

19 May 2017

Ms Sarah Henderson, MP
Chair
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Re: FRSA Submission to the inquiry into a better family law system to support and protect those affected by family and domestic violence

Dear Ms Henderson,

Family & Relationship Services Australia (FRSA) welcomes the opportunity to submit a response to the Inquiry into a better family law system to support and protect those affected by family and domestic violence.

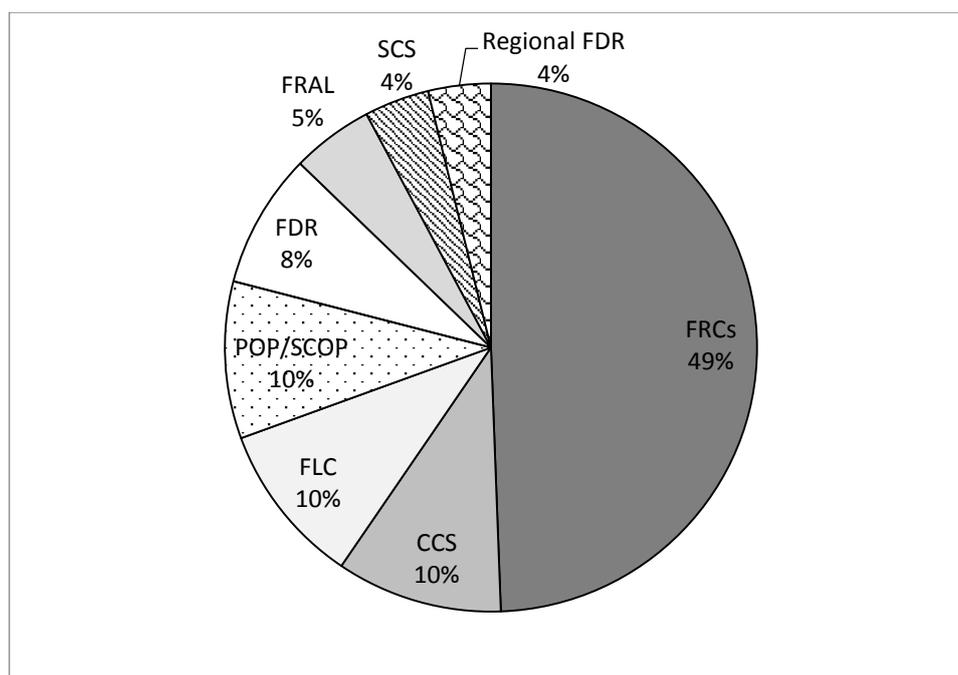
FRSA is the national representative body for 165 not-for-profit organisations that provide family and community services to approximately 400,000 clients through 1,300 outlets across Australia each year.

Nation-wide, many organisations that are part of our membership deliver a range of Family Law Services represented in the list below. For 2014-15 funding for these services totalled \$155.4 million, comprising:

- Family Relationship Centres - \$76.78 million
- Children's Contact Services - \$15.69 million
- Family Law Counselling - \$15.42 million
- Parenting Orders Program / Post Separation Cooperative Parenting - \$14.94 million
- Family Dispute Resolution - \$12.79 million
- Family Relationship Advice Line - \$7.74 million
- Supporting Children after Separation - \$6.13 million
- Regional Family Dispute Resolution - \$5.91 million

Figure 1 shows the breakdown of funds as proportions of the overall Budget for 2014-2015.

– FIGURE 1 –



Source: “Future Focus of the Family Law Services, Final Report, 22 January 2016”, pg 25.

Family Law Services, funded by the Attorney-General’s Department, aim to improve family relationships in the best interest of children by providing safe alternatives to formal legal process for families who are separated, separating or in dispute.¹ The fundamental aim of family law services is to promote meaningful and healthy family relationships in the context of keeping children and families safe. In other words, safety trumps other considerations. Across all courts, applications for final orders in children-only and children-plus-property cases (children’s matters) declined by 25% from 2004-05 to 2012-13 (since the establishment of mandatory Family Dispute Resolution in 2006)².

For FRSA family law services, the key guiding principle is the strengthening of family relationships which allow for children to have a meaningful relationship with both parents, providing it is in the best interest of the child and safe to do so. This is the lens through which FRSA is responding to the Terms of Reference of this Inquiry.

It is no secret that families, and family relationships, are multifaceted and can be complex. Even in the best of circumstances, families have varying capacity to achieve healthy family relationships and optimal conditions for ensuring safe, loving and supportive environment in which children can grow and develop. When parents separate, that capacity can be deleteriously affected, and the health and functionality of family relationships and conditions for raising children can be seriously undermined.

¹ As stated in the Family Law Services Grant Agreement

² Retrieved at <https://aifs.gov.au/publications/family-law-court-filings-2004-05-2012-13>

It is the FRSA network's experience that the needs of families entering the post-separation family law system are becoming increasingly complex, and that violence is likely to be present in a substantial number of cases,^{3 4} especially those presenting with ongoing conflict over children.

Our submission draws on the practice wisdom of family law services within the FRSA network as they support families to navigate this complex system particularly those families who have experienced family and domestic violence and other safety concerns such as child abuse. The submission also includes opportunities for improvement following consultation with the sector. Protection of children and families from violence and working to ensure immediate and ongoing safety concerns are met are part and parcel of family dispute resolution (mediation), child contact and other family law services.

We recognise that the system at large, and the various points of connection between the courts, child contact services and the range of family law services, is overloaded. Waiting lists are long, funding is stretched and the demands on professionals/practitioners across the whole family law spectrum are relentless. Our services are able to manage the risk once families access the service. However it is the experience of our sector that the risk for those families caught in long waiting lists has the potential to increase over time.

FRSA's submission focuses on Terms of Reference 1-5. It reflects on the challenges faced by the family law sector, including the prevalence of violence and the increasing complexity of client needs. We identify barriers to optimal engagement with, and support for, families as they proceed through the family law system and make recommendations for improving aspects of the system. Our submission also points to the strengths within the current system, examples of what 'works', and the successes that have resulted from concerted efforts toward continuous improvement. Finally, and in accordance with the Terms of Reference, we make a number of recommendations for improving the system.

It should be noted that FRSA has on many previous occasions made submissions to parliamentary inquiries and reviews that focus on family and domestic violence in the family law system, including in relation to information sharing. We would be pleased to provide the Committee with copies.

We trust that FRSA's contribution to this Inquiry, drawn from the expertise and practice wisdom of experienced family law practitioners, will provide the Committee an informative real-world picture of the way family law services are currently identifying and responding to allegations of family and domestic violence and related safety concerns, and offer practical and workable solutions for taking the pressure off an overloaded family law system.

³ See AIFS report: Moloney, L., Smyth, B., Weston, R., Richardson, N., Qu, L. & Gray, M. (2007), *Allegations of family and domestic violence and child abuse in family law children's proceedings: A pre-reform exploratory study*, Research Report No. 15, Australian Institute of Family Studies: Melbourne. Retrieved at <https://aifs.gov.au/publications/allegations-family-violence-and-child-abuse-family-l/synopsis>

⁴ See Kaspiew, R., Moloney, L., Dunstan, J. & De Maio, J. (2015) Family law court filings 2004-05 to 2012-13, Research Report No. 30. Retrieved from <https://aifs.gov.au/publications/family-law-court-filings-2004-05-2012-13>).

Further to the Family Law Services provided by our members, member organisations receive a mix of federal, state and local government funds to also deliver a range of other services that clients of the family courts use, including:

- Child and parenting services
- Adult specialist support services
- Post-separation parenting programs
- Family relationship counselling
- Family and domestic violence services
- Men's services
- Youth services
- Aged services
- Drug and alcohol services
- Mental health services

FRSA is available for ongoing consultation about how to improve the family law system so that all parts of the system respond more effectively to the complex issues surrounding family and domestic violence.

Yours sincerely,



Jackie Brady
FRSA Executive Director

FRSA's response to the **House of Representatives Standing Committee on Social Policy and Legal Affairs** *Inquiry into a better family law system to support and protect those affected by family and domestic violence*

TOR 1 How the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family and domestic violence, including by:

- a) facilitating the early identification of and response to family and domestic violence; and**
- b) considering the legal and non-legal support services required to support the early identification of and response to family and domestic violence**

FRSA member organisations delivering family law services work holistically with clients to respond to multiple, and increasingly complex, needs. Their first priority is to keep children and families safe, and to ensure the best interests of the child/ren are served. The work of resolving family disputes and mediating a path to some form of shared parenting of children is intensive and multi-faceted.

Working with clients who present with multiple complex issues are vulnerable, afraid, traumatised, stressed and in a state of upheaval or uncertainty requires a flexible responsive individualised approach. The challenge of meeting the needs of these clients in potentially volatile situations, and the careful and comprehensive ways in which the family and relationships sector is meeting needs, is not always fully appreciated by people outside the sector. Services have developed comprehensive screening tools and processes that assist them to respond to family and domestic violence. However, despite this, the increasing demand on all parts of the family law system, including the courts, indicates the need for improvements in legal and non-legal processes, support services and an adequate resource base to implement them.

FRSA members providing family legal services have indicated that family and domestic violence is present in the majority of cases. In early May 2017 FRSA surveyed its members providing family law services on their experiences of responding to family and domestic violence in family law contexts and their recommendations for improvements. The survey found that, most respondents (75%) reported that violence was present in 60-80% of cases at the point of intake. Where violence was present, 80% of respondents reported the existence of multiple and complex needs in addition to those related directly to violence. The main issues presenting with family and domestic violence cases include mental health issues, substance abuse, financial constraints and/or control, vexatious claims, housing insecurity, child protection issues, and social isolation.⁵

⁵ These and other complexities are elaborated on by the Australian Institute of Family Studies: *AIFS Evaluation of the 2012 Family and domestic violence Amendments, November 2015*: Retrieved from <https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments/acknowledgements>

FRSA members' family law and relationship support services incorporate comprehensive policies, processes and procedures for identifying violence and for ensuring that the safety needs of clients who are affected by family and domestic violence are identified and met. Various mechanisms are used by family law service providers to identify and respond to family and domestic violence. Most commonly used are standardised screening tools, standardised assessment tools, tailored service delivery, client safety plans and rigorously supervised practice protocols which highlight child safety and protection of all clients from harm.

From our perspective there are a number of key prerequisites for identifying family and domestic violence and keeping clients safe:

COOPERATION AND COLLABORATION - Successful work with high-conflict families [in which family and domestic violence, mental health issues, substance and alcohol abuse are features] is unlikely to be achieved without high levels of inter- and intra-disciplinary cooperation, with collaboration being most effective where it occurs early on⁶. As noted by Johnston (2006, p.33; in Smyth & Moloney, 2017), without effective coordination and collaboration between the courts and community agencies, these interventions run the risk of further fragmenting vulnerable families rather than helping them, or permitting families to fall through the cracks between different services, or leaving families forever suspended in the never-never land of an incomplete or intrusive state intervention.

Stand alone interventions '... are predicated on the need for cooperative endeavours between all professionals involved in the family law system – from initial screening and assessment, through to the many forms of negotiated, mediated, and/or judicially determined processes'.

PLANNING AND RISK MANAGEMENT: to prepare clients and staff for all eventualities, create a safe physical environment and ensure supports are in place and easily accessed. Planning and risk management to ensure safety and protection for families is a whole of life and whole of family undertaking; planning for safety in assessing the service for the client and children is necessary throughout the entire time the family remains within the family law services system. Assessing for risk is only a point in time measure and needs to be reviewed and updated regularly.

TOOLS FOR ENSURING SAFETY AND PROTECTION: tools used for screening and assessment, and identifying and responding to violence need to be consistent across service providers and across the system, and comprehensive training and skills updating of professionals using them. Similarly, the implementation of processes and protocols needs to be supported by appropriate training and resources, and clearly understood and consistently applied by all who use them. Tools and processes must be designed to uphold the best interests and safety of children, and the safety of all family members, especially where violence is present.

⁶ Smyth & Moloney (2017) *Entrenched post-separation parenting disputes: the role of interparental hatred?* Family Court Review. For release in July.

CULTURE: child-focused, non-adversarial, conflict-reducing, sensitivity to vulnerability, non-judgemental, respectful, collaborative and working toward whole-of-family solutions which actively engage the strengths and expertise of clients themselves.

COMMUNICATION: of information, process, timeframes, consequences, options; in an environment respectful of confidentiality, privacy, capacity to understand in the face of significant vulnerability, stress, fear or confusion; and informed through practice wisdom, specialised knowledge and experience

TIME: to listen, to build trust, to carefully work through processes that can be confusing and stressful and to follow up on clients when they miss appointments or need extra support. Aboriginal and Torres Strait Islander and CALD families require quality time with practitioners. Current resourcing does not necessarily acknowledge that sometimes, 'quickly' does not mean 'better.' Change can only take place through the development of trusting worker/client relationships. Building trust takes time. Also, even when the process of a family receiving family dispute resolution is short, their circumstances are often highly changeable and chaotic, so constant review and assessment of all aspects of the families' situation is required (e.g. issues of contention, level of safety, level of violence, etc.).

MULTIDISCIPLINARY RESPONSES AND LINKAGES: including therapeutic responses, warm referrals to specialist services, continuity of support through consistent case management, cross-sector collaboration and the sharing of information as recommended by the Family Law Council.

For example, **Family Relationships Centres** are focused on identifying and responding to concerns about family and domestic violence from the point of intake to final resolution of the presenting issues, including agreement to shared parenting and child support arrangements. The best interests of the child are at the forefront of all parts of the process, including intake and assessment, group sessions and individual interviews. Family Relationship Centre practitioners are guided in the delivery of their services in providing high quality, timely, safe and ethical services by the Family Relationship Centre Safety and Security Plan, particularly the section: Guidelines on safety policies, procedures and critical incidents.

Upon the early identification of family and domestic violence, clients are referred for urgent legal advice if they raise certain issues such as (but not limited to) international or domestic parental child abduction/retention, child abuse or child protection issues and child support/spousal maintenance issues. Family Relationship Centres are required to ask the client if they have received legal advice, even if there is no mention of family and domestic violence. In cases involving violence or child abuse, Family Dispute Resolution is not compulsory and may only proceed if the practitioner assesses it as appropriate and safe.⁷

⁷ More on the safety policies and service efficiency measures of Family Relationship Centres is found at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Documents/Operational%20Framework%20for%20Family%20Relationship%20Centres.pdf>.

Children's Contact Services also focus on effective and timely interventions to ensure the safety of all clients (including all care-givers of children) affected by family and domestic violence. The aim of Children's Contact Services is to assist separating or separated families to move to where it is considered safe to do so to self-managed contact arrangements both in terms of change over and unsupervised contact. In some states Children's Contact Services provide the Family Courts with detailed observation reports to assist the court in making a determination on how best to progress this matter based on the best interest of the child. Interventions (depending on the service) may mean that staff in the Children's Contact Services work with other services such as Parenting Orders Program or Supporting Children after Separation to assist the parents to focus on the needs of the children.

An assessment interview with the parents occurs first, and following the assessment an intervention plan is developed which may include other services as detailed above. The information to be collected through the application form is for the purpose of providing risk assessment related information (e.g. family and domestic violence, substance abuse, child abuse and mental health issues). Clarification of court orders including family and domestic violence is important throughout the entire assessment process.

Children's Contact Services ensure that appropriately trained staff members have a sound knowledge of and training in dealing with issues of family and domestic violence. If it is assessed that service delivery is to be undertaken, staff keep a copy of all court orders, parenting agreements, family and domestic violence orders on file. Individually tailored safety plans are developed, especially in instances of family and domestic violence. There is a case management approach to identifying whether the client requires broader assistance with their safety when not at the service, with a staff member referring them to an authorised referral service such as a family and domestic violence service provider.⁸

It must be noted that while government funded services follow these processes, unregulated services are not required to do so (although some may).

Mediation serves an important role in increasing efficiencies and effectiveness in the family law system by keeping issues out of family law courts. Since 2006 there has been a 25% reduction of cases involving cases for children's matters going before the courts.⁹

Courts typically – but not always – see the most difficult, 'pointy-end' cases, and are in turn increasingly mandating litigants to attend Family Relationship Centres, Children's Contact Services, Parenting Orders Program and Supporting Children after Separation as part of the interim orders; and also referring them back to FARS services for support. Courts need to improve their own triaging processes so that priority is given to children and parents genuinely at risk. There is anecdotal evidence suggesting that due to the work of the court in resolving parental disputes – the minutia of detail which needs to be delved in to at times can take up precious court time in cases where risk is low or non-existent.

⁸ More on Children's Contact Services's guidelines to delivering safe and supportive services to clients experiencing family and domestic violence can be seen at <https://aifs.gov.au/cfca/publications/childrens-contact-services/what-are-childrens-contact-services>.

⁹ Kaspiew, R., Moloney, L., Dunstan, J. & De Maio, J. (2015) Family law court filings 2004-05 to 2012-13, Research Report No. 30. Retrieved from <https://aifs.gov.au/publications/family-law-court-filings-2004-05-2012-13>).

BARRIERS

The FRSA network has identified numerous barriers to quickly and/or effectively meeting the safety needs of clients affected by family and domestic violence. These barriers include:

COMPLEXITY: violence is often accompanied by other factors such as mental health issues, substance abuse, financial constraints (including poverty) and/or control, vexatious claims, housing insecurity, child protection issues, social isolation.¹⁰ There is a need for good education at all levels of the family law system to improve understanding of the dynamics of family and domestic violence.

ACCESS and AFFORDABILITY: support services are not always available, and even when they are, waiting lists can be long.

CONFUSION: for clients: about process and consequences, timing and likely outcomes, and what the order means in terms of how it applies to them and the long time frames.

RESOURCING: to ensure sufficient time can be invested in complex cases, and for continuity, holistic support, multiple interventions, and follow-through.

PRESSURE ON OTHER SUPPORT SERVICES: long waiting lists for specialised DV support, Drug and Alcohol support or legal aid (for example).

TIME AND CASELOAD PRESSURES: FRSA member organisations report that waiting times for accessing services only exacerbate pressures on children and families attempting to resolve their matters through the family law services system. These pressures exist now. Therefore, the projected increase in demand for family law services that was highlighted in the report commissioned by the Attorney-General's Department (conducted by KPMG), "Future Focus of the Family Law Services: Final Report, 22 January 2016" needs to be addressed.¹¹

Given the focus of this particular inquiry, FRSA members also report that there is a lack of family and domestic violence services and that the demand for these services is high.

ABSENCE OF EFFECTIVE AND ENFORCED SANCTIONS: meaning that decisions and orders lack 'teeth' and the ruling can be circumvented. There needs to be more focus on the needs of children given what we know about the impact of family and domestic violence on children's development and that children need to be given the opportunity to have a voice. More orders for therapeutic interventions are required that include the whole of the family, as children are often denied access to counselling and hence often lack support as one parent often says no to counselling.

¹⁰ These and other complexities are elaborated on by the Australian Institute of Family Studies: *AIFS Evaluation of the 2012 Family and domestic violence Amendments, November 2015*: Retrieved from <https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments/acknowledgements>

¹¹ <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Pages/Future-Focus-of-Family-Law-Services.aspx>

When considering the legal and non-legal support services required for best attempting to ensure the safety of victims of violence in an efficient and effective way, FRSA offers the following advice under the various themes:

CASE MANAGEMENT: broaden the scope of Family Relationship Centres to strengthen families' capacity to commit to agreed arrangements – through education, skills development, counselling and post Family Dispute Resolution support.

FINE-TUNING THE DELIVERY OF CONSENT ORDERS: to ensure consent orders are entered into free of threat/duress/coercion

EDUCATION: of judges, lawyers, court reporters, family law service practitioners, support service practitioners – on the complexity of family and domestic violence-related cases and the sensitivity required to respond (child-centred, non-adversarial, family as client, cultural and vulnerability issues, support contexts). See response to TOR 5.

For the Family Law Services Sector, we have developed an industry led training package for Family Dispute Resolution Practitioners that includes as a core competency within that package training in domestic and family violence. The sector also acknowledges that given the prevalence of family violence in the families we work with – the need for ongoing training in domestic and family violence is required on an ongoing basis.

Suggestions for better meeting clients' safety needs

PREVENTION: greater educational initiatives to teach teenagers about healthy and respectful relationships and communication, to further debunk myths and stereotypes about gender and how to respond when violence is observed. There is also an opportunity to look at the Family and Relationship Services sector through a public health lens acknowledging the great potential that exists for those services to provide a more active role in prevention and early intervention to better meet the safety needs of clients.¹²

EVIDENCE: informing our service delivery based on best evidence on perpetrators' behaviour and what works best in ensuring / maximising victims' safety;

GREATER INFORMATION SHARING: The issue of information sharing has been the subject of a Family Law Council Inquiry held over a two year period. That report "Family Law Council Final Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Terms 3, 4 & 5. Final Report – June 2016. (Terms 3, 4 & 5)"¹³ has been referred to elsewhere in this submission. Within the family law services system, there are currently limits to the sharing of information between some professional groups. These do exist for the specific purpose of protecting confidentiality and ensuring that the FDRP/Mediation process is not compromised. However, previous feedback from the FRSA network indicates that there is scope to look into the issue of Information Sharing with a view to improving collaboration between all family law system stakeholders and

¹² FRSA recently released a report exploring the untapped potential in the Family and Relationship Services sector to have a greater prevention and early intervention function. The Report is entitled, Strengthening Prevention and Early Intervention Services for Families into the Future: Accessible at: <https://frsa.org.au/wp-content/uploads/2016/05/FRSA-Research-Report-Printable.pdf>

¹³ <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

ensuring that better service networks exist. There is also scope for a broader range of responses to improve information sharing such as raising awareness with the legal profession about the role of Family Relationship Centres working with families experiencing Family Violence.

STAFFING / RESOURCING / FUNDING: recruiting Family Dispute Resolution practitioners (it is currently difficult to do so, perhaps due to low remuneration) and other specialised non-legal, (non-Family Dispute Resolution) advocates to assist families affected by family and domestic violence to safely navigate the system; to fund in-house social workers within Legal Aid Commissions and Women's' Legal Services and DV Legal Services, more (qualified) workers, more anger management and DV perpetrator programs and counselling available, for Family Relationship Centres to better meet needs of more complex clients including additional resources for Family Dispute Resolution.

TOR 1 Recommendations

- 1.1 That federal and state governments enable and resource better access to training and education across the entire family law system for family law professionals, for the purpose of improving awareness of and capacity to respond to family and domestic violence in family law services: e.g. for better screening (DOORS and AVERT); trauma-informed practice; impact on children; behaviour of and control/manipulation by perpetrators; and training on the impact of psychological abuse and family and domestic violence induced trauma.
- 1.2 That the scope of Family Relationship Centres be broadened: Families do best when mediation/Family Dispute Resolution is done as part of a multifaceted intervention to respond to their many needs and particular circumstances. Family Relationship Centres should be resourced to undertake case management, to optimise the likelihood that families will achieve the outcomes to which they aspire – especially for families with complex needs.
- 1.3 The demand for Family Law Services clearly outweighs demand. With the rate of demand increasing significantly over the next ten years¹⁴, there needs to be a renewed commitment from the Federal Government to adequately fund Family Law Services into the future. This also needs to take into account that the complexity of clients coming into services have changed since the Family Relationship Centres were established 10 years ago. With complexity comes an increased demand on time and resources.

¹⁴ <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Pages/Future-Focus-of-Family-Law-Services.aspx>.

TOR 2 The making of consent orders where there are allegations or findings of family and domestic violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures

FRSA member organisations delivering family and relationship support services believe there is room for improvement in processes relating to the making of consent orders, starting with assisting parents to better understand just what the consent orders aim to achieve, and what this means for ongoing arrangements between separated parents.

Consent order processes must be child-focussed. Child-inclusive practice, where the child's experience of their world is heard, and conveyed to their parents and professionals has been shown to be a powerful tool in bringing parents back to a child-responsive frame. The potential impact of decisions on children must be understood by all relevant professionals, actual impact assessed and acted on, with children's wellbeing and safety remaining at the forefront of any arrangements negotiated.

While the rights of children to be safe are well known, 'rights' are not necessarily backed up with best practice. While the rights of the child to be safe trumps the rights of the parent to have access to children this is hardly ever born out in court orders; it is nearly always the rights of the parents to have a meaningful relationship with the child that is given precedence. Children sometimes must live with or spend time with a perpetrator of family and domestic violence. This can result in emotional insecurity, an environment not conducive to optimal social, emotional cognitive and even physical development. In some cases of family and domestic violence the rights of the parent to see the child is given priority over the rights of the child to feel safe. Where there is entrenched high levels of parental conflict, or where children have experienced or are likely to be exposed to continuing family and domestic violence or child abuse, parent-child contact may be highly inappropriate and can have serious, long-lasting adverse effects on children.

The family law system needs to better identify the different types of intimate partner violence (e.g. coercion and control, context specific violence and separation induced violence) that are present in a family to efficiently and effectively tailor therapeutic interventions and court / consent orders.

The process for applying for consent orders is not client friendly. The Family Court DIY online application form for consent orders is 25 pages in length and requires a paralegal resource to complete it.

Families face long wait lists to accessing children's contact centres, which could be reduced if contact centres had a more targeted focus so services are only provided to people with compounding factors (i.e. mental health, family and domestic violence, drugs and alcohol). An alternative service could intervene to assist parents to find more realistic outcomes, and to challenge parents' views.

Also, often consent orders are used to direct parents to use private contact centres, with some parents reporting they did not realise that some Children's Contact Services are not Government funded and hence, are not subject to rigorous quality control, including around staff qualifications.

TOR 2 Recommendations

- 2.1 That consent orders include provision for regular checking-in of clients and factor in children's best interests; and be reviewed by a court-appointed family counsellor. This could be a counsellor as identified under the Family Law Act, which would mean a larger demand on family and relationship services but broadens the capacity for parents to actually be able to comply with requirements of the orders.
- 2.2 That the principle of acting in the child's best interests be strengthened by removing any incentives for family and domestic violence victims to settle on arrangements that are not in the child's best interests, by including provision for vulnerable witnesses and providing regular family education to the Bench and legal professionals.
- 2.3 That the DV Benchbook be modified to include the cultural change required for achieving child-centred, non-adversarial processes. Include coverage of cultural sensitivities.
- 2.4 That significant investment be made in educating all family law professionals about responding to family and domestic violence across the spectrum of the family law system. See TOR 1 and Recommendation 1.1.

TOR 3 The effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self-represented, and where there are allegations or findings of family and domestic violence

FRSA is of the view that there is a need for families before the family courts to receive better and more holistic support services than what is currently provided to them – regardless of whether they are self-represented or not. However, we also offer the following advice for this TOR's focus on self-represented people before the family courts.

At present, the community-based family law system focuses on mediation and Family Dispute Resolution before cases get to court (with the aim of preventing them going to court at all). Although several Family Relationship Centres use legally assisted Family Dispute Resolution, current protocols do not allow lawyers to act for their clients in litigation beyond the Family Dispute Resolution process, so any continuity of support that might have been available for clients is lost once Family Dispute Resolution has ceased.¹⁵

¹⁵ This may change. The Attorney-General's department is currently reviewing the policy and protocol for the provision of legal assistance in the Family Relationship Centres.

Should clients go to court they cannot be represented by the family dispute resolution lawyer in Court, and hence continuity is lost. Continuity would enable the people to be better connected through referral and advice back to the wrap around service. In the current situation the client is 'lost' to the FDR service and the benefit of its support services and referral pathways.

Those Family Relationship Centres in the FRSA network which currently access legally assisted Family Dispute Resolution have pointed to the importance of *both* partners having access to legal assistance, especially if the case goes to court. This is partly an equity issue, and partly an issue of capacity to participate in subsequent rulings and parenting arrangements. Both the self-represented person and the represented person need to fully understand the processes, the implications of legal interventions (whether during Family Dispute Resolution or through court proceedings), the associated costs, and the consequences for their lives of the agreed resolution. A Victorian Family Relationship Centre commented that accessibility of lawyers to act in legally assisted family dispute resolution is an issue, as two different legal services are required and there is no additional funding to sustain this type of more costly family dispute resolution service despite its benefit. The Victorian family dispute resolution service currently diverts some of its funding to provide a limited service at its own cost.

As stated under TOR 1, courts are increasingly prescribing that people attend Family Relationship Centres, Children's Contact Services, Parenting Orders Program and Supporting Children after Separation as part of the interim orders; and referring them back to FARS services for support.

Toward achieving greater support arrangements for families in the family court, FRSA also supports the recommendations made by the Family Law Council in its report to the Attorney-General on *Families with Complex Needs and the intersection of the Family Law and Child Protection Systems: Terms 3, 4 & 5*¹⁶, particularly:

Recommendation 1: Family safety services

The Australian Government consider ways of incorporating the expertise of specialist family violence services into the family law system to improve responses to families where there are issues of family violence or other safety concerns for children. This may include a combination of:

- 1) funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- 2) embedding workers from specialist family violence services in the family courts and Family Relationship Centres;
- 3) creating a dedicated family safety service within the family law system.

¹⁶ The Family Law Council report is retrieved at:
<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

Recommendation 3: Family lawyers and risk identification

The Australian Government consult with the Family Law Section of the Law Council of Australia, legal practitioner regulation bodies, including National Legal Aid, and family law practitioners more broadly, to support the development of:

- 1) a simplified risk identification mechanism for parents and children for use by the legal profession
- 2) protocols and guidelines to assist practitioners to utilise strategies to ensure that risk is identified and managed effectively, including through warm referrals to specialised family violence services
- 3) the development of a strategy to support the implementation of these measures among legal practitioners who practice family law in the context of their professional obligations to their clients, their ethical responsibilities as legal practitioners and the professional indemnity issues that responses to risk raise.

Recommendation 4: Family dispute resolution practitioners and risk management strategies

The Australian Government consult with key stakeholders, including Family & Relationships Services Australia, to identify how best to support a systematic approach to meeting client needs once an assessment that family dispute resolution should not proceed is made or risk is identified. The following options should be considered:

- 1) an amendment to Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* to extend the obligations of family dispute resolution practitioners to their clients to encompass the following steps as required:
 - (a) preparation of a safety plan and referral to a specialised family violence support service;
 - (b) referral for legal advice on personal protection orders and options for addressing parenting arrangements;
 - (c) referral for therapeutic support for affected parents and children;
 - (d) referral to a men's behaviour change program and other referrals in relation to other support needs, such as housing, mental health or substance misuse needs.
- 2) amendments to relevant funding agreements to support this extension of obligations*.

(*: FRSA would like to acknowledge that increased funding should accompany an increase in work activity).

Recommendation 7: Case managed integrated services in the family relationships sector

To better address the complex nature of children's disputes, the Australian Government consult with Family & Relationship Services Australia with a view to further developing a case managed integrated services approach attached to family dispute resolution and men's behaviour change programs across the whole family relationship services sector.

TOR 3 Recommendations

- 3.1 A greater emphasis from services and greater funding from government must be made to better support families going through the family court process. In doing so, FRSA recommends developing, implementing and evaluating a holistic service system that adequately and effectively ensures the safety of all family members is taken care of before, during and after a family attends court to better ensure the safety of family members where family and domestic violence is present.
- 3.2 That the Committee look to the Recommendations made by the Family Law Council in its report to the Attorney-General on *Families with Complex Needs and the intersection of the Family Law and Child Protection Systems, especially 1,3, 4 and 7* as part of its consideration of this TOR.

TOR 4 How the family law system can better support people who have been subjected to family and domestic violence recover financially, including the extent to which family and domestic violence should be taken into account in the making of property division orders

The separating parent who has been subjected to family and domestic violence is more likely to suffer financial hardship as a result of the separation than is the perpetrator. The other is that financial control, whereby one partner limits the other's access to finances in a way that is severely controlling and deleterious to other's capacity to manage financially, and ultimately to wellbeing and self-esteem, is a form of violence.

Family Relationship Centres are not funded to provide property dispute resolution, although several do offer this service on a fee-for-service basis. Those providing the service have noted the increasing demand for property mediation and dispute resolution. Family Dispute Resolution and mediation services are, however, likely to have to consider the financial needs of clients as part of the mediation/dispute resolution process. It is common that the victim of family and domestic violence is more likely to require financial assistance, but securing financial support from the other partner can be very problematic. Where organisations delivering family law services also deliver a range of complementary support services, including emergency relief, financial counselling and emergency housing, there is some capacity to include 'financial support' as part of the ongoing support process. But this a short-term 'fix' and does not resolve the issue of fair division of finances and properties.

One of the barriers to ensuring a fair distribution of finances is the inconsistent handling of taxable income by the courts. Of increasing concern to the Family and Relationship Services sector is the power imbalance in situations where a significant proportion of one partner's income is tax-free, so that the taxable income appears quite low (e.g. some defence, mining and offshore jobs). In these circumstances, ex-partners with a higher income and greater access to resources, including healthcare and housing, are enabled (due to the measuring of income alluded to previously) to provide little or no financial support, often leaving the care-giver of children with inadequate healthcare, housing and other material supports.

Because the current capacity of the community-based family law service sector to offer property mediation per se is limited, it is up to the courts to ensure any division of property takes into account the presence of family and domestic violence and the impact this has had, and might continue to have, on each partner's financial situation and capacity to parent. It is therefore critical that all family law system professionals have a sound understanding of the overt and covert dynamics of family and domestic violence and are equipped to deal with these (see recommendations 1.1, 2.1 and 2.3, above).

TOR 4 Recommendations

- 4.1 Make sure the courts put the child's safety and wellbeing needs first. Continually ensure that all family law services, lawyers and courts give priority to the safety of children, parents and where appropriate, designated carers.
- 4.2 There is a need to look closely at how taxable and tax-free income is dealt with in resolving property dispute matters in the family law system.

TOR 5 How the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family and domestic violence

All family law professionals need to be assisted to fully appreciate the complex dynamics of family and domestic violence, in all its forms, and the impact of family law processes on children and adults affected by violence. Recommendations for further education and training of family law professionals have been a feature of reports since the 1970s.

Professional development and training for family law system professionals are needed in a number of areas, and for the skills and knowledge developed in training to be embedded in practice. AS previously noted the Family Law Services Sector, an industry led training package for Family Dispute Resolution Practitioners includes as a core competency within that package training in domestic and family violence. The sector also acknowledges that given the prevalence of family violence in the families we work with – the need for ongoing training in domestic and family violence is required on an ongoing basis.

The FRSA network has identified the following topics as key:

AWARENESS-RAISING: e.g. to improve understanding of the nature and forms of family and domestic violence, the impact of women and children and the rights of the child to be safe; family law professionals across the system should have access to a lot more training on the prevalence and impact of psychological abuse and family and domestic violence induced trauma; professionals need to improve their understanding of the impact of family law interventions, however and wherever they occur, on children; specific training is needed on the way perpetrators use 'the system' to perpetuate ongoing control over, and abuse of, the victim; the implications of financial hardship and financial abuse need to be better understood, and addressed.

CULTURE CHANGE: Promoting a non-adversarial culture or continuing to insist on less adversarial ways of working (less adversarial trials were run as part of the 2006 reforms) of working with post-separation families that places children's best interests at the centre and takes a whole-of-family approach to resolving disputes and making determinations; improving cultural sensitivity and responses when working with Aboriginal and Torres Strait Islander people and other culturally and linguistically diverse clients.

SPECIFIC SKILLS: e.g. screening, risk assessment and responding to risk; supervision / assessment in real time cases. Training needs to be compulsory across the FL and focus on standardised tools.

EDUCATION: consistent and up-to date education on—the impacts of family and domestic violence; best practice standards for all professionals (including guidelines around reporting family and domestic violence); properly understanding children's needs; the potential impact of contact with other parent; and the pathways for Family Dispute Resolution practitioners to alert the Court of family and domestic violence; recent amendments to the Act, emphasising that child safety is the dominant interest; the damaging and traumatic impact on children of exposure to family and domestic violence; the evidence that perpetrators of family and domestic violence often make other damaging parenting choices pre- and post-separation; the dynamics of DV (including elevated risks post-separation; the ways perpetrators of family and domestic violence can use the Family Law system to perpetuate ongoing control over and abuse of victims (systems abuse); child inclusive practice; child development; responding to trauma; understanding the neuroscience and pathology of family and domestic violence; Aboriginal and Torres Strait Islander and CALD issues; Family Law and its process and limitations of those processes (e.g. Injunctions and Recovery Orders); the effect of non-physical DV on children; stalking methods (including electronic stalking) and consequences; how to consider evidence in each particular matter rather than leaning on stereotypes; the psychological damage that can occur in all forms of family and domestic violence, especially when there is an absence of physical violence; the role of Family Dispute Resolution practitioners in assessing clients' needs; and better informing lawyers about Family Dispute Resolution as an option at first instance in many cases.

Capacity also equates to the time required to deal with increasingly complex cases where family and domestic violence is one, but not the only, factor, at the same time as dealing with other competing priorities. Time pressures include:

- The pressure to deliver 'quick and effective' outcomes in situations where intensive work needs to be done to provide holistic support to clients which often involves other services and professionals, but without additional resources to do this sensitively, using warm referrals and following up on each step of the process. Family Relationship Centres, for example, are not funded for case management and yet case management is just what is needed to ensure truly effective, holistic outcomes. Also, a further focus on providing a quicker service and ensuring the safety of victims of violence can result in an increase of vexatious or false claims of violence, which has been reported to be used in some cases for tactical purposes.¹⁷

¹⁷ See the submission to this Inquiry by Parents Beyond Breakup.

- The fact that Family Dispute Resolution course requirements for organisations supervising students on their journey to becoming Family Dispute Resolution practitioners has increased from 10 hours to 50 hours. While this increase in supervisory hours was sought by our sector to ensure the work readiness of practitioners, the pressure on staff to manage supervision *and* large caseloads has an impact on time available for other tasks.
- The pressure placed on organisations to navigate red tape and to meet other requirements put on them by government (such as outcomes measurement through DEX and SCORE) are usually not accompanied by additional resources to meet them, adding another pressure on workers' time.

The continuing significant resourcing problem with respect to both staff numbers and salaries in the service delivery part of the sector compounds these time pressures.

The need for measuring meaningful outcomes for vulnerable families, across the family law system has been highlighted in evaluations being undertaken by Deakin University and Drummond Street Services' Centre for Family Research and Evaluation (CFRE). Funded by the federal Department of Social Services and The Attorney-General's Department, CFRE is leading outcomes measurement projects with 15 Victorian Family Dispute Resolution services and a post parenting order pilot program. The evaluations' initial review of literature, interviews with key academics and consultations with service providers highlight the need for consistent assessment of and response to family and domestic violence and child abuse/safety issues, investigating whether s60I certificates are working as intended (ie what are the issues, pathways and outcomes for these families and is any of the s60I information used by the courts), distinguishing between having an agreement/order and *complying* with that agreement/order, and investigating the extent the family law system replicates and reinforces power and control issues within parental dynamics which are deemed 'conflictual'. What happens to families who don't have the money to go to court and are not eligible for legal aid?

FRSA supports the recommendations pertaining to professional training in the June 2016 Family Law Council Report to the Attorney General on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Terms 3, 4 and 5¹⁸*, including:

Recommendation 11: Family and domestic violence competency

The ability of professionals working in the family law system to understand family and domestic violence dynamics be strengthened by training programs and, more specifically:

- 1) The Australian Government develop, in partnership with other stakeholders, a learning package for professionals working in the family law system that provides both minimum competencies and in-depth and technical content designed for a range of roles, including Family Dispute Resolution practitioners, family report writers and family lawyers (including Independent Children's Lawyers).
- 2) There should be a specific family and domestic violence and child sexual abuse module in the National Family Law Specialist accreditation scheme at the

¹⁸ <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>

examination phase, professional development phase and re-accreditation phase as a compulsory requirement of being accredited.

- 3) That Legal Aid Commissions across Australia should consider requiring their in-house lawyers as well all legal practitioners on their family law practitioner panels to demonstrate a sound awareness of family and domestic violence, trauma informed practice and an ability to work with victims of family and domestic violence.

Recommendation 12: Joint professional development

- 1) To ensure there is consistent and national training, the National Judicial College of Australia develop a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family and domestic violence to strengthen understanding of family law and family and domestic violence and the impact of trauma.
- 2) The Australian Government engage with relevant professional bodies within the child protection, family law and family and domestic violence systems with a view to encouraging collaboration in designing and delivering joint training opportunities aimed at strengthening cross-professional understanding.

TOR 5 Recommendations

- 5.1 Greater government and service provider investment in professional development to increase family law professionals' capacity to effectively respond to family and domestic violence: including consistent and up-to date practical skills training, conference attendance, group workshops and education.
 - 5.2 For government to consider where red tape and other pressures can be reduced.
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FULL LIST OF RECOMMENDATIONS

- 1.1 That federal and state governments enable and resource better access to training and education across the entire family law system for family law professionals, for the purpose of improving awareness of and capacity to respond to family and domestic violence in family law services: e.g. for better screening (DOORS and AVERT); trauma-informed practice; impact on children; behaviour of and control/manipulation by perpetrators; and training on the impact of psychological abuse and family and domestic violence induced trauma.
- 1.2 That the scope of Family Relationship Centres be broadened: Families do best when mediation/Family Dispute Resolution is done as part of a multifaceted intervention to respond to their many needs and particular circumstances. Family Relationship Centres should be resourced to undertake case management, to optimise the likelihood that families will achieve the outcomes to which they aspire – especially for families with complex needs.
- 1.3 The demand for Family Law Services clearly outweighs demand. With the rate of demand increasing significantly over the next ten years¹⁹, there needs to be a renewed commitment from the Federal Government to adequately fund Family Law Services into the future. This also needs to take into account that the complexity of clients coming into services have changed since the Family Relationship Centres were established 10 years ago. With complexity comes an increased demand on time and resources.
- 2.1 That consent orders include provision for regular checking-in of clients and factor in children's best interests; and be reviewed by a court-appointed family counsellor. This could be a counsellor as identified under the Family Law Act, which would mean a larger demand on family and relationship services but broadens the capacity for parents to actually be able to comply with requirements of the orders.
- 2.2 That the principle of acting in the child's best interests be strengthened by removing any incentives for family and domestic violence victims to settle on arrangements that are not in the child's best interests, by including provision for vulnerable witnesses and providing regular family education to the Bench and legal professionals.
- 2.3 That the DV Benchbook be modified to include the cultural change required for achieving child-centred, non-adversarial processes. Include coverage of cultural sensitivities.
- 2.4 That significant investment be made in educating all family law professionals about responding to family and domestic violence across the spectrum of the family law system. See TOR 1 and Recommendation 1.1.

¹⁹ <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Pages/Future-Focus-of-Family-Law-Services.aspx>

- 3.1 A greater emphasis from services and greater funding from government must be made to better support families going through the family court process. In doing so, FRSA recommends developing, implementing and evaluating a holistic services system that adequately and effectively ensures the safety of all family members is taken care of before, during and after a family attends court to better ensure the safety of family members where family and domestic violence is present.
- 3.2 That the Committee look to the Recommendations made by the Family Law Council in its report to the Attorney-General on *Families with Complex Needs and the intersection of the Family Law and Child Protection Systems, especially 1,3, 4 and 7* as part of its consideration of this TOR.
- 4.1 Make sure the courts put the child's safety and wellbeing needs first. Continually ensure that all family law services, lawyers and courts gives priority to the safety of children, parents and where appropriate, designated carers.
- 4.2 There is a need to look closely at how taxable and tax-free income is dealt with in resolving property dispute matters in the family law system
- 5.1 Greater government and service provider investment in professional development to increase family law professionals' capacity to effectively respond to family and domestic violence: including consistent and up-to date practical skills training, conference attendance, group workshops and education.
- 5.2 For government to consider where red tape and other pressures can be reduced.

I thank the Committee for the opportunity to participate in this Inquiry and look forward to assisting the Committee further, as may be required over the duration of the Inquiry.

I can be contacted on 02) 6162 1811.

Yours sincerely,

Jackie Brady
Executive Director