

grandparents
V I C T O R I A



TIME TO STRENGTHEN THE FAMILY LAW ACT OF AUSTRALIA

**GPV/KCV RESPONDS TO REVIEW QUESTIONS RELATED
TO CHANGES TO THE FAMILY LAW ACT, POSED BY THE AUSTRALIAN
LAW REFORM COMMISSION**





Grandparents Victoria and Kinship Carers Victoria are supported by the Victorian Government.

14 Youlden Street Kensington 3031
Telephone: (03) 9372 2422
Email: director@grandparents.com.au
www.grandparents.com.au
www.kinshipcarersvictoria.org.au

Introduction

Grandparents Victoria/Kinship carers Victoria (GPV/KCV) is pleased to respond to this review because both organisations respect the rule of law and believe that a strong legal system is a strong framework on which to build a society that respects and upholds the rights of its citizens, particularly the rights of children and families.

GPV/KCV welcomes any changes to the *Family Law Act* which will improve children's access to representation in legal proceedings affecting their future outcomes, and the promotion of their best interests within these proceedings.

GPV/KCV notes two further considerations which do not appear in the discussion questions presented by the Australian Law Reform Commission:

- The 2006 reforms giving the courts the ability to consider the relationship between grandchildren and their grandparents have gone some way towards making it easier for grandparents to maintain contact with their grandchildren after a family breakdown, but GPV still receives many calls for help and advice each year from grandparents who have been denied access to their grandchildren by the child's parents.
- Grandparents continue to need support from the Family Law Court in enforcement of restraining orders and access arrangements. They often find themselves in the invidious position of 'go-between' in family dispute situations, involving them in divided loyalties and the need to make decisions for which they are usually neither trained nor experienced.

About Grandparents Victoria

Grandparents Victoria (GPV) was founded in 2001 as a statewide not-for-profit organisation of grandparents who believe that grandparents have a role to play in supporting families, particularly children.

<http://grandparents.com.au>

About Kinship Carers Victoria

Kinship Carers Victoria (KCV) was formed by GPV in 2010 to:

- help kinship carers in Victoria be supported in their role according to their needs and the needs of the children they care for
- identify, promote and represent the views of kinship carers in decision-making processes
- inform and train carers to enable them to better perform their role as carers
- advocate the needs of kinship carers with decision-makers
- promote and assist in the delivery of programs designed to support kinship carers.

<http://kinshipcarersvictoria.org>

Guardian ad Litem – relief for a number pressure points

In 2012 Anne McLeish, Director of GPV/KCV, visited Vermont in the US to look at support offered to kinship carers. Whilst there, she was introduced to the scheme of *Guardians ad Litem* (GAL). Since that time, GPV/KCV has advocated for the implementation of a similar system in the family courts of Victoria.

The benefits of having a GAL to represent a child's best interests in court proceedings were recognised in Western Australia as far back as 1971 and were enshrined into law in the *Legal Representation of Infants Act 1977*. The limited role of a GAL in WA is, however, substantially different from that proposed here.

What GPV/KCV proposes is a more holistic approach to child representation.

As demonstrated in Vermont, a *Guardian ad Litem* is a unique type of guardian who interacts with each case only for the duration of a legal action. Completely independent of both family members and child protection practitioners, *Guardians ad litem* are appointed by the courts and are legally responsible for protecting the wellbeing and interests of children in court proceedings. The sole aim of a GAL is to achieve the most safe and positive outcomes for the child(ren) whom they represent. *Guardians ad litem* investigate, attend to the child's emotional and legal needs, monitor the child's family, and seek to shield the child from the often-bruising experience of a lawsuit. They are there to represent the views, opinions, wishes and feelings of the child(ren) in any mediation or court proceedings, and also play a crucial role in explaining the legal proceedings to the child(ren) in a way that can be more easily understood.

How the system operates in the US varies between jurisdictions. In some states, such as Wisconsin, the GAL is a licensed legal practitioner, while in others the GAL may be a law student or volunteer who has been through a specialised training course. From GPV/KCV's point of view, one of the most important qualifications for a GAL is ongoing training in trauma-informed practice, and having the ability to balance the representation of the child(ren)'s wishes with the child(ren)'s best interests.

GPV/KCV has learned that a system of GAL similar to that proposed for Victoria already operates within the NSW justice system but has yet to extend to Victoria.

GPV/KCV believes that the extension of a system of *Guardians ad Litem* as described above into the family courts Australia-wide could be an effective solution to many of the challenges raised by questions 3, 4, 10, 11, 12, 14, 20, 23, 26, 34, 35, 36, 37 and 39 in the Australian Law Reform Commission issues paper. *The Family Law Act* should make provision for such a system to be rolled out nation-wide, which would go some way to promoting the best outcomes for families and children in the family law system – particularly in the circumstances outlined in the numbered questions noted above.

Sources:

<http://www.gal.justice.nsw.gov.au/>

http://www.lrc.justice.wa.gov.au/_files/P23.pdf

GPV/KCV response to a selection of other questions posed by the Australian Law Reform Commission issues paper

Objectives and principles	
1. What should be the role and objectives of the modern family law system?	<ul style="list-style-type: none"> To establish a legal framework for the protection of family rights.
2. What principles should guide any redevelopment of the family law system?	<ul style="list-style-type: none"> The principles set out in the UN Convention on the Rights of the Child and those held by the Australian Human Rights Commission, which states on its website that 'human rights are about recognising and respecting the inherent value and dignity of all people'.
Access and engagement	
3. In what ways could access to information about family law and family-law related services, including family violence services, be improved?	<p>Making available:</p> <ul style="list-style-type: none"> A plain English-speaking version of the <i>Family Law Act</i> A series of pamphlets in community languages that explain the <i>Family Law Act</i> A small grants program allowing community groups wanting to conduct seminars about families and the law to do so A series of podcasts explaining the <i>Family Law Act</i> to particular client groups such as grandparents A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
4. How might people with family-law related needs be assisted to navigate the family law system?	<ul style="list-style-type: none"> Easier access to legal aid services for families and most particularly grandparents who have demonstrated concerns about the welfare of their grandchildren A telephone counselling service that enables citizens to put their issue(s) to a person expert in the <i>Family Law Act</i> and who will point out where the act supports their cause A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
5. How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?	<ul style="list-style-type: none"> Easier access to legal aid services Use of technology such as Internet/video conferencing for clients in remote areas
6. How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?	<ul style="list-style-type: none"> Provision of translators in languages most commonly spoken by clients Availability of pamphlets in a variety of languages Encourage family law specialists to advertise if they speak other languages.

<p>7. How can the accessibility of the family law system be improved for people with a disability?</p>	<ul style="list-style-type: none"> • Use of technology such as Internet/video conferencing for clients who would otherwise find it difficult to attend family law proceedings • Provision of advocates to assist with explaining proceedings to those with an intellectual disability.
<p>8. How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?</p>	<p>See response 5 above</p>
<p>9. How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?</p>	<ul style="list-style-type: none"> • Use of technology such as Internet/video conferencing for clients who would otherwise find it difficult to attend family law proceedings • More flexibility in the timing of court sessions to assist farming families • Information distributed via local governments.
<p>10. What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?</p>	<ul style="list-style-type: none"> • Send copies of documents via electronic mail rather than as printed hardcopies • Introduce some system to assist working families to lose less paid work hours waiting in corridors for a hearing, for example, more accurate timetabling of court appearances • A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
<p>13. What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?</p>	<ul style="list-style-type: none"> • Provision of a waiting room or rooms for families with children, kept separate from other court areas.
<p>Legal principles in relation to parenting and property</p>	
<p>15. What changes could be made to the definition of family violence, or other provisions regarding family violence, in the <i>Family Law Act</i> to better support decision-making about the safety of children and their families?</p>	<ul style="list-style-type: none"> • Adopt definitions used in the 2015 Federal Enquiry into Family violence, Domestic violence in Australia, and the report of the Victorian Royal Commission into Family Violence, delivered in March 2016.
<p>Resolution and adjudication processes</p>	

<p>21. Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute-resolution processes or services to facilitate earlier resolution of disputes?</p>	<ul style="list-style-type: none"> • Yes – mandate this.
<p>23. How can parties who have experienced family violence or abuse be better supported in court?</p>	<ul style="list-style-type: none"> • Protection from abusers, if abusers are also to be involved in proceedings • Security measures should be managed so that the victims do not feel penalised • A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
<p>24. Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?</p>	<ul style="list-style-type: none"> • Yes. Family dispute resolution should be a mandated first step in all disputes within the family law system.
<p>25. How should the family law system address misuse of process as a form of abuse in family law matters?</p>	<ul style="list-style-type: none"> • There should be a limit on the number of times clients can access legal aid to challenge family court decisions; for example, a parent can challenge the custody of their children multiple times and receive legal aid funding each time, while the child’s carers must use their own money to fight the challenge.
<p>27. Is there scope to increase the use of arbitration in family disputes? How could this be done?</p>	<ul style="list-style-type: none"> • Yes – arbitration should be a mandated step prior to court proceedings.
<p>28. Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?</p>	<ul style="list-style-type: none"> • Provided these methods can be used safely and securely
<p>29. Is there scope for problem-solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?</p>	<ul style="list-style-type: none"> • Family conferences should be held which take into account the feelings of as many family members as possible, including parents, grandparents, children, and others with a close link to the children.

<p>30. Should family-inclusive decision-making processes be incorporated into the family law system? How could this be done?</p>	<ul style="list-style-type: none"> • Family conferences should be held which take into account the feelings of as many family members as possible, including parents, grandparents, children, and others with a close link to the children • Grandparents clearly often see themselves as the remaining stable element that their grandchildren have when those children’s parents divorce or separate. At the same time, grandparents express a degree of frustration as to their legal rights in such situations. There is widespread ignorance of Family Law Court processes that acknowledge the important place grandparents can/could play in diminishing the ill effects of family breakdowns.
<p>Integration and collaboration</p>	
<p>33. How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?</p>	<ul style="list-style-type: none"> • Develop systems to ensure that confidential information held by child protection authorities which is shared with the courts is not also accidentally distributed to other parties to the proceedings, such as abusers from whom children are being protected.
<p>Children’s experiences and perspectives</p>	
<p>34. How can children’s experiences of participation in court processes be improved?</p>	<ul style="list-style-type: none"> • Children should be kept away from the adversarial elements of court processes as much as possible. • A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
<p>35. What changes are needed to ensure children are informed about the outcome of court processes that affect them?</p>	<ul style="list-style-type: none"> • Children should have the outcome of proceedings explained to them in language they can understand by an independent adult, such as via a program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission • There should be an opportunity for children to have any follow-up questions answered.
<p>36. What mechanisms are best adapted to ensure children’s views are heard in court proceedings?</p>	<ul style="list-style-type: none"> • A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission.
<p>37. How can children be supported to participate in family dispute resolution processes?</p>	<ul style="list-style-type: none"> • A program of <i>Guardians ad Litem</i>, as discussed on page 5 of this submission • Alternatively, the child(ren) should be allowed to choose a trusted person, such as a teacher, to support them during dispute resolution.

<p>38. Are there risks to children through involving them in decision-making or dispute-resolution processes? How should these risks be managed?</p>	<ul style="list-style-type: none"> • Involvement in adversarial court processes can be traumatic for children. As much as possible, they should be excused from attending any parts of a proceeding that may be harmful for them to hear, such as cross-examination of parents or carers • Any questioning of children should be undertaken in a manner that empowers them to speak their own thoughts and wishes without putting undue pressure on them • Children should not be asked to remain in the same room as someone who has a history of abusing them.
<p>39. What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?</p>	<ul style="list-style-type: none"> • A program of Guardians ad Litem, as discussed on page 5 of this submission • Alternatively, the child(ren) should be allowed to choose a trusted person, such as a teacher, to support them during dispute resolution.
<p>40. How can efforts to improve children’s experiences in the family law system best be improved through the experiences children and young people have of its processes?</p>	<ul style="list-style-type: none"> • Any attempts to collect data from children and young people as to their experiences in the family law system must tread a fine line between collecting accurate data that may assist others in the future, and not adding to the difficulty or negativity of the experience for children and young people who may already be experiencing trauma.
<p>Professional skills and wellbeing</p>	
<p>41. What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?</p>	<ul style="list-style-type: none"> • Professionals in the family law system should be able to demonstrate proven experience in dealing with families and children • Professional development should include modules delivered prior to taking up official positions and ongoing on-the-job training. Both should address key issues and research related to a range of matters affecting families, such as the effects of trauma on the understanding of children.
<p>42. What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?</p>	<p>See response 41 above.</p>
<p>43. How should concerns about professional practices that exacerbate conflict be addressed?</p>	<ul style="list-style-type: none"> • There should be at each court a process that allows families to lodge complaints and have them heard by an independent panel • Court procedures need to be thoroughly vetted, and those that are deemed to exacerbate conflict should be modified or discontinued if possible.

<p>44. What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?</p>	<ul style="list-style-type: none"> • A counselling service should be available to family law professionals who have been affected by cases in which they are involved • Staff levels need to be high enough to ensure that family law professionals are not asked to deal with more cases at any one time than they can handle, and to cover any time off that may be required to prevent 'burn-out'.
<p>Governance and accountability</p>	
<p>45. Should s121 of the <i>Family Law Act</i> be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?</p>	<ul style="list-style-type: none"> • No. The privacy of all parties involved needs to be protected, as does the principal of separation of powers, which relies on a certain level of confidentiality surrounding legal proceedings. This protection should extend not merely to the families and children, but also the court personnel involved in the proceedings.