if they can trust what their parents are telling them or know what to believe given the tumultuous nature of the family break down. Indeed, there is a clear conflict of interest between the child and the parent and they may not be acting in the best interests of their child. Not knowing details relating to their lives is not only unsettling for young people, but it robs them of their rights and ability to try to influence their future. Indeed, KHL would advocate the transmission of age or maturity appropriate information to ensure children and young people do not feel disempowered but rather have some level of understanding about what is going on.

With parents sometimes being a poor source of information and support during family separation, it would be hoped that the family law system is equipped to step in and appropriately assist children and young people and ensure that they know their rights and have their say. A key part of the *Experiences Survey* was understanding what young Australians found to be helpful or unhelpful in supporting their experience of family separation in the court system and supporting services. In this section, we examine these findings in conjunction with existing research and KHL clients' experiences and views.

Young Australians experiences of the family law system

Reflecting KHL callers lack of knowledge and access to the family law system, many stakeholders suggest that despite efforts in the past to reform legal processes to better accommodate the needs of children and young people, barriers continue to exist that prevent them from being informed and understanding the law

⁵⁸ Law Council of Australia, The Justice Project: Children and Young People, Consultation Paper, August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>

or accessing it to have a meaningful say in their lives.⁵⁹ For example, the system is still complex, fragmented, process-oriented, extremely formal, and uses language which even adults find impenetrable, whilst the traditional view that children are the law's subjects rather than its participants seems to stubbornly persist.⁶⁰ Indeed, in 1997 the Australian Law Reform Commission (ALRC) itself made a number of recommendations to address evidence of "failures, to some degree by each of the institutions of the legal process, to accommodate the changing notions of children's evolving maturity, responsibilities and abilities, and in particular a consistent failure to consult with and listen to children in matters that affect them". Yet in 2013, Child Rights International Network suggested that most of ALRC's recommendations had not been implemented, while others maintain that there are too few legal specialist services and highly skilled staff to assist children and young people.⁶¹ Australia was one of the many countries that the United Nations Office of the High Commissioner for Human Rights noted did not have sufficient resources and staff to provide specialist legal services for children in 2013, whilst in its 2014 *Access to Justice Arrangements – Inquiry Report*, the Productivity Commission found significant funding shortages in relation to domestic violence and child protection, asserting that the "gap in independent lawyer services for children [is] especially worrying".⁶²

The *Experiences Survey* can shed some more current light on whether recent changes to the family law system are helping to support children and young people. The survey asked whether respondents had met with or spoken to the following services in relation to their parents' separation: counsellor, KHL counsellor, social worker, psychologist, independent children's lawyer and court family consultant. Only 9 per cent of respondents indicated that they had met with a court family consultant and only 20 per cent of these were satisfied or very satisfied with the support they received from the court family consultant, with 39 per cent being dissatisfied or very dissatisfied. Just 6 per cent had accessed an independent children's lawyer but conversely 43 per cent were satisfied or very satisfied with the service they received, and 26 per cent were dissatisfied or very dissatisfied.

In comparison, 29 per cent and 12 per cent either had contact with a counsellor or a KHL counsellor respectively, and 22 per cent and 11 per cent had met with a psychologist and social worker respectively. Like the independent children's lawyer, they too had much higher levels of satisfaction than the court family consultant, with respondents being most satisfied and least dissatisfied with the psychologist and KHL's counsellor.

Criticisms made by respondents about the court family consultant included feeling that the advice they gave them was not true or that they did not feel like the consultant believed them. A few respondents offered some positive feedback, stating they had made helpful recommendations but the court had not listened to them. Conversely, responses relating to the independent children's lawyer found that they did listen to them and they were helpful, although some negative comments included that they had broken their confidentiality and did not take account of their opinions because of their age.

The negative feedback about these legal representatives reflects the views of some KHL clients who tell us that they feel that their views were not appropriately captured or believed by legal representatives. More commonly, KHL clients simply lack information about legal processes and are seeking legal support and advice from our counsellors, or they find themselves in highly risky living arrangements or at the very least where they are unhappy as a result of cumbersome and lengthy legal processes or perhaps as their views had not been appropriately heard or considered. Indeed, as detailed in our response to Question 23 relating to family violence, significant legal barriers exist for children and women seeking legal safety and

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid

⁶² Productivity Commission, *Access to Justice Arrangements – Inquiry Report* (2014) 675.

protection from a violent perpetrator. These include the fragmented processes and services in family law and child protection together with the state, territory and federal systems that lead to multiple proceedings and often inconsistent orders in relation to the same case, and the difficulty women have trying to get their children placed on domestic violence orders, whilst the Family Court seems to continue to place the onus on children having to spend time with the perpetrator whilst the victim risks losing parental responsibility if she does not comply.⁶³ These are sobering realities of the present system which are badly failing many extremely vulnerable young Australians and their mothers.

KHL insights: case studies

Gemma, 12 years old, explained that her parents are divorcing and unfortunately her mum has assumed that she will live with her. However, Gemma wants to live with her dad but does not know how to tell her mum and it's making her feel sick. Her mum works too much whilst her dad lives on a farm which she loves. She is hoping that if she goes to court, she can just tell the judge her preference and the judge can tell her mum so she doesn't hurt her feelings.

Corey, 13 years old, says a court order has ruled that he has to live with his mum and step-dad, and is not to see his father until he is 18. He said that his parents went to court and that he was not allowed to speak. His mum lied about his stepfather's abusive behaviour towards Corey to protect his stepfather. A few weeks ago, Corey ran away from his mum's and hitched a ride to his dad's some distance away. His mum came today to his school to take him back but he refused to go. She said that she will get the police involved to make him come home. Corey has reported his stepfather to the police and child protection but they don't seem to believe him and haven't acted on it.

Tilley, 8 years old, was introduced by her mum who stated that due to a recent Family Court decision, her daughter would have to spend 21 days straight with her father and with no communication with her at all. If she and Tilley do not comply with the order, she risks full parental responsibility being granted to her dad. Tilley came on the phone crying and said she did not like being at her dad's but would not say why. She said she had a tummy ache thinking about having to go and stay with him for so long.

The final report of the *Experiences Survey* will present more detail about the experiences of young Australians and key legal representatives and the broader support services it provides. Clearly, more can be done to provide legal services and staff better tailored to meet the needs and preferences of children and young people. Getting levels of specialist legal and wider support services right to help children and young people is critical if they are to have their views effectively represented, have access to information, exert their rights, and have a feeling of some sort of control over, or at least meaningful input, into their lives.

With family separation highly correlated with a range of poorer outcomes for children, it is critical that appropriate support services are in place to help them best deal with this life-changing event. What's more, as many of the children and young people we hear from are experiencing multiple forms of disadvantage, it is clear that the legal system must be capable of supporting a range of complex and interrelated issues. This will mean working effectively with different support services to overcome the additional barriers to legal access that multiple disadvantage presents.

⁶³ Law Council of Australia, The Justice Project: Children and Young People, Consultation Paper, August 2017: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Children%20and%20Young%20People.pdf>

yourtown recommendations

The recommendations we set out below include recommendations we have made in previous sections in relation to different vulnerable groups of Australians whose lives come into contact with the family law system in some way. That they are repeated emphasises their importance in making a difference to disadvantaged Australians. Our recommendations also include many from the draft findings of the *Experiences Survey*.

Based on the evidence we have presented in the sections above, **yourtown** strongly recommends that the following reforms are made to the family law system to ensure children and young people are appropriately supported to access the system and have a meaningful voice within it:

- Fund and provide more specialist law services and staff for children and young people, in addition to providing specialist training for all legal representatives who work with cases involving children and young people so that the legal information, advice and assistance they provide is tailored to meet the developmental needs of children and young people.
- Fund and provide tailored support services for children and young people, supporting their communication preferences and their holistic needs. These services must be available as early intervention services and be accessible throughout the process of a family's separation as well as for as long as children and young people may wish to access them afterwards. Given young people's range of preferences, provide face-to-face, telephone, online and webchat support services to ensure that no young person need miss out on this support.
- Provide and facilitate young people with an opportunity to talk about their parents' separation and their needs and preferences to a support person/s. This should be offered early in the process of separation and with ongoing access.
- Monitor young people, including very young children, whose parents are in the process of separation for a range of mental health and behavioural factors that could potentially lead to negative outcomes to ensure the timely development of a support plan and access to support services.
- Apply greater discretion in cases involving children and young people so that they receive age or maturity appropriate opportunities to engage with the system and have their say over decisions that affect them.
- Acknowledge and accommodate that it is important to children's health and wellbeing that they feel like they have had an opportunity to have their say and feel like they have been listened to, even if the outcome of the decision is still not what they would wish.
- Provide young people going through the separation process with easy access to appropriate information about their rights in terms of legal representation, counselling or other services, and how these rights change as they get older.
- Equip parents with resources including advice and counselling regarding how to deal with issues surrounding disclosure of details of the separation to their children, especially with respect to why the separation is occurring. Ensure parents are aware that it is important that children and young people have a say in their future and feel like their views are listened to and respected in the process.
- Integrate family law and child protection legal systems, or ensure that single hearings can take place that cover both aspects of the law for single cases involving both areas of law.
- Increase consistency of national, state and territory legal systems and empower them to promote more joined up community responses to family law, family violence and child protection issues.