

# Innovation and Technology in the Legal Industry: A Focus on Family Law



Article by Bridget Barrie, Paralegal at O'SheaDyer Solicitors and final year law student at QUT.

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## Introduction

The occurrence of self-represented litigants within the Australian legal system is now commonplace. Innovative resources have been developed to assist the self-represented litigant navigate the Australian legal system. This article will examine innovation and technology aimed towards self-represented parties in family law matters and discuss whether such innovations assist with upholding the rule of law by improving access to justice. This article draws from a variety of resources and focuses on the legal need these technologies address as well as barriers to their implementation.

Innovation and technology, through automation, have influenced many different industries and professions. Although the legal industry has initially been slower than many to embrace these innovations, there have now been a significant number of advances in how legal services are delivered to clients.<sup>1</sup> There is a growing trend among some legal service providers to implement innovative processes and technology to provide more affordable and transparent legal services. These legal service providers are unofficially classified as NewLaw firms.<sup>2</sup> Many NewLaw firms, as part of their philosophy, are targeted towards litigants who would otherwise have to self-represent.<sup>3</sup>

This paper will analyse three innovations namely automated legal advice tools, limited scope legal services and online alternative dispute resolution. The services provided by these innovations will be applied to the specific needs of self-represented litigants in family law matters to determine whether they assist with upholding the rule of law by improving access to justice, as well as exploring any barriers to their implementation.

The article will discuss the wide range of reasons for self-representation, the varying skill level of the parties and the differing complexities of each family law matter. The

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<sup>1</sup> Judith Bennett et al, *Current State of Automated Legal Advice Tools* (Discussion Paper, No 1, Networked Society Institute, April 2018) 5 ('Bennett et al').

<sup>2</sup> Ibid; James Gonczl, *Transforming the Legal Landscape: The NewLaw Philosophy* (LegalVision).

<sup>3</sup> *Transforming the Legal Landscape: The NewLaw Philosophy* (LegalVision) ('Gonczl').

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article will specifically discuss family law matters with family violence issues and discuss the suitability of these innovations to assist matters with such complexities.<sup>4</sup>

Further, this article will deduce that recent innovations are suitable for a very small demographic of self-represented litigants and do not improve access to justice for many parties. Recommendations will be discussed which aim to improve the accessibility of these services particularly for self-represented litigants who have experienced family violence.

## 1. INNOVATION

This article focuses on a diverse range of innovations being employed throughout the Australian legal system at the present time. The aim of innovation is to improve, and particular focus will be given to three innovations which are intended to improve access to justice for self-represented litigants. These innovations can be characterised as NewLaw services which fall under the NewLaw philosophy of delivering legal services more efficiently and under changing cost models.<sup>5</sup>

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<sup>4</sup> Emma Ryan, 'NewLaw influence gaining more ground' *Lawyers Weekly* (Web Page, 17 July 2017) <<https://www.lawyersweekly.com.au/newlaw/21498-newlaw-influence-gaining-more-ground>> ('Ryan').

<sup>5</sup> *Gonczi* (n 3).

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## 1.1 Automated Legal Advice Tools

Digital innovations include the development of automated legal advice tools (ALATs).<sup>6</sup> The main purpose of ALATs is to provide legal advice as regulated by the legal profession.<sup>7</sup> This article will focus specifically on Amica, an ALAT developed for couples going through separation.<sup>8</sup>

Amica is available as an online service for desktop or mobile and assists couples in coming to an agreement regarding parenting or financial matters.<sup>9</sup> According to their website, Amica's artificial intelligence will take into account all necessary considerations to work out a fair agreement such as the length of the relationship, age, health needs, contributions and future needs.<sup>10</sup> This article will explore the benefits of services like Amica, which have the potential to enable couples to resolve problems themselves and avoid the court process altogether.<sup>11</sup> The article will discuss the limitations of such services such as a lack of suitability for some family law matters and the requirements of both parties to have a certain level of digital literacy and accessibility.<sup>12</sup> The benefits and limitations will be discussed in correlation with their effect on access to justice and upholding the rule of law.

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<sup>6</sup> Bennett et al (n 1).

<sup>7</sup> Ibid.

<sup>8</sup> Tania Sourdin, Bin Li, 'People are using artificial intelligence to help sort out their divorce. Would you?' *The Conversation* (Web Page, 22 July 2020) < <https://theconversation.com/people-are-using-artificial-intelligence-to-help-sort-out-their-divorce-would-you-142731> > ('Sourdin').

<sup>9</sup> Sourdin (n 8); 'A smart and simple way to separate', *Amica* (Web Page) < <https://amica.gov.au/how-it-works> >.

<sup>10</sup> 'A smart and simple way to separate', *Amica* (Web Page) < <https://amica.gov.au/how-it-works> > ('*Amica Website*').

<sup>11</sup> *Amica Website* (n 10); Sourdin (n 8).

<sup>12</sup> *Amica Website* (n 10); Sourdin (n 8).

## 1.2 Limited Scope Services

Limited scope or unbundled legal services involve a matter being broken down into multiple stages and tasks and a lawyer provides representation and assistance with a limited number of tasks.<sup>13</sup> The main purpose of providing limited scope services is to assist clients who do not have the financial means to retain a lawyer on a full-time basis.<sup>14</sup> The lawyer may assist with drafting material, providing advice or strategy or appearing at certain court events, depending on the client's instructions.<sup>15</sup> This article will explore the benefits of limited scope services in assisting self-represented litigants particularly in family law matters. The article will also consider the effectiveness of these services for particular self-represented parties and discuss barriers to implementation such as the extent of liability for the lawyer.

## 1.3 Online Alternative Dispute Resolution

Online Alternative Dispute Resolution ('OADR') operates outside of the court system.<sup>16</sup> The form of OADR can vary and may include a web page, smart phone or tablet.<sup>17</sup> The technology is used in many types of legal disputes but particularly in family law matters where attempted mediation is a requirement before parties can file an application in the court.<sup>18</sup> Where a dispute relates to a low value matrimonial property pool, parties may be denied access to justice because the cost of engaging legal representation or seeking advice is higher than the settlement outcome they are seeking.<sup>19</sup> Self-represented parties may be assisted by an impartial dispute resolution practitioner in an online forum to come to a settlement outcome instead of engaging in

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<sup>13</sup> Michael Legg, Michael, 'Flip: Recognising a new form of legal practice: Limited scope services' (2018) 50 (January) *Law Society of NSW Journal* 74 ('Legg').

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Legg, Michael, 'The Future of Dispute Resolution: Online ADR and Online Courts' (2016) 71 (July) *Forthcoming – Australasian Dispute Resolution Journal, UNSW Law Research Paper* ('Legg').

<sup>17</sup> Ibid.

<sup>18</sup> Ibid; *Family Law Act 1975* (Cth).

<sup>19</sup> Legg (n 16).

expensive court proceedings or simply choosing not to finalise property matters because they cannot afford the cost.<sup>20</sup> This paper will explore the type of self-represented litigant this service is targeted towards and any barriers OADR faces in its implementation.

## 2. Access to Justice

An integral element of the principle of the rule of law is that all Australians have the right to seek justice and justice must be accessible.<sup>21</sup> However, the right to seek justice does not automatically ensure that all Australians are in a position to access justice.<sup>22</sup> It has been estimated that each year, one in four Australians will experience a legal problem that requires legal assistance.<sup>23</sup> Self-represented litigants are common in all areas of law in Australia and the reasons for the lack of legal representation are varied.<sup>24</sup> The most common barriers to obtaining legal assistance are education and literacy levels, language barriers, financial circumstances, physical accessibility, access to information and technology, past trauma engaging with the legal process and a lack of knowledge around rights and access to assistance.<sup>25</sup> Whatever the reason, not having access to legal advice or representation means the self-represented litigant may not get the correct information about the law, they may not be able to understand the outcome of their legal matter and their voice may not be heard adequately when arguing their matter.<sup>26</sup>

The scope of this article is to examine the characteristics and needs of self-represented parties in family law matters. The most common reason for self-representation in

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<sup>20</sup> Ibid; Catherine Caruana, 'Meeting the needs of self-represented litigants in family law matters' (2002) *Family Matters, Australian Institute of Family Studies* 38 ('Caruana').

<sup>21</sup> Law Council of Australia, 'Access to Justice: The Justice Project' (Web Page, 2020) <<https://www.lawcouncil.asn.au/justice-project/access-to-justice>> ('The Justice Project').

<sup>22</sup> Ibid.

<sup>23</sup> Ibid; Law Council of Australia, 'Final Report: The Justice Project' (Web Page, 2020) <<https://www.lawcouncil.asn.au/justice-project/final-report>> ('Final Report').

<sup>24</sup> *The Justice Project* (n 21).

<sup>25</sup> *The Justice Project* (n 21); *The Final Report* (n 23).

<sup>26</sup> *The Justice Project* (n 21); *The Final Report* (n 23).

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family law is due to the financial circumstances of the individual.<sup>27</sup> Often in matrimonial property matters, the asset pool is smaller than the cost of engaging with the court process and this can deter parties from retaining a lawyer.<sup>28</sup> Another reason is often parties do not meet the threshold to qualify for Legal Aid but their income is not high enough to afford a lawyer.<sup>29</sup> It is this demographic that NewLaw services are targeted towards.<sup>30</sup> This article will consider how NewLaw services and innovation can assist those self-represented parties in accessing justice. The article will also identify possible barriers to the implementation of such services by distinguishing particular self-represented parties whose ability to access justice will not be improved by these services.

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<sup>27</sup> *Caruana* (n 20).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Gonczi* (n 3).

## 2.1 Access to Justice - Automated Legal Advice Tools

The ALAT known as Amica is directed at separated or separating couples who wish to negotiate and record parenting arrangements for their children and/or divide their matrimonial property without engaging a lawyer.<sup>31</sup> Rather than pay for advice from a lawyer and, potentially, the cost of engaging in the court process parties will instead pay a small fee to use Amica.<sup>32</sup> This service benefits couples whose property pool is modest and they do not have the financial resources to retain lawyers, thus improving access to justice for this demographic. However, as listed on Amica's website, there are certain situations where the platform will not be suitable.<sup>33</sup>

One example is the division of superannuation. Amica is not suitable if, as part of the division of matrimonial property the parties wish to equalise/split their superannuation interests.<sup>34</sup> Modest property pools may contain superannuation as the largest asset and often, the superannuation interest of one party is significantly higher than the other.<sup>35</sup> It is also possible for the property pool to include a significant superannuation interest yet the parties themselves cannot afford legal representation to finalise a property settlement agreement.<sup>36</sup> In this instance, one party will be significantly disadvantaged by not having the means to claim superannuation they may be entitled to pursuant to the *Family Law Act 1975 (Cth)*.<sup>37</sup>

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<sup>31</sup> Australian Government Attorney-General's Department, 'amica – An Online Dispute Resolution Tool' (Web Page, 2020) < <https://www.ag.gov.au/families-and-marriage/families/family-law-system/amica-online-dispute-resolution-tool> >.

<sup>32</sup> *Amica Website* (n 10).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Rohan Best, 'Quantifying Australia's Gender Superannuation Gap' (2021)97(318) *Economic Record* 410 ('Best'); Grania Sheehan, April Chrzanowski and John Dewar 'Superannuation and Divorce in Australia: An Evaluation of Post Reform Practice and Settlement Outcomes' (2008)22(July) *International Journal of Law, Policy and the Family* 206.

<sup>36</sup> Best (n 35); Grania Sheehan, April Chrzanowski and John Dewar 'Superannuation and Divorce in Australia: An Evaluation of Post Reform Practice and Settlement Outcomes' (2008)22(July) *International Journal of Law, Policy and the Family* 206.

<sup>37</sup> Best (n 35); Grania Sheehan, April Chrzanowski and John Dewar 'Superannuation and Divorce in Australia: An Evaluation of Post Reform Practice and Settlement Outcomes' (2008)22(July) *International Journal of Law, Policy and the Family* 206; *Family Law Act 1975 (Cth)*.

Gender is one of the main drivers of gaps in superannuation and on average, the difference between the superannuation balances of females and males is approximately \$60,000.00.<sup>38</sup> Given the high occurrence of a superannuation interest as part of a matrimonial property pool there is potential for a huge cohort of self-represented parties, most often females, to be denied access to justice due to this limitation.<sup>39</sup>

Another limitation of the Amica platform is that it is only suitable for reasonably amicable separations and is not appropriate for relationships where family violence is an issue.<sup>40</sup> Given the Family Law system has a high number of self-represented litigants and a high proportion of matters which involve family violence, this limitation suggests that a large number of self-represented litigants will not be able to access justice via the Amica platform or similar.<sup>41</sup>

Amica and other ALAT's provide a cost effective way to access justice for particular self-represented litigants who are reasonably amicable, and their issues are relatively simple. However, there are still a large group of self-represented litigants whose situation is not suitable for platforms of this type and the barriers to these litigants being able to access justice will persist.

## 2.2 Access to Justice - Limited Scope Services

Limited scope services is a NewLaw approach to legal representation aimed at parties who cannot afford full legal representation and is common in family law matters.<sup>42</sup> This type of representation is sometimes referred to as 'unbundled legal services' or 'shadowing' and is relatively new to Australia, so much so that limited scope services are not recognised by any legal professional legislation, ethics rules or court rules in

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<sup>38</sup> Best (n 35).

<sup>39</sup> Ibid.

<sup>40</sup> Amica Website (n 10).

<sup>41</sup> Wangmann, Jane, Tracey Booth and Miranda Kaye *No straight lines: Self-represented litigants in family law proceedings involving allegations about family violence* (Research Report, 24, December 2020) ('No Straight Lines').

<sup>42</sup> Forrest S, Morten and Elizabeth Potter Scully, 'Unbundled Legal Services; A Family Lawyer's Guide' (2018)56 *Family Court Review* 709.



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Australia.<sup>43</sup> Although the representation is limited to whatever the client requests, the professional and ethics requirements of the lawyer apply in full.<sup>44</sup> It is for this reason that limited scope services require a clear retainer and the client should be competent enough to undertake the remaining elements of the matter without representation.<sup>45</sup>

Limited scope services are a worthwhile option for parties who cannot afford full legal representation as it provides access to justice in an affordable method.<sup>46</sup> However, this type of representation is beneficial only to parties who have the skills, capacity and confidence to manage periodic support.<sup>47</sup> Limited scope services will be of little to no use for parties who do not possess the confidence to partially manage their own legal matter.<sup>48</sup> There are many reasons why a party cannot successfully manage part of their legal proceedings such as education and literacy levels and language barriers. While this demographic may have the financial means to afford limited scope services, such services will not provide support that is adequate to ensure their access to justice.<sup>49</sup>

Limited scope services require partial self-representation and this has the potential to be unsuitable for family law matters where family violence is an issue.<sup>50</sup> Family violence issues have the potential to negatively affect all aspects of a family law matter including inadequate documentation of experiences in court material, feeling pressure to settle for an unsatisfactory outcome and family violence can often manifest in the court room setting.<sup>51</sup> Limited scope services are insufficient in these circumstances and are not a means of providing access to justice for self-represented parties in these situations.

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<sup>43</sup> Legg (n 13).

<sup>44</sup> Legg (n 13).

<sup>45</sup> Legg (n 13).

<sup>46</sup> Margaret Castles, 'Barriers to Unbundled Legal Services in Australia: Canvassing Reforms to Better Manage Self-Represented Litigants in Courts and in Practice' (2016)25(June) *Journal of Judicial Administration* 237 ('Castles').

<sup>47</sup> Ibid

<sup>48</sup> Ibid: Legg (n 13).

<sup>49</sup> Ibid: Legg (n 13).

<sup>50</sup> *No Straight Lines* (n 41).

<sup>51</sup> Ibid.

Limited scope services must be managed correctly by the legal practitioner and possible development of regulations are needed to ensure this type of legal representation works effectively for the client and legal practitioner.<sup>52</sup> Provided the client has the ability to partially self-represent in certain circumstances, limited scope services are a valuable way for parties in family law matters to gain access to justice.<sup>53</sup> However, this type of representation is not suitable for a substantial section of the self-represented demographic and issues with access to justice will continue for these parties.<sup>54</sup>

## 2.3 Access to Justice - Online Alternative Dispute Resolution

Online alternative dispute resolution offers an affordable way for parties in a family law matter to discuss their issues with the assistance of an impartial third party (mediator or dispute resolution practitioner) and attempt to reach a resolution.<sup>55</sup> This type of OADR is usually outside of the court process and is useful for low value property pool matters where going to court is more costly than the pool itself.<sup>56</sup> The best outcome in OADR is that the parties come to an agreement and avoid the court process entirely.

OADR has the potential to overcome many barriers to accessing justice. The participants are not limited by their geographical location. Language barriers can be overcome by the inclusion of an interpreter. Parties can also have a lawyer present to assist during the dispute resolution if they wish. However, OADR is not without its limits.

Although participants in OADR are assisted by a neutral third party who is either a trained mediator or dispute resolution practitioner, the parties still require a certain capacity and understanding of the matters at hand.<sup>57</sup> The level of understanding possessed by the parties can affect whether a successful outcome is achieved,

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<sup>52</sup> *Legg* (n 13).

<sup>53</sup> *Castles* (n 46); *Legg* (n 13).

<sup>54</sup> *Castles* (n 46); *No Straight Lines* (n 41).

<sup>55</sup> *Legg* (n 16).

<sup>56</sup> *Legg* (n 16).

<sup>57</sup> *Ibid.*

whether one party settles for a poor outcome and whether either party appreciates the neutral position of the mediator or dispute resolution practitioner.<sup>58</sup>

While OADR is not limited to amicable relationships with relatively simple issues there are some circumstances that will affect whether the mediation is successful. OADR is touted as suitable for family law matters with family violence issues as there is the option for the parties to have no contact with each other during the mediation.<sup>59</sup> Victims of family violence, without the buffer of a lawyer, often experience considerable pressure to settle for an unsatisfactory outcome.<sup>60</sup> There is also evidence to suggest that perpetrators of family violence may use the family law systems as a tool for abuse by refusing to settle and prolong proceedings.<sup>61</sup> There is no evidence to suggest that the parties not being able to see one another will completely mitigate these potential issues.<sup>62</sup>

OADR offers a useful option for separated parties to come to an agreement and avoid the court process altogether. However, as discussed above, there are sub-groups of the self-represented cohort who will not benefit from the use of OADR.

### 3. Case Study

#### 3.1 Self-represented Litigants and Family Violence

As discussed above, litigants in family law matters where family violence is an issue, can face unique difficulties when one or both parties self-represented.<sup>63</sup> This article has drawn from multiple sources in relation to this issue and in particular, a recent research report published by *Australian's National Research Organisation for Women's Safety Limited* ('ANROWS') titled "*No straight lines*": *Self-represented*

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> *No Straight Lines* (n 41).

<sup>61</sup> *No Straight Lines* (n 41).

<sup>62</sup> Ibid.

<sup>63</sup> *Caruana* (n 20).

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*litigants in family law proceedings involving allegations about family violence* ('the report').

The research was a qualitative exploratory study using a multimethod approach.<sup>64</sup> The first component was an interview sample consisting of 35 people in the first group, most of whom had represented themselves and some had faced a self-represented litigant in family law proceedings.<sup>65</sup> The second group consisted of 68 professionals who had engaged with self-represented litigants in family law proceedings.<sup>66</sup> The second component was an intensive case study examining individual cases where one or both parties were self-represented litigants.<sup>67</sup>

This report provides credible information about the reasons for self-representation and the impacts of self-represented litigants on the legal system.<sup>68</sup> The report was published in 2020 and therefore the information is current. The report is also consistent with the principles of the *Committee on Publication Ethics (COPE) Ethical Guidelines for Peer Review*.<sup>69</sup> The report supports the argument of this paper that even with innovations in the way legal advice is delivered, particular under the NewLaw philosophy, there is still a large group of people whose access to justice will not be improved.

The report found that the overwhelming motive for self-representation were financial reasons and in particular, parties who were not eligible for Legal Aid but could not afford the high cost of legal representation. This demographic is often referred to as the 'missing middle' and is the target demographic of the NewLaw philosophy.<sup>70</sup> One of the key findings of the report is that it is not possible to generalise the missing middle.<sup>71</sup> Self-represented litigants who fall into this category are not uniform and are incredibly varied in terms of their skill levels, resourcefulness and their approach to

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<sup>64</sup> *No Straight Lines* (n 41).

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *No Straight Lines* (n 41); *Gonczi* (n 3).

<sup>71</sup> *No Straight Lines* (n 41).

litigation.<sup>72</sup> With the added complexity of family violence issues it becomes impossible to apply a one size fits all approach to self-represented litigants in this category.<sup>73</sup>

The report concluded with recommendations to improve assistance for self-represented litigants moving forward. Participants had suggested a change to the business model of the legal profession and the way it charges within the family law system.<sup>74</sup> This recommendation canvassed the provision of further development of limited scope legal services to better accommodate self-represented litigants where family violence is an issue and allow for non-profit and or pro-bono legal practices.<sup>75</sup> The report also identified the need for a centralised online information hub that provides referrals and links to better assist the self-represented litigant navigate the family law system.<sup>76</sup>

These recommendations will be discussed in more detail when considering general recommendations for improving innovations and technology aimed at self-represented litigants particularly in family law matters.

## 4. Recommendations

### 4.1 Recommendations - Automated Legal Advice Tools

ALAT's such as Amica, discussed in this paper, are a useful resource for a small portion of self-represented litigants.<sup>77</sup> These tools are best suited to amicable parties who wish to document an agreement that is low in complexity.<sup>78</sup> For a large portion of self-represented litigants, services like Amica will not be suitable.<sup>79</sup> In cases involving issues of family violence, it is not likely that a service like Amica will ever be suitable in those circumstances.<sup>80</sup> A key area of concern is that although family law matters

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> *Amica Website* (n 10); *Sourdin* (n 8).

<sup>78</sup> *Amica Website* (n 10); *Sourdin* (n 8).

<sup>79</sup> *No Straight Lines* (n 41).

<sup>80</sup> Ibid.

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commonly include family violence issues, these two characteristics operate in separate jurisdictions and this creates a complex system for self-represented litigants to navigate.<sup>81</sup>

Self-represented litigants have expressed the need for a centralised information hub relating to family law and domestic violence matters.<sup>82</sup> While there is useful information on the court's webpage and the webpages of many government departments, these resources are difficult to navigate and do not cater to the varied skill levels of self-represented litigants<sup>83</sup>

A centralised information hub could be in the form of an ALAT, similar to Amica. Rather than supplying a negotiating platform for the parties, which would be unsuitable in these circumstances, the ALAT would be a centralised service with information about navigating the family law and domestic violence court systems. The service would also need to provide links to any relevant referral services such as counselling services. While the service would not necessarily provide legal representation, it would offer the self-represented litigant a complete guide through the family law and domestic violence court system and what is expected of them as a party to a proceeding.<sup>84</sup> This centralised information service could improve access to justice for parties to family law matters who find themselves having to self-represent and are struggling to navigate the complicated family law and domestic violence court system.<sup>85</sup>

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<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

## 4.2 Recommendations - Limited Scope Services

Limited scope services are becoming increasingly popular as an alternative to full legal representation for parties with modest financial means who do not qualify for Legal Aid.<sup>86</sup> This type of services allows the party to obtain advice and assistance when necessary and self-represent at other times.<sup>87</sup>

For limited scope legal services to be a valid tool in Australia for supporting access to justice, there needs to be further discussion around developing rules and professional codes of conduct for limited scope retainers, as has been achieved in other countries such as Canada and the US.<sup>88</sup>

As discussed, family violence issues add a further level of complexity to family law matters and this complexity often makes any level of self-representation unsuitable.<sup>89</sup>

As well as the need for clarity in regulation, any limited scope service for matters which include domestic violence, would need a retainer specifically tailored to these matters.<sup>90</sup> Practitioners offering limited scope services for such matters would need specialised knowledge in this area.<sup>91</sup> While there is education and training around knowing the law around family violence, this differs from understanding family violence, and the issues and impacts.<sup>92</sup> The legal practitioner would require specialised skills to understand how to apply limited scopes services to such a complex issue and would need to be able to make a decision on whether this type of services is suitable on a case by case basis.<sup>93</sup>

With adequate development of professional codes of conduct and specialised services as discussed above, limited scope legal services have the potential to be a valuable

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<sup>86</sup> *Legg* (n 13).

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Caruana* (n 20).

<sup>90</sup> *Legg* (n 13).

<sup>91</sup> *No Straight Lines* (n 41).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Legg* (n 13); *Caruana* (n 20); *No Straight Lines* (n 41).

tool for improving access to justice for self-represented litigants in family law matters with family violence issues.

## 4.3 Recommendations - Online Alternative Dispute Resolution

OADR services are useful for low property pool matters where parties want to come to an agreement and avoid the expense of going to Court.<sup>94</sup> While touted as suitable for matters where family violence is an issue due to the parties' lack of physical proximity, the online element does not ensure domestic violence will not be experienced by either party.<sup>95</sup> During settlement negotiations, without the safeguard of a lawyer, victims of family violence will often feel pressure to settle for an unsatisfactory outcome.<sup>96</sup>

OADR services could be improved by offering specialised mediations for matters involving family violence. As previously discussed, understanding family violence and its impacts differs greatly from understanding the law around family violence and family law matters.<sup>97</sup>

Family law matters involving family violence are often found to be unsuitable for mediation and for an online service to be suitable in these circumstances, specialised expertise would be required to ensure both parties are able to negotiate confidently.<sup>98</sup>

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<sup>94</sup> *Legg* (n 16).

<sup>95</sup> *No Straight Lines* (n 41).

<sup>96</sup> *Ibid.*

<sup>97</sup> *No Straight Lines* (n 41).

<sup>98</sup> *No Straight Lines* (n 41); *Caruana* (n 20).



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## Conclusion

Innovation and technology have a vital role to play in changing the way legal services are delivered. There are numerous innovations aimed towards the self-represented litigant with the intention of improving access to justice for those who ordinarily would not be able to afford legal representation. However, the self-represented litigant is not a homogenous individual. There are many reasons a party may be self-represent and the ability of a person to successfully self-represent is dependant upon many factors.

This article focused on self-represented parties in family law matters. There is a layer of complexity in family law matters, particularly when there are allegations of family violence. It could be argued that matters with such complications may never be suitable for the one-size-fits-all approach of the innovations discussed in the article.

The technologies are targeted towards the self-represented party who cannot afford the court process or full legal representation. In their current form these technologies will only service the most competent self-represented litigants going through an amicable separation, hoping to reach a simple agreement. There is a valid argument that many family law matters do not fall into this category.

The recommendations discussed in this article are intended to widen the reach of innovation so that access to justice is improved for a larger cohort. These innovative resources within the legal industry are in their early stages and with further developments and discussions around regulations there is much potential for a real improvement in access to justice.

# Innovation and Technology in the Legal Industry: A Focus on Family Law



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## Bibliography

### A – Articles/Books/Reports

- Bennett, Judith et al, *Current State of Automated Legal Advice Tools* (Discussion Paper, 1, Networked Society Institute, April 2018) 5
- Best, Rohan, 'Quantifying Australia's Gender Superannuation Gap' (2021)97(318) *Economic Record* 410
- Caruana, Catherine, 'Meeting the needs of self-represented litigants in family law matters' (2002) *Family Matters, Australian Institute of Family Studies* 38
- Castles, Margaret 'Barriers to Unbundled Legal Services in Australia: Canvassing Reforms to Better Manage Self-Represented Litigants in Courts and in Practice' (2016)25(June) *Journal of Judicial Administration* 237
- Gonczy, James, *Transforming the Legal Landscape: The NewLaw Philosophy* (LegalVision).
- Legg, Michael, 'Flip: Recognising a new form of legal practice: Limited scope services' (2018) 50 (January) *Law Society Journal of NSW* 74.
- Legg, Michael, 'The Future of Dispute Resolution: Online ADR and Online Courts' (2016) 71 (July) *Forthcoming – Australasian Dispute Resolution Journal, UNSW Law Research Paper*
- Morten, Forrest S and Elizabeth Potter Scully, 'Unbundled Legal Services; A Family Lawyer's Guide' (2018)56 *Family Court Review* 709.
- Sheehan, Grania, April Chrzanowski and John Dewar 'Superannuation and Divorce in Australia: An Evaluation of Post Reform Practice and Settlement Outcomes'(2008)22(July) *International Journal of Law, Policy and the Family* 206
- Wangmann, Jane, Tracey Booth and Miranda Kaye *No straight lines: Self-represented litigants in family law proceedings involving allegations about family violence* (Research Report, 24, December 2020)

### B - Legislation

*Family Law Act 1975* (Cth)

### C - Other

- 'A smart and simple way to separate', *Amica* (Web Page) < <https://amica.gov.au/how-it-works>>
- Australian Government Attorney-General's Department, 'amica – An Online Dispute Resolution Tool' (Web Page, 2020) < <https://www.ag.gov.au/families-and-marriage/families/family-law-system/amica-online-dispute-resolution-tool>>
- Law Council of Australia, 'Access to Justice: The Justice Project' (Web Page, 2020) < <https://www.lawcouncil.asn.au/justice-project/access-to-justice>>
- Law Council of Australia, 'Final Report; The Justice Project' (Web Page, 2020) < <https://www.lawcouncil.asn.au/justice-project/final-report>>
- Ryan, Emma, 'NewLaw influence gaining more ground' *Lawyers Weekly* (Web Page, 17 July 2017) < <https://www.lawyersweekly.com.au/newlaw/21498-newlaw-influence-gaining-more-ground>>
- Sourdin, Tania, and Bin Li, 'People are using artificial intelligence to help sort out their divorce. Would you?' *The Conversation* (Web Page, 22 July 2020) < <https://theconversation.com/people-are-using-artificial-intelligence-to-help-sort-out-their-divorce-would-you-142731>>