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DIGNITY AND THE FUTURE OF FAMILY LAW

MICHEIL PATON* AND PHOEBE TAPLEY**

In April 2019 the Australian Law Reform Commission ('ALRC') published the final report of its inquiry into Australia's family law system, making 60 recommendations for reform. This article explores the extent to which, and the ways in which, the ALRC family law inquiry engaged with and promoted concepts of 'human dignity'. Human dignity is a contested, but frequently invoked concept in international human rights law. The relevance of human dignity to family law arises as a result of the potential impact of the family law system on a range of human rights. In addition, there is an expectation that the family law system will uphold the 'dignity' of persons in the ordinary sense of the term. This article observes that although there was no explicit adoption of a human dignity framework in the ALRC family law inquiry, considerations of human dignity arguably informed the referral and conduct of the inquiry. The article reviews a selection of the ALRC recommendations through a human dignity lens, considering, in particular, their impact on rights relating to privacy and protection from harm, and whether they promote dignity in the ordinary sense of the term. The article concludes by suggesting that while many ALRC recommendations arguably seek to promote human dignity, the explicit incorporation of a human dignity framework may have added value to the inquiry in a number of ways.

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I INTRODUCTION

Arguably, few areas of law are as ‘human’ as family law. Family law dissects the most intimate of human relationships, in all their diversity and fragility. From one perspective, family law represents the intrusion of public legal principles and institutions into spheres of life that were traditionally seen as private or ‘domestic’.¹ The appropriate level and nature of intervention by states in the lives of their constituents has always been contentious and in recent decades, minimum standards have been expressed partly in terms of ‘human dignity’. Most prominently, this concept has taken root in the context of international human rights law.

In April 2019, the Australian Law Reform Commission (‘ALRC’) published the final report of its broad-ranging 18-month inquiry into the overall functioning of Australia’s family law system. The report contains 60 recommendations and covers areas including substantive law, dispute resolution procedures, system governance, and ancillary services.

The ALRC did not explicitly adopt a human dignity framework in the conduct of its inquiry. However, considerations of human dignity arguably informed the Terms of Reference for the inquiry, as well as the ALRC’s conduct of the inquiry. This article

¹ Danaya Wright, ‘Theorizing History: Separate Spheres, the Public/Private Binary and a New Analytic for Family Law History’ [2012] *Australia & New Zealand Law and History E-Journal* 44.

therefore explores the extent to which, and the ways in which, the ALRC family law inquiry engaged with and promoted concepts of human dignity.

The next section of this article investigates the nexus between family law and human dignity, setting out three aspects of human dignity that are relevant to the design and operation of the family law system. The following sections then examine particular themes and recommendations of the ALRC inquiry in relation to their potential impact on human dignity, as illustrative examples. In particular, the recommendations relate to: the jurisdictional gap between federal courts and state and territory courts; information sharing; case management powers; approaches to property division; and, a statutory tort for family violence. The article concludes by arguing that while many ALRC recommendations effectively seek to promote human dignity, the explicit incorporation of a human dignity framework may have added value to the inquiry in a number of ways.

II DIGNITY AND FAMILY LAW

It has been observed that the concept of 'human dignity' was introduced relatively recently into international and national legal instruments; the first appearance of the term in international law is in the Universal Declaration of Human Rights ('UDHR').² It has been asserted that human dignity represents both the normative boundaries of international law,³ and also 'the condition that would be achieved if there were good governance and respect for human rights'.⁴ Demonstrating the wide appeal of the concept, human dignity has been described as 'one of the Western world's greatest examples of ethical consensus',⁵ although there remains the danger that in practice it 'functions merely as a mirror onto which each person projects his or her own values'.⁶ The precise parameters of the legal meaning of 'human dignity' are indeed contested, but attempted definitions commonly recognise its universal and inherent nature, such

² *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 (10 December 1948) Preamble and art 1; see Rinie Steinmann, 'The Core Meaning of Human Dignity' (2016) 19(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1.

³ Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart Publishing, 2009).

⁴ Stephen Riley, 'Architectures of Intergenerational Justice: Human Dignity, International Law and Duties to Future Generations' (2016) 15(2) *Journal of Human Rights* 272.

⁵ Luis Barroso, 'Here, There and Everywhere: Human Dignity in Contemporary Law and in the Transnational Discourse' (2012) 35(2) *Boston College International & Comparative Law Review* 331, 332.

⁶ *Ibid.*

that all human beings are of equal value and they should never be used merely as a means to an end.⁷

The concept of human dignity finds expression beyond the UDHR in international treaties that require state parties to observe and protect enumerated human rights. Under international law, Australia is bound to give effect to its treaty obligations in respect of human rights.⁸ The family law system is one arena that engages these human rights obligations. There are a number of human rights that may have implications for the operation and design of family law, including the provisions of the *United Nations Convention on the Rights of the Child* ('UNCRC'),⁹ the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW'),¹⁰ and the *International Covenant on Civil and Political Rights* ('ICCPR').¹¹ Each of these treaties affirms that human dignity is a fundamental value underpinning human rights.¹²

The UNCRC provides, for example, that children's best interests must be a primary consideration in all actions concerning children,¹³ children have a right to 'maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests',¹⁴ and that children should be 'provided the opportunity to be heard in any judicial and administrative proceedings affecting the child'.¹⁵ In addition, CEDAW recognises 'the common responsibility of men and women in the upbringing and development of their children'¹⁶ and requires state parties to ensure that women and men have the 'same rights and responsibilities during marriage and at its dissolution'.¹⁷ Similarly, the ICCPR provides for equal rights and

⁷ Steinmann (n 2).

⁸ Though treaty obligations do not have legal force in Australian domestic law unless and until the obligations have been implemented in domestic law by Parliament: see, eg, *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 286–7.

⁹ *Convention on the Rights of the Child*, opened for signature 20 December 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹⁰ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW').

¹¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

¹² *Convention on the Rights of the Child* (n 9) Preamble; CEDAW (n 10) Preamble; ICCPR (n 11) Preamble.

¹³ *Convention on the Rights of the Child* (n 9) art 3(1).

¹⁴ *Ibid* art 9(3).

¹⁵ *Ibid* art 12(2).

¹⁶ CEDAW (n 10) art 5.

¹⁷ *Ibid* art 16(1)(c).

responsibilities of spouses during marriage and at dissolution, as well as ‘the necessary protection of any children’.¹⁸

Giving effect to the UNCRC is one of the stated objects of Pt VII of the *Family Law Act 1975* (Cth) (*Family Law Act*).¹⁹ Incidentally, one of the ALRC recommendations is that this entire ‘objects clause’ be repealed in the interests of legislative simplification.²⁰ This recommendation was made partly on the basis that removing this reference to the UNCRC is not likely to materially affect the interpretation of the Act. Namely, existing common law principles provide that in the event of any ambiguity in a statute, courts should interpret the statute in a manner consistent with Australia’s obligations under international conventions.²¹

It would not be possible in this article to analyse all aspects of human dignity relevant to family law. Instead, this article focuses on human rights relating to protection from harm, as well as rights to privacy and reputation. In addition to considering human dignity through the lens of these two categories of human rights, this article will engage with the ordinary (rather than necessarily legal) conception of ‘dignity’, which connotes treatment with respect.

A Protection from Harm

Protection from harm is integral to the family law system. This is due to the nature of the decisions made by courts exercising family law jurisdiction (such as determining the living arrangements of children), as well as the prevalence of risk factors among users of the family law system. The nature of contemporary family law disputes that require court adjudication is that, overwhelmingly, they are overshadowed by complex risk factors, including family violence and child abuse, as well as substance abuse and serious mental health issues.²² Human rights engaged in this context include the general obligation to ensure for each child ‘such protection and care as is necessary for his or

¹⁸ *ICCPR* (n 11) art 23(4).

¹⁹ *Family Law Act 1975* (Cth) s 60B(4) (*Family Law Act*).

²⁰ Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Report No 135, March 2019) Recommendation 4.

²¹ *Ibid* 163 [5.34], citing *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 27; Dennis Pearce and Robert Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014).

²² Australian Law Reform Commission (n 20) 135 [4.86].

her well-being',²³ the right of children to be protected from harm,²⁴ and the provisions of CEDAW.²⁵

There is explicit recognition of the importance of protecting parties and their children from harm in the *Family Law Act*. The Act provides that courts exercising family law jurisdiction are required to have regard to 'the need to protect the rights of children and to promote their welfare' as well as 'the need to ensure protection from family violence'.²⁶

B *Privacy and Reputation*

The highly personal nature of the disputes governed by family law inevitably engages human rights obligations in relation to privacy and reputation (or 'protection against attacks on a person's honour').²⁷ Ordinarily, court proceedings and judgments are required to be made public, but there may be restrictions 'when the interest of the private lives of the parties so requires', and specifically when 'the proceedings concern matrimonial disputes or the guardianship of children'.²⁸ The relevance of these rights is reflected in concerns identified at the time the *Family Law Act* was contemplated, which included 'a desire to eliminate the indignities associated with the former fault-based divorce regime, where the names of co-respondents to adultery petitions were often reported in the tabloid press'.²⁹ This aspect of privacy encompasses concerns in relation to maintaining reputations against prurient public curiosity and scandal. Beyond matters of reputation, privacy concerns also arise in relation to how personal details of parties may be shared between different actors within the system (eg, courts, support services, police, and government agencies), or between the parties to a family law dispute.

²³ *Convention on the Rights of the Child* (n 9) art 3.

²⁴ *Ibid* art 19.

²⁵ CEDAW (n 10). Although CEDAW does not explicitly refer to family violence, it has been recognised that reducing the incidence of violence against women will complement the rights enumerated in CEDAW, and vice versa; see the *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN Doc A/48.104 (23 February 1994, adopted 20 December 1993), particularly the Preamble.

²⁶ *Family Law Act* (n 19) s 43(1)(c), (ca).

²⁷ ICCPR (n 11) art 17; see also *Universal Declaration of Human Rights* (n 2) art 12.

²⁸ ICCPR (n 11) art 17.

²⁹ Australian Law Reform Commission, *Review of the Family Law System* (Issues Paper No 48, March 2018) 401, citing the Hon John Fogarty, 'Establishment of the Family Court of Australia and its Early Years' (2001) 60 *Family Matters* 90, 97; see also *AH & SS* [2005] FamCA 854.

C Calls for Dignity from Family Law System Users

Questions of 'dignity' in family law arise not only with respect to human rights obligations but also in accordance with the common or ordinary usage of the term. This aspect of dignity is related to the subjective experiences of individuals as they engage with the family law system, and connotes an expectation of a basic level of respect. This conception of dignity is broadly consistent with the fundamental tenets of human dignity as understood in international human rights law, reflecting a general concern that family law users are treated in a manner that is consistent with their inherent value as human beings. Contributions to the ALRC inquiry suggested that being treated 'with dignity' is a key concern for many family law system users. A number of individuals who confidentially provided to the ALRC their personal stories of experience with courts exercising family law jurisdiction, recounted experiences that failed to meet their expectation of being treated with dignity.³⁰ For example, some felt they were humiliated by the other party, lawyers, judicial officers, or court staff. Conversely, several submissions to the ALRC inquiry emphasised the importance of affording dignity to those using the family law system.³¹ Thus, there appears to be a more general call for dignity in family law that extends beyond the parameters of specific human rights obligations.

III DIGNITY AND THE ALRC INQUIRY

The foregoing analysis has highlighted that there is a clear nexus between human dignity (and the human rights that emanate from this fundamental concept) and the family law system. However, the Terms of Reference for the ALRC family law inquiry did not explicitly refer to human rights, nor to the concept of 'human dignity'. The ALRC, in turn, did not explicitly adopt a human dignity or human rights framework in the conduct of its inquiry. There is, nonetheless, evidence that considerations of human

³⁰ These stories were submitted to 'Tell Us Your Story', a confidential online portal established by the ALRC for the purposes of its review of the family law system. See Australian Law Reform Commission, *Family Law - Summary of Tell Us Your Story Responses* (ALRC News, June 2019) <<https://www.alrc.gov.au/news/family-law-summary-of-tell-us-your-story-responses/>>.

³¹ See, eg, Western Sydney CLC, Submission No 8; Australian Dispute Resolution Advisory Council ('ADRAC'), Submission No 12; Royal Australian and New Zealand College of Psychiatrists, Submission No 18; PeakCare Queensland, Submission No 72; R Alexander, Submission No 131; Farrar Gesini Dunn, Submission 140; CatholicCare Diocese of Broken Bay, Submission No 197.

dignity underpinned both the referral of this inquiry to the ALRC and the ALRC's conduct of the inquiry.

Notably, protection from harm was identified by the ALRC as a key theme of the inquiry. The ALRC observed that a number of elements of the Terms of Reference could be categorised as aiming to 'protect vulnerable parties'.³² For example, the ALRC was asked to consider 'the protection of the best interests of children and their safety', including in the context of family violence and child abuse.³³ A focus on protection is also borne out in the overarching principles said to inform the ALRC's recommendations, which include integrating adjudication pathways for the protection of vulnerable parties.³⁴

There is also explicit reference to privacy and dignity in the framing of the ALRC inquiry. One of the circumstances to which the Attorney-General is recorded as having regard in developing the Terms of Reference is 'the importance of affording dignity and privacy to separating families'.³⁵

In addition, the ALRC described its recommendations as being 'necessary to provide a *dignified* and efficient process that resolves disputes between parties to intimate relationships at the lowest financial, emotional, and psychological costs'.³⁶ These references to dignity seem to reflect the concept of affording due respect to individuals, rather than the concept of human dignity which underlies human rights realisation more generally.

The ALRC is specifically directed in its governing legislation to consider Australia's international obligations, as well as 'personal rights and liberties', when making recommendations.³⁷ The close relationship between such rights and human dignity provides a substantial basis for incorporating a human dignity framework into the ALRC's work.

The following sections consider whether and how certain recommendations from the ALRC's final report promote aspects of human dignity. In view of the nexus between the

³² Australian Law Reform Commission (n 20) 30 [1.3].

³³ George Brandis, Attorney-General of Australia, 'Review of the Family Law System' (Terms of Reference, Australian Law Reform Commission, 17 August 2017); reproduced in *ibid* 5–6.

³⁴ Australian Law Reform Commission (n 20) 36 [1.25].

³⁵ Brandis (n 33).

³⁶ Australian Law Reform Commission (n 20) 31 [1.6] (emphasis added).

³⁷ *Australian Law Reform Commission Act 1996* (Cth) s 24.

family law system and concepts of human dignity, it may be observed that all of the ALRC's 60 recommendations will have some bearing on matters of human dignity. For example, a number of recommendations affect how determinations of a child's best interests would be made,³⁸ while other recommendations consider cultural issues relating to Aboriginal and Torres Strait Islander children,³⁹ and therefore engage cultural rights.⁴⁰ A discussion on the duties of independent children's lawyers highlighted the importance of children's input in proceedings, echoing the right of the child to express views freely in all matters affecting the child.⁴¹ However, the focus of these recommendations was more on simplification and clarification of the law and codifying existing guidelines, rather than substantive change to processes or outcomes.⁴²

For the purposes of this article, analysis has been restricted to recommendations relating to the jurisdictional gap between federal courts and state and territory courts, information sharing, case management powers, property division, and a statutory tort of family violence. These recommendations were chosen on the basis of their direct bearing and potential impact on the particular aspects of human dignity discussed above: protection from harm, privacy and reputational matters, and expectations of being treated with dignity.

A The Jurisdictional Gap

Arguably the most significant recommendation made by the ALRC in the family law inquiry is that state and territory courts should become the primary fora for family law litigation, and that first instance federal family courts should be ultimately abolished.⁴³ The implementation of this recommendation would not include devolving legislative power in relation to family law to the states and territories. Rather, the *Family Law Act*, together with a single set of family court rules, would provide the legislative framework applying in all states and territories. The ALRC further discussed that a federal family

³⁸ Australian Law Reform Commission (n 20) Recommendations 4–10.

³⁹ *Ibid* Recommendations 6, 9.

⁴⁰ *Convention on the Rights of the Child* (n 9) art 30; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 15(1).

⁴¹ *Convention on the Rights of the Child* (n 9) art 12.

⁴² See Australian Law Reform Commission (n 20) Chapters 5 and 12.

⁴³ *Ibid* Recommendation 1.

court of appeal could be retained to promote consistency in the development of family law jurisprudence.⁴⁴

This recommendation sought to address fundamental structural problems within the Australian family law system that have been identified in a number of previous reports, and which were seen as compromising the safety of families in the family law system.⁴⁵ Fundamentally underlying the structural problems is a bifurcated legislative regime: federal legislation dealing primarily with parenting and property matters (with an associated federal court structure), running in parallel with state and territory legislation on child protection and domestic violence (and state and territory courts vested with jurisdiction to deal with those matters).

The ALRC cited empirical evidence that a large proportion of family disputes requiring court adjudication involve complex risk factors, including family violence and child abuse, as well as substance abuse and serious mental health issues.⁴⁶ For example, a significant number of matters involved the filing of a formal notice alleging a risk of child abuse or family violence,⁴⁷ and/or a referral to a child protection agency.⁴⁸ Previous studies have found that 85% of parents who litigate parenting issues report a history of emotional abuse and more than half (54%) report physical hurt from their former partner.⁴⁹

Previous inquiries had expressed concern that ‘the very design of the current family law system’ contributes to a failure to protect and support families experiencing ongoing

⁴⁴ Ibid 136–7 [4.92].

⁴⁵ See, eg, Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* (Report, July 2001) 100–1; Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection System* (Interim Report, 30 June 2015) 96–8; House of Representatives Standing Committee on Family and Community Affairs, Parliament of Australia, *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation* (Report, 2003) 69–72. For a comprehensive discussion of previous inquiries see Australian Law Reform Commission (n 20) 114–123.

⁴⁶ Australian Law Reform Commission (n 20) 103–5.

⁴⁷ In around 30% of final parenting order matters in the Family Court of Australia: Family Court of Australia, *Family Court of Australia 2017–18 Annual Report* (2018), Figures 3.18–3.19. In the Federal Circuit Court of Australia a Notice of Risk must be filed by all parties to a final order application seeking parenting orders.

⁴⁸ In around 45% of cases in the Federal Circuit Court of Australia: Federal Circuit Court of Australia, Private Correspondence (22 January 2019), cited in Australian Law Reform Commission (n 20) 105 [3.94].

⁴⁹ Rae Kaspiew et al, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report* (Australian Institute of Family Studies, 2015) 16.

violence.⁵⁰ A former Family Court judge had also highlighted the additional risk of inconsistent orders in different jurisdictions.⁵¹ The ALRC concluded that these risks would best be overcome by having family law, family violence, and child protection matters for the same family heard in the same place at the same time.⁵² Perhaps ironically, this approach echoes the original intent that the Family Court of Australia would constitute a 'one-stop shop' for family legal matters.⁵³

The ALRC highlighted potential models for the establishment of family courts in the states and territories, such as the Family Court of Western Australia and Unified Family courts in Canada,⁵⁴ but stopped short of recommending any particular model, and instead suggested the establishment of a task force to undertake this work.

Having one court with jurisdiction to hear and determine a broader range of family disputes, which often involve a complex mix of risk factors, is potentially a significant step in the promotion of human dignity. First, it may contribute to the realisation of human rights to protection from harm because it may reduce the likelihood of courts being unaware of information relevant to an assessment of risk. Secondly, it may promote a more 'dignified' experience for users of the court system, because it may reduce the need for parties to repeatedly tell their story in multiple proceedings.

This ALRC recommendation has not been uncontroversial. Of note, one Commissioner queried the effectiveness of the recommended model and instead proposed that existing court structures be maintained, while simplifying pathways between them to provide continuity, support, and less confusion for litigants.⁵⁵ Dr Richard Ingleby has written that establishing state family courts would be 'far more logistically problematic' than

⁵⁰ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Report, 2017) [3.82], cited in Australian Law Reform Commission (n 20) 112 [4.3].

⁵¹ The Hon Justice Linda Dessau, 'A Unified Family Court' (Paper, Third National Family Court Conference, 23 October 1998).

⁵² The ALRC noted that the same conclusion has been reached by a number of previous inquiries: Australian Law Reform Commission (n 20) 111 [4.2].

⁵³ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Report on the Law and Administration of Divorce and Related Matters and the Clauses of the Family Law Bill 1974* (Parliamentary Paper, No 133, October 1974) 14 [44]; Commonwealth, *Parliamentary Debates*, House of Representatives, 28 November 1974, 4321–23 (Mr Whitlam) 4322 ('*Parliamentary Debates*').

⁵⁴ Department of Justice (Canada), *Unified Family Court Summative Evaluation* (Final Report, 2009).

⁵⁵ See dissenting view of Commissioner Faulks, Australian Law Reform Commission (n 20) 139–43.

granting the federal family courts responsibility for child protection matters.⁵⁶ On 19 September 2019, without the Government having formally responded to the ALRC report, the Parliament appointed a Joint Select Committee on Australia's Family Law System, and the first issue listed in its Terms of Reference relates to the interaction between the family law, child protection, and family violence systems.⁵⁷ That Committee has also been asked to investigate reforms to the structure of the federal family courts. It may therefore be expected that the implications and limitations of this ALRC recommendation will receive further attention in 2020.

B Information Sharing

While maintaining that a fundamental restructure of the family law system is necessary in the long-term, the ALRC also made recommendations in respect of appropriate information-sharing arrangements between various courts and ancillary family law services, with the aim of reducing harm in the short-term.

The ALRC noted evidence of barriers to effective information sharing between federal family courts, state and territory courts and related services such as police, child protection and health services. These barriers are particularly significant in the context of family law because federal family courts have limited investigative powers or capacity to follow up allegations made in family law proceedings that indicate potential risks of harm and abuse. The federal family courts are often reliant on information from state and territory courts and agencies about risks to families to inform decision making.⁵⁸

The ALRC referenced a number of initiatives facilitating information sharing in this area and acknowledged the valuable role they play in promoting the safety and wellbeing of families. It recommended that federal, state and territory governments should work together to develop and implement a national framework to guide the sharing of information about the safety, welfare, and wellbeing of families and children between

⁵⁶ Richard Ingleby, 'Family Law for the Future – A Response to the ALRC "Radical" Recommendation' (2019) 93 *Australian Law Journal* 815, 816.

⁵⁷ Parliament of Australia, Terms of Reference, Joint Select Committee on Australia's Family Law System (19 September 2019) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Terms_of_Reference>.

⁵⁸ Australian Law Reform Commission (n 20) 143 [4.129].

the family law, family violence, and child protection systems.⁵⁹ The ALRC further recommended the expansion of the National Domestic Violence Order Scheme to include federal family court orders, and state and territory child protection orders.⁶⁰

Some stakeholders expressed concerns about the effect of section 121 of the *Family Law Act* on the ability of family court users to share information about their own experiences. Section 121 makes it a criminal offence to publish an account of any family law proceedings that identifies a party or witness to the proceedings, subject to a number of exceptions. While some stakeholders argued that section 121 does not provide adequate scope for family court users to share their experiences publicly, others cautioned that the existing restrictions provide an important safeguard for dignity and privacy, and should be maintained.⁶¹ The ALRC noted that objectives relating to privacy must be qualified by the principle of 'open justice', which is fundamental to ensuring that courts remain transparent and accountable for their decisions.⁶² The ALRC concluded, however, that concerns regarding section 121 of the *Family Law Act* misunderstood the effect of the provision, and therefore recommended it be redrafted for greater clarity.⁶³

The ALRC acknowledged some stakeholder concerns with the potential for overly facilitative information sharing frameworks to inadvertently cause further harm. For example, it cited Aboriginal and Torres Strait Islander legal services warning that the 'perception and fear that information could be shared with child protection may mean that Aboriginal and Torres Strait Islander women choose not to access much-needed support'.⁶⁴

The ALRC further acknowledged broader concerns about breaches of privacy and confidentiality, often without the parties' consent.⁶⁵ These concerns suggest the potential for tensions between human rights to privacy and human rights to protection

⁵⁹ Ibid Recommendation 2. The ALRC considered that legislation in New South Wales and Victoria may provide a helpful model of facilitative information sharing provisions: *ibid* 151.

⁶⁰ Ibid Recommendation 3.

⁶¹ Victorian Women Lawyers, Submission No 84; Law Council of Australia, Submission No 43; Australian Law Reform Commission (n 29) 88.

⁶² *Family Law Act* (n 19) s 97(1).

⁶³ Australian Law Reform Commission (n 20) Recommendation 56. See also Australian Law Reform Commission, *Review of the Family Law System* (Discussion Paper No 86, 2018) 304.

⁶⁴ National Family Violence Prevention Legal Services Forum, Submission No 293, quoted in Australian Law Reform Commission (n 20) 150 [4.154].

⁶⁵ *Ibid* 149.

from harm. In turn, these tensions between human rights raise difficult questions about how ‘human dignity’ is to be most appropriately promoted in the context of information sharing. However, the ALRC did not undertake a detailed analysis of the optimal balance between these potentially competing aspects of human dignity.

As outlined above, the ALRC did categorise these information sharing recommendations as contributing to the ‘protection of vulnerable parties’.⁶⁶ Commentators such as Fineman have critiqued the tendency to describe particular populations as ‘vulnerable’, arguing instead that vulnerability is universal and constant.⁶⁷ Arguably, focusing on the ‘vulnerability’ of particular populations to justify the sharing of information without their consent may further erode their agency and may distract from the task of finding an appropriate balance between rights to protection, and rights to privacy.

Ultimately, the ALRC did not further specify how information sharing provisions might be appropriately formulated across the broad and complex landscape of differing existing federal, state and territory provisions, nor how the concerns of Aboriginal and Torres Strait Islander services or other stakeholders in relation to privacy may be appropriately accommodated. Rather, this more detailed and difficult work remains to be done.⁶⁸

C Case Management Powers

A common theme among the personal stories submitted to the confidential online portal established for the ALRC’s family law inquiry was that their engagement with the family law system was emotionally and financially taxing, and escalated tensions.⁶⁹ These sentiments echo the findings of a number of earlier inquiries — that the adversarial nature of courts exercising family law jurisdiction is inappropriate for resolving family law disputes.⁷⁰ One submission suggested that the current ‘court-centric process’ was

⁶⁶ Australian Law Reform Commission (n 20) 30 [1.3].

⁶⁷ Martha Albertson Fineman, ‘Vulnerability and Inevitable Inequality’ (2017) 4(3) *Oslo Law Review* 133, 142.

⁶⁸ Attorney-General’s Department, ‘Family Violence’ (Webpage) <www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>.

⁶⁹ Australian Law Reform Commission, *Family Law - Summary of Tell Us Your Story Responses* (ALRC News, June 2019) <<https://www.alrc.gov.au/news/family-law-summary-of-tell-us-your-story-responses/>>; Australian Law Reform Commission (n 20) 107–8 [3.106].

⁷⁰ See, eg, Family Law Pathways Advisory Group (n 45); House of Representatives Standing Committee on Family and Community Affairs, Parliament of Australia (n 45); House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia (n 50).

initially developed to provide a ‘private and dignified process of legal separation’, but that the adversarial nature of that process is no longer appropriate, particularly in terms of fostering ongoing co-parenting relationships.⁷¹

Recommendations in Chapter 10 of the ALRC’s report contemplate ensuring ‘as far as possible, that court processes do not unduly exacerbate existing conflict and trauma’.⁷² The key recommendation in this chapter relates to amendment of the *Family Law Act* to provide that the overarching purpose of family law practice and procedure is to facilitate the just resolution of disputes according to law, as quickly, inexpensively, and efficiently as possible, and with the least acrimony so as to minimise harm to children and families.⁷³ This statutory overarching purpose would be reinforced by costs consequences for parties, their lawyers and third parties who fail to act in accordance with the overarching purpose.⁷⁴

Furthermore, the ALRC recommended the introduction of powers to enable judges to take on a supervisory role in certain cases where a party is causing harm to the respondent and/or any children involved in the proceedings through the use of court processes in a manner that is inconsistent with the overarching purpose. This recommendation would empower the court to require a party to seek leave before making further applications and serving them on the other party.⁷⁵

Granting additional powers and statutory impetus to courts to manage cases more proactively, including by reference to the duration of proceedings, has the potential to limit the opportunity for parties to participate in those proceedings. Participation in court proceedings may itself constitute an expression of human dignity.⁷⁶ However, protracted proceedings (with associated costs), repeated applications of questionable merit, and inflammatory conduct may also effectively limit parties’ meaningful participation. Utilising a human dignity framework may be a useful method of analysing these competing rights and of determining an appropriate balance of such interests.

⁷¹ Relationships Australia, Submission No 317.

⁷² Australian Law Reform Commission (n 20) 296 [10.2].

⁷³ *Ibid* Recommendation 30.

⁷⁴ *Ibid* Recommendation 31.

⁷⁵ *Ibid* Recommendation 32.

⁷⁶ For example, as a component of equality before courts: *ICCPR* (n 11) art 14(1).

In addition to the introduction of costs consequences for non-adherence to the overarching purpose, the ALRC recommended removal of the general rule that parties bear their own costs in family court proceedings. The high costs involved in family court proceedings raise questions about the extent to which the system is advancing the interests of its users, as opposed to the interests of those who participate in the system. The ALRC cited a number of cases where judges have commented on the excessive costs in family law proceedings, noting the use of phrases such as ‘obscene’,⁷⁷ ‘eye watering’,⁷⁸ and ‘extraordinary [and] grossly disproportionate to the subject matter of the litigation’.⁷⁹ The ALRC’s recommendation was presented as a necessary ‘brake ... on the ability of either, or both parties, to unnecessarily engage in expensive legal skirmishes to the detriment of each other and the children without the risk, except in exceptional circumstances, of a costs order being made against them’.⁸⁰

Implementation of these recommendations would give the courts additional tools to limit the ‘indignity’ of family law proceedings, and to protect children and other parties from harm caused by the misuse of court proceedings. Other complementary aspects of the inquiry report include recommendations seeking to increase the use of non-court dispute resolution processes in appropriate financial and children’s cases.⁸¹

D Property Division

Parliamentary debates at the time of the *Family Law Act*’s development reveal that one aim of the new legislation was to create a less punitive and more dignified divorce process than had existed under the former fault-based divorce system.⁸² One aspect of family law proceedings that arguably retains in some ways a fault-based approach, is property division based on assessments of each party’s contributions to the relationship. The ALRC instead recommended the introduction of a presumption of equal contributions. In many cases, this may have the benefit of circumventing unproductive disputes, potentially furthering the aim of less acrimonious, more

⁷⁷ *Finazzi & Finazzi* [2012] FamCA 102.

⁷⁸ *Simic & Norton* [2017] FamCA 1007.

⁷⁹ *Newport & Newport* [2018] FamCA 472.

⁸⁰ Australian Law Reform Commission (n 20) 332 [10.137].

⁸¹ See *ibid* ch 8.

⁸² *Parliamentary Debates* (n 53) 4323; Commonwealth, *Parliamentary Debates*, House of Representatives, 9 April 1975, 1375–1377 (Dr JF Cairns) 1375.

'dignified' family law proceedings. In a joint submission to the ALRC inquiry, private law firms Moores and MELCA submitted that

the effect of introducing a 50/50 presumption would be that much of the criticism by one party of the other about their supposedly inadequate contributions would be removed from most affidavit material and from most trials.⁸³

Currently the *Family Law Act* provides for significant judicial discretion in the division of property following separation. The starting point under Australian law is that the legal and equitable property interests of the parties prevail on separation.⁸⁴ However, the court has the power to 'make such order as it considers appropriate' to alter the respective property interests of the parties where 'it is satisfied that, in all the circumstances, it is just and equitable to do so'.⁸⁵ In determining which orders should be made, the court is required to take into account seven factors which are listed in section 79(4).⁸⁶ One of the factors under section 79(4) is relevant matters contained in section 75(2),⁸⁷ which provides a further list of factors to be considered in respect of the 'future needs' of the parties.

It has been argued that a discretionary approach to property division is necessary to accommodate the diverse circumstances of separated couples.⁸⁸ However, the ALRC's recommendations ultimately reflect the view that for the majority of separated couples — who divide their property without the benefit of a judicial determination⁸⁹ — a more prescriptive approach to property division may be preferable. It is noted that the lengthy list of relevant factors in the legislation, with no clear guidance on their relative weight or quantification, provides little assistance to separated couples attempting to understand what constitutes a fair division of property in their circumstances.

⁸³ Moores and MELCA, Submission No 222.

⁸⁴ Patrick Parkinson, 'Family Property Division and the Principle of Judicial Restraint' (2018) 41(2) *University of New South Wales Law Journal* 380, 386.

⁸⁵ *Family Law Act* (n 19) ss 79, 90SM.

⁸⁶ *Ibid* s 90SM(4) for de facto relationships.

⁸⁷ *Ibid* s 90SF(3) for de facto relationships.

⁸⁸ This view informed Commissioner Geoff Sinclair's dissent on Recommendations 12 and 16; see Australian Law Reform Commission (n 20) 239 [7.97].

⁸⁹ In the Longitudinal Study of Separated Families, only 7% of couples reported resolving their property arrangements through the courts, with approximately 60% reporting that arrangements were made through discussions or that it 'just happened'; a further 29% reported using the services of a lawyer and 4% used mediation: Lixia Qu et al, *Post-Separation Parenting, Property and Relationship Dynamics after Five Years* (Attorney General's Department (Cth), 2014) 98.

Key recommendations from the ALRC contemplate simplification of the provisions governing property division,⁹⁰ and the introduction of a presumption of equal contributions to the relationship.⁹¹ These recommendations are aimed at affording separated couples with greater guidance in reaching a just and equitable property division without formal legal assistance. The Productivity Commission's 2014 report on access to justice suggests this is an important goal, as the costs of using the court to reach a property settlement are likely to be disproportionate to the relatively small property pool of the majority of separated couples in Australia, and legal costs will be prohibitive in many cases.⁹²

In making this recommendation, the ALRC noted evidence that mothers typically receive greater than 50% of the property pool under current arrangements.⁹³ In particular, assessing the 'future needs' of the parties commonly involves making an adjustment in favour of mothers, based on factors such as their caring responsibilities and lower earning capacity. The ALRC recommended that the legislation explicitly state the steps that must be taken in determining what adjustment should be made to the parties' interests in property, including consideration of a revised list of factors relating to 'future need'.⁹⁴ The ALRC was thus of the view that its recommendation should not lead to any diminution in the share of property received by parents with greater caring responsibilities, an outcome which it said would be 'unacceptable'.⁹⁵

Nevertheless, critics of a presumption of equal contributions argue that a 50/50 starting point may represent a step backward for women.⁹⁶ For example, women with caring responsibilities may misunderstand that they are only entitled to 50% of the property, or may not be sufficiently empowered to argue for a greater share of the assets, particularly if they do not access legal representation. This raises the question of

⁹⁰Australian Law Reform Commission (n 20) Recommendation 11.

⁹¹Ibid Recommendation 12. See also Recommendation 16 in respect of a presumption of equal sharing of the value of superannuation assets accumulated during a relationship.

⁹²Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, Vol 2, 2014) 872. Most separated couples who participated in the Longitudinal Study of Separated Families reported asset pools of less than \$300,000: Qu et al (n 89) 92.

⁹³Australian Law Reform Commission (n 20) 201 [6.23], citing Qu et al (n 89) 102; Rae Kaspiew and Lixia Qu, 'Property Division after Separation: Recent Research Evidence' (2016) 30(1) *Australian Journal of Family Law* 1, 19; Christopher Turnbull, 'Family Law Property Settlements: Principled Law Reform for Separated Families' (PhD Thesis, Queensland University of Technology, 2017) 203.

⁹⁴Australian Law Reform Commission (n 20) Recommendation 11; see also 219 [7.8].

⁹⁵Ibid 225 [7.36].

⁹⁶See, eg, Belinda Fehlberg, Lisa Sarinas and Jenny Morgan, 'The Perils and Pitfalls of Formal Equality in Australian Family Law Reform' (2018) 46 *Federal Law Review* 367.

whether this recommendation is inconsistent with the respect of human dignity, and particularly with implementation of article 3 of CEDAW, which calls for state parties to take appropriate measures to ensure the full development and advancement of women. However, it is not clear that the recommended reform would present any additional challenges than under the current law, which requires parties to argue for any adjustment to existing legal and equitable interests in property. Indeed, carers who have little or no assets 'in their name' may particularly benefit from a presumption of equal contributions to property during the relationship. The recommended reform would need to be monitored using empirical research, in order to assess its impact on couples across a diverse range of financial circumstances.

E A Statutory Tort for Family Violence

The ALRC also recommended the introduction of a statutory tort that would allow compensation for harm caused by family violence to be pursued in the family courts as part of property proceedings.⁹⁷ This recommendation is consistent with the general imperative in human rights instruments to ensure that any persons whose rights or freedoms have been violated have an effective legal remedy.⁹⁸ In particular, the *Declaration on the Elimination of Violence against Women* provides that states should ensure that women who are subjected to violence have access to appropriate remedies for the harm they have suffered.⁹⁹

The recommended cause of action would replace the common law principles that currently govern how family violence is taken into account in property division proceedings. In accordance with the decision in *Kennon & Kennon*,¹⁰⁰ an adjustment to property interests may be made in 'exceptional' cases to address the impact of a course of violent conduct on a party's 'contributions' to the marriage. The work of Professors Easteal, Warden and Young suggests that adjustments on this basis are rare and, typically, modest.¹⁰¹

⁹⁷ Australian Law Reform Commission (n 20) Recommendation 19.

⁹⁸ *ICCPR* (n 11) art 2; *Universal Declaration of Human Rights* (n 2) art 8.

⁹⁹ *Declaration on the Elimination of Violence Against Women* (n 25) art 4(d).

¹⁰⁰ *Kennon & Kennon* (1997) 22 FamLR 1.

¹⁰¹ Patricia Easteal, Catherine Warden and Lisa Young, 'The Kennon "Factor": Issues of Indeterminacy and Floodgates' (2014) 28(1) *Australian Journal of Family Law* 1, 9.

In a judgment that post-dates the law reflected in the ALRC's final report, the Full Court of the Family Court of Australia clarified that the *Kennon* principle does not require evidence that permits 'quantification' of the impact of the violent conduct on the claimant party's contributions.¹⁰² There must, however, be 'an evidentiary nexus between the conduct complained of and the capacity (and or effort expended) to make relevant contributions'.¹⁰³

The shift away from a contributions framework (per *Kennon*) to a compensatory framework, as contemplated by the ALRC's recommendation, may be seen to have merit from the perspective of upholding the dignity of persons who have experienced family violence. Compensation involves the recognition of harms caused by conduct that is held out to be wrong, rather than asking how the conduct may have limited the victim's contribution to the relationship per *Kennon*. Incorporating a statutory tort within the *Family Law Act* would also notably enable compensation to be sought in conjunction with the resolution of property matters upon separation, whereas existing common law causes of actions would require the institution of separate civil proceedings.

From another perspective, promoting the importance of family violence in property division may be seen as re-introducing, to some extent, a 'fault-based' approach and so detracts from the aim of dignified proceedings sought by a presumption of equal contribution. However, where acts of violence have caused substantial harm to a party, it would arguably be an abrogation of duties to protect human dignity to ignore the impact of those acts when dividing up the parties' property.

IV CONCLUSION

Issues pertaining to human dignity were of relevance in a number of ways throughout the ALRC family law inquiry. This is perhaps unsurprising, given that family law deals primarily with intimate human relationships. It is not suggested that a human dignity framework is the only appropriate lens through which the ALRC could properly have conducted the family law inquiry. The inquiry was broad-ranging, involving consideration of a diverse range of topics, and a number of issues of principle were raised. However, the examples in this paper arguably demonstrate that explicitly

¹⁰² *Keating & Keating* (2019) 59 FamLR 158, 165–6 [38]–[39], [43].

¹⁰³ *Ibid* 166 [39].

incorporating human dignity concepts into the inquiry's approach may have added value in a number of ways.

First, a human dignity framework would reflect the strong links between family law and human rights. It would facilitate and promote consideration of the many human rights obligations that are relevant to the design and operation of the family law system. This article has particularly focused on rights such as protection from harm and privacy. However, a human dignity framework would accommodate explicit consideration of the wide spectrum of human rights that are relevant to family law.

Secondly, this article has highlighted that it is often not a straightforward matter to identify whether a particular measure will ultimately be the best option for promoting human dignity. For example, there are sometimes tensions between multiple relevant human rights that need to be managed. A human dignity framework may have provided a useful tool for balancing these competing aspects of human dignity.

Thirdly, dignity was evidently a prominent concern for a significant proportion of people engaging with the inquiry process, including individuals and professional stakeholders. Highlighting the importance of human dignity in the inquiry approach may assist to reflect that concern and thereby demonstrate active engagement with it.

Fourthly, a focus on human dignity would appear consistent with legislation that requires the ALRC to consider Australia's international obligations.

In any event, a number of ALRC recommendations arguably seek to enhance human dignity. For example, this article has highlighted measures aiming to protect parties from harm and minimise the 'indignity' of litigation. It is relatively common ground that these are worthy goals. It remains to be seen how the ALRC inquiry will influence progress towards their achievement.

REFERENCE LIST

A Articles/Books/Reports

- Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Report No 135, March 2019)
- Australian Law Reform Commission, *Review of the Family Law System* (Discussion Paper No 86, October 2018)
- Australian Law Reform Commission, *Review of the Family Law System* (Issues Paper No 48, March 2018)
- Barroso, Luis, 'Here, There and Everywhere: Human Dignity in Contemporary Law and in the Transnational Discourse' (2012) 35(2) *Boston College International & Comparative Law Review* 331
- Capps, Patrick, *Human Dignity and the Foundations of International Law* (Hart Publishing, 2009)
- Department of Justice (Canada), *Unified Family Court Summative Evaluation* (Final Report, 2009)
- Easteal, Patricia, Catherine Warden and Lisa Young, 'The Kennon "Factor": Issues of Indeterminacy and Floodgates' (2014) 28(1) *Australian Journal of Family Law* 1
- Family Court of Australia, *Family Court of Australia 2017–18 Annual Report* (2018)
- Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection System* (Interim Report, 30 June 2015)
- Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* (Report, July 2001)
- Fehlberg, Belinda, Lisa Sarmas and Jenny Morgan, 'The Perils and Pitfalls of Formal Equality in Australian Family Law Reform' (2018) 46 *Federal Law Review* 367
- Fineman, Martha Albertson, 'Vulnerability and Inevitable Inequality' (2017) 4(3) *Oslo Law Review* 133

Fogarty, John, 'Establishment of the Family Court of Australia and its Early Years' (2001) 60 *Family Matters* 90

House of Representatives Standing Committee on Family and Community Affairs, Parliament of Australia, *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation* (Report, 2003)

House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Report, 2017)

Ingleby, Richard, 'Family Law for the Future – A Response to the ALRC “Radical” Recommendation' (2019) 93 *Australian Law Journal* 815

Kaspiew, Rae et al, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report* (Australian Institute of Family Studies, 2015)

Kaspiew, Rae and Lixia Qu, 'Property Division after Separation: Recent Research Evidence' (2016) 30(1) *Australian Journal of Family Law* 1

Parkinson, Patrick, 'Family Property Division and the Principle of Judicial Restraint' (2018) 41(2) *University of New South Wales Law Journal* 380

Pearce, Dennis and Robert Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014)

Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, Vol 2, 2014)

Qu, Lixia et al, *Post-Separation Parenting, Property and Relationship Dynamics after Five Years* (Attorney General's Department (Cth), 2014)

Riley, Stephen, 'Architectures of Intergenerational Justice: Human Dignity, International Law and Duties to Future Generations' (2016) 15(2) *Journal of Human Rights* 272

Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Report on the Law and Administration of Divorce and Related Matters and the Clauses of the Family Law Bill 1974* (Parliamentary Paper, No 133, October 1974) 44

Steinmann, Rinie, 'The Core Meaning of Human Dignity' (2016) 19(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1

Wright, Danaya, 'Theorizing History: Separate Spheres, the Public/Private Binary and a New Analytic for Family Law History' [2012] *Australia & New Zealand Law and History E-journal* 44

B Cases

AH & SS [2005] FamCA 854

Finazzi & Finazzi [2012] FamCA 102

Keating & Keating (2019) 59 FamLR 158

Kennon & Kennon (1997) 22 FamLR 1

Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273

Newport & Newport [2018] FamCA 472

Simic & Norton [2017] FamCA 1007

C Legislation

Australian Law Reform Commission Act 1996 (Cth)

Family Law Act 1975 (Cth)

D Treaties

Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Rights of the Child, opened for signature 20 December 1989, 1577 UNTS 3 (entered into force 2 September 1990)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

E Submissions to Australian Law Reform Commission, Review of the Family Law System

Australian Dispute Resolution Advisory Council (ADRAC), Submission No 12

CatholicCare Diocese of Broken Bay, Submission No 197

Farrar Gesini Dunn, Submission 140

Law Council of Australia, Submission No 43

Moores and MELCA, Submission No 222

National Family Violence Prevention Legal Services Forum, Submission No 293

PeakCare Queensland, Submission No 72

R Alexander, Submission No 131

Relationships Australia, Submission No 317

Royal Australian and New Zealand College of Psychiatrists, Submission No 18

Victorian Women Lawyers, Submission No 84

Western Sydney CLC, Submission No 8

F Other

Attorney-General's Department, 'Family Violence' (Webpage)

<www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>

Australian Law Reform Commission, *Family Law - Summary of Tell Us Your Story Responses* (ALRC News, June 2019) <<https://www.alrc.gov.au/news/family-law-summary-of-tell-us-your-story-responses/>>

Brandis, George, Attorney-General of Australia, 'Review of the Family Law System' (Terms of Reference, Australian Law Reform Commission, 17 August 2017)

Commonwealth, *Parliamentary Debates*, House of Representatives, 9 April 1975, 1375–1377 (Dr JF Cairns)

Commonwealth, *Parliamentary Debates*, House of Representatives, 28 November 1974, 4321–23 (Mr Whitlam)

Declaration on the Elimination of Violence Against Women, GA Res 48/104, UN Doc A/48.104 (23 February 1994, adopted 20 December 1993)

Dessau, Justice Linda 'A Unified Family Court' (Paper, Third National Family Court Conference, 23 October 1998)

Parliament of Australia, Terms of Reference, Joint Select Committee on Australia's Family Law System (19 September 2019)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Terms_of_Reference>

Turnbull, Christopher, 'Family Law Property Settlements: Principled Law Reform for Separated Families' (PhD Thesis, Queensland University of Technology, 2017)

Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 (10 December 1948)

United Nations Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4, Annex (28 September 1984)