

SUBMISSION

FRSA Submission to the Australian Law Reform Commission Inquiry - Review of the Family Law System

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About FRSA

As the national peak body for family and relationship services, FRSA is committed to strong policy engagement.

We have a critical leadership role in representing over 170 FRSA Member organisations and supporting the needs and interests of this strong, diverse and adaptable membership and the children, families and communities they serve. These Member organisations provide family and community services to approximately 400,000 clients from 1,300 outlets across Australia each year.

FRSA also has a key role in supporting the growth, development and viability of services dedicated to children, families and communities amidst an ever-changing fiscal and social landscape.



FRSA Membership

FRSA is the national representative body for over 180 family relationship and support service providers, operating in more than 650 locations across Australia. We represent Members from private, community-based and local government services providers.

AUSTRALIAN CAPITAL TERRITORY (ACT)

- ✎ Anglicare NSW South, NSW West and ACT
- ✎ Belconnen Community Service
- ✎ CatholicCare Canberra and Goulburn
- ✎ Catholic Social Services Australia
- ✎ Conflict Resolution Services
- ✎ Communities@Work
- ✎ Families ACT
- ✎ Lone Fathers Association
- ✎ Marymead Child & Family Centre
- ✎ Relationships Australia National
- ✎ Relationships Australia Canberra and Region

NEW SOUTH WALES (NSW)

- ✎ CatholicCare Sydney
- ✎ CatholicCare Wollongong
- ✎ Centacare Bathurst
- ✎ Centacare New England North West
- ✎ Centacare South West NSW
- ✎ Centacare Wilcannia-Forbes
- ✎ Community First Step
- ✎ CRANES Community Support Programs
- ✎ Dads in Distress
- ✎ Family Support Newcastle

- ✎ First Light Care Association Inc
- ✎ Good Beginnings Australia
- ✎ Gurehlgam Corp Ltd
- ✎ Interrelate Ltd
- ✎ Karitane
- ✎ Kim Ibbott (Individual Member)
- ✎ MacArthur Diversity Services Initiative Ltd
- ✎ Western Sydney Community Legal Centre
- ✎ Relationships Australia NSW
- ✎ Southern Youth & Family Services
- ✎ Tamworth Family Support Services Inc
- ✎ The Benevolent Society
- ✎ The Family Centre
- ✎ The Smith Family
- ✎ UnitingCare Unifam Counselling & Mediation
- ✎ Wellington Aboriginal Corporation Health Service
- ✎ Andrew King (Individual Member)
- ✎ Prepare/Enrich Australia
- ✎ Samaritans Foundation

NORTHERN TERRITORY (NT)

- ✎ Northern Territory Legal Aid Commission
- ✎ Anglicare NT Ltd
- ✎ CatholicCare NT
- ✎ FAST NT (Families And Schools Together)

- ✎ Relationships Australia NT

QUEENSLAND (QLD)

- ✎ Compass Seminars Pty Ltd
- ✎ New Way Lawyers
- ✎ The Parenting Centre
- ✎ Anglicare Southern Queensland
- ✎ Bundaberg & District Neighbourhood Centre
- ✎ Centacare - Catholic Diocese of Rockhampton
- ✎ Centacare Brisbane
- ✎ Centacare Cairns
- ✎ Centacare Toowoomba
- ✎ Centacare North Queensland
- ✎ Drug Arm Australasia
- ✎ Elizabeth Van Acker (Individual Member)
- ✎ Search Light Inc
- ✎ Foundations Care Ltd
- ✎ Lives Lived Well
- ✎ Goldbridge Rehabilitation Services
- ✎ Judith Merari-Lyons (Individual Member)
- ✎ Kalwun Development Corporation Ltd
- ✎ Kyabra Community Association Inc
- ✎ Lifeline Darling Downs & South West QLD
- ✎ Mackay Children's Contact Services
- ✎ Men's Information and Support Association Inc
- ✎ Mercy Community Services SEQ Ltd



- ✧ Mundubbera Community Development Association Inc
- ✧ Phoenix House
- ✧ Encircle Ltd
- ✧ QPASTT
- ✧ Relationships Australia QLD
- ✧ Sunshine Coast Family Contact Centre
- ✧ Tanya Murdock (Individual Member)
- ✧ Tara & District Family Support Committee Inc
- ✧ Toowoomba Children's Contact Centre
- ✧ United Synergies
- ✧ UnitingCare Community
- ✧ YFS Ltd
- ✧ Yourtown

SOUTH AUSTRALIA (SA)

- ✧ ac.care
- ✧ Anglicare SA Inc
- ✧ Baptist Care (SA) Inc
- ✧ Centacare Catholic Family Services
- ✧ Centacare Catholic Family Services Country SA
- ✧ Lutheran Community Care
- ✧ Mission Australia
- ✧ Nunyara Wellbeing Centre
- ✧ Relationships Australia SA Ltd
- ✧ The Salvation Army - Ingle Farm
- ✧ Uniting Communities
- ✧ UnitingCare Wesley Country SA
- ✧ UnitingCare Wesley Port Adelaide

TASMANIA (TAS)

- ✧ Unitingcare Tasmania
- ✧ Anglicare Tasmania Inc
- ✧ CatholicCare Tasmania
- ✧ Positive Solutions

- ✧ Relationships Australia Tasmania

VICTORIA (VIC)

- ✧ Australian Institute of Family Studies
- ✧ International Social Service Australia
- ✧ Logie-Smith Lanyon Lawyers
- ✧ Marriage & Relationship Educators Association of Australia
- ✧ The Centre for Excellence in Child and Family Welfare Inc
- ✧ Anglicare Victoria
- ✧ Welfare Society
- ✧ Balmoral Bush Nursing Centre Vic
- ✧ Berry Street Victoria
- ✧ Bethany Community Support
- ✧ CatholicCare Melbourne
- ✧ Centacare Ballarat
- ✧ CentaCare Sandhurst
- ✧ Child & Family Services Ballarat
- ✧ Children's Protection Society
- ✧ City of Greater Geelong
- ✧ Comm Unity Plus Services
- ✧ drummond street services Inc
- ✧ EACH
- ✧ Family Life Ltd
- ✧ Family Relationships Institute Inc (RELATEWELL)
- ✧ FamilyCare
- ✧ Fiona Harley (Individual Member)
- ✧ FMC Mediation and Counselling Victoria
- ✧ Gateway Health
- ✧ LifeWorks Relationship Counselling & Education Services

- ✧ MacKillop Family Services
- ✧ Mallee Family Care
- ✧ Odyssey House Victoria
- ✧ OzChild
- ✧ PRONIA
- ✧ Relationships Australia Victoria
- ✧ Rumbalara Aboriginal Cooperative
- ✧ Southern Migrant & Refugee Centre
- ✧ Spectrum Migrant Resource Centre Inc
- ✧ The Cairnmillar Institute
- ✧ The Salvation Army Australia Southern Territory
- ✧ The Salvation Army Bendigo Community Services
- ✧ Upper Murray Family Care
- ✧ Save the Children Australia



WESTERN AUSTRALIA (WA)

-  Amity Health
-  Citizens Advice Bureau of WA (Inc)
-  Halsmith Consulting Pty Ltd
-  Legal Aid WA
-  Accordwest
-  Anglicare WA
-  Baptistcare Inc
-  Catholic Marriage and Fertility Service
-  Centacare Geraldton
-  Centrecare Inc (Perth)
-  Communicare Inc
-  Ishar Multicultural Women's Health Centre
-  Jacaranda Community Centre Inc
-  Men's Outreach Service Broome
-  Ngala Community Services
-  Relationships Australia Western Australia
-  Wanslea Family Services
-  YMCA of Perth Youth & Community Services Inc

HONORARY MEMBERS

-  Steve Hackett
-  Professor Richard Chisholm AM
-  Sue Holmes
-  Michael Hunt
-  Sue Pidgeon
-  Professor Bryan Rodgers
-  Chief Justice Stephen Thackray



Acknowledgements

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- ✧ Professor Richard Chisholm AM, Australian National University
- ✧ Dr Susan Cochrane, Relationships Australia National
- ✧ Laura Dillon, Comm Unity Plus Services
- ✧ Francesca Gerner, CatholicCare Melbourne/CCVT
- ✧ Dr Bob Jacobs, The Parenting Centre
- ✧ Judge Matthew Myers AM, Federal Circuit Court of Australia/FRSA Board Member
- ✧ Pauline O'Neill, Uniting
- ✧ David Roberts, Relationships Australia NSW
- ✧ Associate Professor Bruce Smyth, Australian National University
- ✧ Maryse Street, Positive Solutions
- ✧ Graeme Westaway, FMC Mediation and Counselling



Introduction

FRSA welcomes the ALRC's Review of the Family Law System, as there have been many changes to Australian families and society since the introduction of the Family Law Act 1975 (Cth) and the opening of the Family Court on 5 January 1976. We perceive the Review as a great opportunity for significant changes to be made, for the betterment of Australian children and families—and a nation as a whole.

The value of this review is evident in the fact the nature of the Family Law System's client base is very different from the one that was envisaged at the time it was created. Australian social and family life has changed a great deal over the past 40 years, with increasing complexity of family structures which include increased numbers of unmarried families, stepfamilies, blended families, same-sex families and kinship-care arrangements.

While most separating couples are able to work out their arrangements with limited or no recourse to the Family Law System, many of the families who do turn to the system for support have complex needs. FRSA is well aware of studies that show that safety concerns for children are increasingly a common feature of the Family Law System's workload¹, and that many of the system's client families are affected by issues that may pose a risk of harm to the child, including issues of family violence, mental ill-health and substance misuse².

We concur with the ALRC in its Issues Paper that there are a number of problems affecting families who use the Family Law System, including:

- difficulties that families face in seeking to achieve safe outcomes for children and victims of family violence;
- the growing cost of legal services and expert reports;
- increasing delays in the courts;
- the extent to which the system's services support child-centred approaches and the participation of children in processes that affect them;
- the extent to which the provisions of the *Family Law Act* are applied consistently to all children irrespective of their family structure;
- the cultural responsiveness of mainstream Family Law Services and the cultural safety of court processes for Aboriginal and Torres Strait Islander peoples and culturally and linguistically diverse clients;
- the difficulties that face clients in rural and remote areas of Australia in accessing Family Law Services; and
- concerns about the adversarial nature of legal processes and the impact on parental and child wellbeing.

This submission responds to the issues presented by ALRC in the Issues Paper by drawing upon a range of views and experiences shared by FRSA Members and in particular, those who are currently providing family law service. Most recently, FRSA surveyed the membership via a Member Survey specifically designed to capture feedback on the issues raised in the ALRC Issues Paper. In addition to this, FRSA has drawn upon our history of providing written submissions in response to a range of previous Inquiries and Review processes regarding Family Law matters.

¹ Kaspiew, R. et al, 'Evaluation of the 2012 family violence Amendments' (Synthesis Report, Australian Institute of Family Studies, 2015) 16

² Qu, L. et al, 'Post-Separation Parenting, Property and Relationship Dynamics after Five Years' (Attorney-General's Department (Cth), 2014) 43, 44, 59–65.



A large number of FRSA member organisations deliver the full range of government funded Family Law Services. These Services are funded by the Attorney-General's Department (approximately \$156 million per annum across the entire service system) and administered by the Department of Social Services.

The 66 funded Family Law Service providers, all of whom are members of FRSA, provided the following Programs/Services to a total of 93,734 individual clients, through a total of 241,805 sessions in the six month period July to December 2017.

Family Law Services	No. of providers	Outlets	Group clients	Indiv. clients	Total sessions
Family Relationship Centres	33	153	6,927	34,903	96,081
Children's Contact Services	37	76	877	12,141	46,626
Family Law Counselling	29	191	604	10,274	24,368
Family Relationship Advice Line (includes telephone and online dispute resolution)	1	3	1,543	14,217	21,760
Family Dispute Resolution	18	81	432	8,846	18,679
Regional Family Dispute Resolution	33	73	544	3,405	7,696
Parenting Orders Program	25	97	1,969	6,607	17,211
Supporting Children After Separation	12	42	419	3,341	9,404

A brief description of these services/programs is as follows³:

Family Relationship Centres are a highly visible entry point or gateway to the whole family support service system. Family Relationship Centres play an important role in improving family relationships by providing information, support and referral services to all families, as well as family dispute resolution and access to some legal assistance for separating or separated families.

Children's Contact Services enable children of separated parents to have safe contact with the parent who they do not live with in circumstances where parents are unable to manage their own contact arrangements.

Family Law Counselling services help people with relationship difficulties better manage their personal or interpersonal issues to do with children and family during marriage, separation and divorce.

Family Relationship Advice Line (the Advice Line) is a national telephone service to assist families affected by relationship or separation issues. The Advice Line is available on 1800 050 321 from 8am–8pm (local time) Monday to Friday and 10am–4pm (local time) on Saturdays.

³ Courtesy of the Australian Government Department of Social Services website, retrieved from: <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/family-support-program/family-law-services>



Family Dispute Resolution services assist families to reach agreement and to resolve their disputes related to family law issues about child and property related matters, outside of the court system.

Regional Family Dispute Resolution services assists families in rural and remote communities.

Parenting Orders Program - Post Separation Co-operative Parenting services help separated or divorced families who are in high conflict to work out parenting arrangements in a way that encourages consideration of what is in a child's best interests in establishing or maintaining relationships, while at the same time ensuring the safety of all parties.

Supporting Children after Separation Program aims to support the wellbeing of children under the age of 18 from separated or separating families who are experiencing issues with difficult family relationships.

The views of FRSA member organisations are critical in light of the fact there has been much greater utilisation of the family dispute resolution and other Family Law Services outside of court. The Australian Institute of Family Studies ([AIFS], 2015) report suggests that the main pathways used by parents who had sorted out their parenting arrangements in 2014 was: 'discussions with other parent' (68.9%); 'nothing specific, just happened' (10.4%); 'counselling / mediation / Family Dispute Resolution services' (9.9%); 'a lawyer' (5.7%); 'the courts' (2.9%); and 'something else' (2.1%). Family Law Services delivered by FRSA are frequented at a rate almost double to that of any other provider in the Family Law System.

In short, more people access our services than any other service in the System.

As a service system we have a strong history and capability of providing child and family focused services. It is our contention that our services are well placed to:

- Offer deeper and broader wrap around services
- Focus on the long term welfare of clients not just an episode that needs a legal process response
- Incorporate therapeutic responses which are best delivered within the social services environment (as opposed to the court and/or legal contexts)
- Provide a holistic response to the needs of children and families
- Provide child friendly and responsive environments
- Provide connection and interface with a broad ranging and far-reaching service system (into the broader social services system/networks)
- Offer value for money

The structure of this submission

In this submission, FRSA has opted to focus our comments on a number of key topics to Family Law Services raised in the ALRC Issues Paper:

- i. Resetting the objectives and principles for a new and improved system (Issues Paper pp 16-21);
- ii. Children's experiences and perspectives (IP pp 75-82);
- iii. Improving access and engagement for all Australian families (IP pp 21-40);
- iv. Better addressing parenting and/or property disputes (IP pp 40-52);
- v. Families affected by family violence (IP pp 46-52);
- vi. Integration and collaboration (IP pp 68-75); and
- vii. Professional skills and wellbeing (IP pp 82-88).



i. Resetting the objectives and principles for a new and improved system

As shifts in Australian social and family life have taken place, significant changes in the jurisdiction, structure and workload of the Family Law System have too. These include changes to give effect to Australia's obligations under the United Nations Convention on the Rights of the Child, and to ensure the Family Court can make orders about the children of unmarried parents and the property of unmarried couples. At the same time, approaches to dispute resolution have evolved substantially, with a growing emphasis on alternative dispute resolution processes, as well as increasing numbers of self-represented litigants.

Many of the original principles for the Family Law System, set out in Section 43 of the *Family Law Act*, provide a strong basis from which to work, including:

- (a) the need to preserve and protect the institution of marriage as the union of 2 people to the exclusion of all others voluntarily entered into for life;
- (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- (c) the need to protect the rights of children and to promote their welfare;
 - (ca) the need to ensure protection from family violence; and
- (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

In revising the principles and objectives for a new and improved system, FRSA acknowledges the need to address the range of issues facing the Family Law System (acknowledged by the ALRC in its Issues Paper), including:

- the affordability of services and processes and the importance of costs being proportionate to the parties' dispute (also outlined in the Productivity Commission's *Access to Justice Arrangements* Inquiry Report [No 72, Vol 1, 2014]);
- the ways in which the prevalence of cases involving safety concerns for children challenge the assumption of a clear distinction between the work of the family law, child protection and family violence systems in Australia, and the importance of collaboration across these jurisdictions (see also Family Law Council's *Interim Report to the Attorney-General in Response to the First Two Terms of Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* [2015]);
- the ways in which the prevalence of families affected by ongoing conflict in the Family Law System challenges the conceptualisation of dispute resolution as a single event; and
- the appropriateness of adversarial processes, and the ethics of adversarial practices, in a system concerned with the wellbeing of children (see also House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by family violence* [2017]).



FRSA concurs with research⁴ that suggests that a modern Family Law System has a number of key functions, including advancing the safety, healthy development and economic support interests of children, protecting adult rights to physical safety and equitable distribution of resources, and regulating the processes for resolving post-separation problems to ensure they are affordable and cost-effective.

FRSA takes the position that the Family Law System must have a focus on meeting the needs of the whole family – not just individuals. Services should be therapeutic and restorative, meeting the needs of children and families first and foremost (a client upward approach) rather than taking a law downward approach. Also, rather than merely better supporting families to navigate a complex system, where possible the system should be simpler and client-friendly.

It is also our position that a prevention and early intervention approach be taken in the Family Law Systems and delivery of Family Law Services. The Family Law System focuses predominantly on resolving conflicts between couples in the process of separating, and not on strengthening families earlier on. Work with families need not be linear. It is possible to design programs and service delivery so that families continue to use support and strengthening while mediation progresses.

There is also a need to consider the possibility of reconciliation during the process of Family Law Services being delivered, not simply assume final and absolute separation. A better System would focus on bolstering support for families throughout the relationship life cycle—i.e. during relationships, rather than primarily once they have broken down. The work of Family Relationship Centres should be refocused to ensure that we harness the prevention and early intervention approaches that can be provided. Taking a prevention approach in service delivery is close to FRSA's heart; FRSA is currently progressing the recommendations made in its *Strengthening Prevention and Early Intervention for Families into the Future* research report. From identifying what approaches to intake screening and assessment FRSA member organisations take (currently underway), FRSA is looking to develop a common approach to risk assessment and referral for the sector.

FRSA underlines the following objectives and principles as core for a new improved Family Law System:

- To deliver decisions and arrangements that are in the best interest of the wellbeing and safety of children, including by ensuring and maintaining their participation in decision-making processes in a developmentally appropriate manner;
- To acknowledge the complex nature of families and appropriately shape a services system that is holistic, integrated, flexible and responsive, and that for some families, decisions (especially of the Court) cannot be final and will require 'review' from time to time;
- To integrate and share information between services (without compromising principles of confidentiality and privacy) in a way that ensures families are clearly guided through a simplified system in which conflict is minimised and wellbeing is ensured;
- To foster greater collaboration between child protection systems in each state with the Family Law Systems;

⁴ Semple, N. & Bala, N. 'Reforming Ontario's Family Justice System: An Evidence-Based Approach' (Association of Family and Conciliation Courts, 2013) 4–6.



- To provide whole-of-family and multi-disciplinary approaches to service delivery wherever possible;
- To make services, programs and resources affordable and easy to access for all families and all family members;
- To take a greater prevention and early intervention approach in the delivery of services and education of families;
- To better recognise and respond to the effects of family violence, to ensure and maintain the safety and wellbeing of victims;
- To accommodate the diversity and complexity of family and parenting relationships, including in relation to separation, to ensure the needs of children and other family members are always addressed;
- To ensure Family Law Services are appropriately and adequately funded to meet the needs of families;
- To acknowledge that family law matters can no longer be resolved in isolation from other key services to address issues around substance abuse; mental health; family violence; financial insecurity; and
- To ensure and maintain the wellbeing and competency of all practitioners working in the Family Law System.

These objectives and principles surface in this response to the various issues raised in the Issues paper, commencing with a focus on children's experiences and perspectives.



ii. Children's experiences and perspectives

FRSA believes it is imperative that the work of family and relationships support services in the community services sector, including Family Law Services, need to be guided by recommendations and principles for ensuring and maintaining children's rights set out by the National Children's Commissioner. The Commissioner, in the Australian Human Rights Commission Children's Rights Report 2015, sets out 16 recommendations and five key themes:

1. A right to be heard: children's voice and participation in decision-making processes; specifically involving children in issues that affect them; and ensuring that existing mechanisms for resolving disputes are accessible and available to children.
2. Freedom from violence, abuse and neglect: ensuring safe environments and respect for the dignity of the child; specifically making sure that the commitments made in national frameworks are achieved and built upon, through adequate resourcing and action; encouraging a proactive approach to issues of child safety that places a premium on prevention, through enabling safe communities and environments for children; and building resilience among our children.
3. The opportunity to thrive: safeguarding the health and wellbeing of all children in Australia, which includes promoting and supporting children through early intervention and prevention; and identifying and focusing on the most marginalised and vulnerable children.
4. Engaged citizenship: promoting civic engagement and active citizenship through education and awareness-raising.
5. Action and accountability: taking deliberate and proactive steps to protect the wellbeing and rights of children, specifically by collecting comprehensive national data about the wellbeing and human rights of Australia's children; progressing a national vision for Australia's children through intergovernmental partnerships and agreements; developing outcome-based reporting and monitoring of government service delivery and policy development; and developing a children's impact assessment process for law, policy and practice.

The Family Law System must adopt more child-focused approaches (incorporating the practitioner's knowledge of the research literature on children's development into the negotiation process⁵) and child-inclusive approaches (incorporating the views of the particular child who is subject to the process through the involvement of a specialist child consultant⁶). This currently occurs, albeit in a non-systemic way, in the services provided by FRSA members.

In the latter approach, the consultant speaks to the child about their experiences and views and feeds this information back to the parents during the dispute resolution process, with the aim of this information being the focus in negotiations⁷.

FRSA appreciates that the Family Law Act (1975, Cth s 60CC [3]) recognises the rights accorded to children and young people under the Convention on the Rights of Child (the CRC), which include participation rights and freedom of expression (Article 13), access to

⁵ Webb, W & Moloney, L. 'Child-Focused Development Programs for Family Dispute Professionals: Recent Steps in the Evolution of Family Dispute Resolution Strategies in Australia' (2003) 9(1) *Journal of Family Studies* 23

⁶ Moloney, L. & McIntosh, J. 'Child-Responsive Practices in Australian Family Law: Past Problems and Future Directions' (2004) 10(1) *Journal of Family Studies* 71

⁷ McIntosh J., 'Child Inclusion as a Principle and as Evidence-Based Practice: Applications to Family Law Services and Related Sectors' (AFRC Issues Paper No 1, Australian Family Relationships Clearinghouse, 2007).



information (Article 17), and to make their views known and participate in processes relevant to their care (Articles 9 and 12).

In the present Family Law System there are several ways the courts may receive information about the child's views (as articulated in the Family Law Council *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report* [2016]):

- through the appointment of an Independent Children's Lawyer who has the role of representing the child's best interests and ensure any views expressed by the child are put before the court;
- the preparation of a report for the court by a Family Consultant or external report writer, who are required to ascertain the child's views and include these views in the report; and
- the judicial officer meeting directly with the child (albeit this approach being rarely used).

However, as reported by the Australian Institute of Family Studies (2015), it is not uncommon for the court to not receive any independent information about the views of the child or young person in cases where an application for final orders is filed requiring resolution by judicial determination or consent (before or during trial)⁸.

FRSA takes the position that it is vital for Family Law System professionals to take into consideration the experiences and perspectives of children by ensuring their participation—as well as their safety.

FRSA concurs with the findings in the *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report* (Family Law Council, 2016) that this occur outside as well as inside a court room—with judges endorsing the recommendation made by the Family Law Council in 2016 for judicial officers to more regularly meet directly with the child.

Often an Independent Children's Lawyer will present evidence on behalf of the child, and is often the only representative for the child in the room. However, the Independent Children's Lawyer is often criticised for not representing the views of the child. Often children and young people reported negative or counterproductive experiences with Independent Children's Lawyers representing them⁹, including the need for more interaction with the Independent Children's Lawyer representing their interests in order to have court outcomes and how their views are fed into the court's decision-making process explained to them¹⁰. It is clear that there is grave misunderstanding about the current function and purpose of the ICL and as such, the role either requires a name change and/or a re-scoping of function and purpose.

Further to this, FRSA supports the numerous proposals made by the House of Representatives Standing Committee on Social Policy and Legal Affairs (n13, [6.119]) for the appointment of a children's advocate and similar proposals and recommendations.

The involvement of children in developmentally appropriate ways is central in the delivery of Family Relationship Centres. The *Operational Framework for Family Relationship Centres* (September 2017) outlines that Family Relationship Centres make information resources available for children and, where appropriate, conduct information or group sessions for

⁸ Kaspiew, R. et al, 2015, 'Court Outcomes Project: Evaluation of the 2012 family violence Amendments' (Australian Institute of Family Studies 26–9).

⁹ Parkinson, P. & Cashmore, J. 'The Voice of a Child in Family Law Disputes' (Oxford University Press, 2008).

¹⁰ Kaspiew, R. et al, 'Independent Children's Lawyers Study', n 330, 165–7.



children. This involves either including children in the Family Dispute Resolution process (if the family wishes and the Centre has capacity and skills), or make arrangements with other services with experience in child inclusive practice.

A wide range of FRSA member organisations have expertise in working with children in delivering Family Law Services and other family and relationship services. FRSA agrees with the notion that children's participation in the Family Law System must be better supported, to have their experiences and perspectives be better heard and incorporated in the making of decisions. Children are affected by the decision so therefore they deserve a voice. In doing so, it is imperative their safety is ensured and maintained. FRSA member organisations have found that where it is safe and appropriate to do so, there are a number of factors imperative for a child's participation to be better supported and their safety ensured and maintained:

Giving children a voice: much more must be done to give children a voice both inside and outside the court system;,, developing processes and practices that consider the child/young person as active participants and decision makers; implementing children's evaluation/survey for capturing their wishes; negotiating consent with children (to the extent that the child is developmentally capable); increase the use of child focussed workers such as psychologist, family therapists, social workers;); Children's Orientation in Children's Contact Services—in which children's feelings around contact with the non-residential parent are discussed between practitioner and child; always take into consideration the child's age, their ability to clearly express their views and the maturity of their views; the quality of resolution is enhanced through the voice of the child coming into the mediation; making Child Inclusive Practice available to clients – which involves children being interviewed about the experience of their parent's separation and what they see as their needs; ensuring that there is support for child informed/inclusive practice within all parts of the Family Law System; changing the Family Law Act to make the child's voice a primary consideration could make a significant difference; using feedback forms that are suitable for kids to use;

Family therapy models: conjoint work between Contact Services Staff and Family Law (Supporting Children After Separation Services) has enabled the provision of Therapeutic Children's Contact Services. This specialised work is undertaken at the child's pace and prepares and supports them through the potential reunification. This has applied particularly when there has been an impact on the attachment between parent/child i.e. extensive time since last parent/child contact and when children have been witness to behaviours of concern i.e. domestic violence, alcohol/drug consumption. This child focused support has enable children to identify their concerns, build understanding and strategies for safety, express their choice associated with the frequency, duration and level of contact over time;

Support from practitioners: develop an understanding among practitioners that in all parts of the Family Law System child inclusive practice is a longer process but beneficial; build greater connections between Independent Children's Lawyer and Family Dispute Resolution practitioners; provide appropriate training for Child Consultants to become Family Dispute Resolution practitioner accredited to ensure standards and quality; provide greater training for service providers to increase the court's capacity to respond quickly in situations where children's safety is at risk; professionals in court and family service processes should have an understanding of research findings on the desires, needs and wants of children;

Collaboration: Independent Children's Lawyers, where possible and practicable, to meet with children about their concerns and be able to provide all relevant information to the



court; where there are reconnection/reintroduction cases e.g. Parenting Orders Program, family counsellors need to co-work especially in sessions where children are seeing their parents for the first time (these are very resource intensive interventions); share adequate information between the legal fraternity/Courts and Family Law Services to be better informed as to whether parent-child contact should occur or not;

Ensuring safety: taking a Community of Practice approach to developing a framework on how to support children's participation whilst keeping them safe; safety can be ensured by comprehensive risk assessments and working with parents to ensure that they are able to take on board the children's views and stories without repercussions; regular contact throughout the family law process (whether that is through Family Dispute Resolution or through litigation) and regularly in the following two years by a trained child consultant/counsellor with the child to ensure safety and risk assessments are continuously conducted; continual monitoring and safety planning by the practitioner ensures safety is maintained;

Parental involvement: parents are engaged and participating first as the pathway for children to follow; regardless of the needs of children through a service intervention, parents need to understand, be equipped and prepared to support this process with the child; separating couples to move their focus away from their interpersonal issues and onto the wellbeing of the child; not requiring both parents to provide consent to a child's participation, as one parent may not want a child to voice his or her perspectives;

Federal support: Funding Child Inclusive Practice would provide practical support for the rights of children to have their voices heard; circulating more government booklets or other ways of promoting the value of Child Inclusive Practice to encourage parents to engage in Child Inclusive Practice; supporting further research to identify the value of Child Inclusive Practice; in cases involving separation, more money available for Child Consultancy Service for Service Providers to meet with children when parents are separating;

Screening and assessment: Adequate screening of family violence including children's experiences and impact on parental capacity; implementing effective risk assessment prior to engaging parties in any service is also required, with the emotional capacity of parents needing to be established before facilitate Child Inclusive Practice in Family Relationship Centres.

Barriers and risks to children participating

There are a number of barriers to children participating and having their perspectives and experiences taken into consideration. A variety of adverse family circumstances can complicate the child's right to participate, including a home environment characterised by violence or abuse¹¹. Such circumstances create complications for practitioners in determining whether and how to uphold the child's right to participate, yet protecting the child from harm that may be caused through participation the context of both court proceedings and dispute resolution processes¹². FRSA concurs with the Victorian Royal Commission into family violence Report and Recommendations (2016, vol II, 108) that improving children's experiences of participation in the courts and other dispute resolution processes should be sensitive and responsive to the fact that, like adults, the needs of individual children differ, which is particularly the case for children requiring culturally-

¹¹ Kay, E. & Tisdall, M. 'Subjects with Agency? Children's Participation in Family Law Proceedings' (2016) 38(4) Journal of Social Welfare and Family Law 362

¹² Bell, F. 'Barriers to Empowering Children in Private Family Law Proceedings' (2016) 30 International Journal of Law, Policy and the Family



specific support, such as Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse communities, and children with disability can face particular barriers in seeking assistance to deal with abuse¹³.

Victoria's Royal Commission into family violence *Report and Recommendations* (2016, vol II, 114) report that children in newly arrived migrant families may face unique challenges to their participation in circumstances where they have adapted more quickly to life in Australia than their parents, for example by learning English, which can affect the power dynamic between children and their parents. The Family Law Council in the *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds Report* (2012, 37) suggest this leads to intergenerational conflict.

Children and families face a number of risks when needing to deal with multiple systems. The Family Law Council in its *Interim Report to the Attorney-General in Response to the First Two Terms of Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (2015, 33–4) identified that families engaging with the Family Law System following proceedings for family violence related orders in a state or territory court or, to a lesser extent, after contact with a state or territory child protection department or children's court. The Interim Report identifies a number of problems affecting safe outcomes for children and their families as a result, including:

- difficulties experienced by families in negotiating the different legal frameworks, terminology and procedural rules across the different jurisdictions;
- the need for parents and children to re-tell their story and re-litigate the question of risk in different forums;
- the limited capacity for federal judicial officers to address a family's multiple legal needs by exercising the protective jurisdictions of state and territory courts;
- barriers inhibiting access to the family courts by family members who are encouraged to seek family law orders by a state or territory child protection department, including barriers associated with the relative cost, pace and formality of family law proceedings by comparison with those of state courts;
- barriers that can be particularly acute for Aboriginal and Torres Strait Islander; and
- families and grandparent carers.

FRSA acknowledges that a related concern is that children in such cases may be overburdened or further traumatised by being interviewed by too many professionals¹⁴, although others argue that children experiencing family problems are often only too willing to voice their concerns, with child-inclusive practice playing a significant role in ensuring the child's voice is heard¹⁵. Other practitioners argue that the application of child-inclusive practice in these circumstances may intensify the pressures on the child and expose them to retribution from the perpetrator for speaking out. While these concerns tend to focus on matters involving family violence, consideration of methods to facilitate children's safe participation in court proceedings and dispute resolution processes are relevant to all matters in which a child is the subject of a dispute.

FRSA identify that major barriers include: a lack of ability/support from some practitioners; (some) parents; time sensitivities; safety issues; unreasonable cost; a lack of collaboration; and a lack of federal support.

¹³ See also Taylor, J. et al, 'Deaf and Disabled Children Talking about Child Protection' (The University of Edinburgh Child Protection Research Centre, 2015).

¹⁴ Kaspiew, R. et al, 'Independent Children's Lawyers Study', n 330.

¹⁵ Harris, N. 'Family Group Conferencing in Australia 15 Years On' (Child Abuse Prevention Issues No 27, Australian Institute of Family Studies National Child Protection Clearinghouse, 2008)



A lack of ability/support from some practitioners: the view of some practitioners that children's participation is not important or appropriate; inadequate skill level of practitioners and difficulty in recruiting appropriately trained and skilled child consultants; the belief that children do not understand, and are too young to have an opinion, and hence are not listened to for their views; there can be a lack of clarity around the purpose of children participating - especially when a court ordered family report is being completed simultaneously;

Parents: parents can be caught in their own grief and anger and attempting to 'use' the children to harm / punish the other parent; parents attempting to influence what the child says or how the child presents (some parents even refusing to allow their child to be seen); difficulty in getting both parties' (parents') consent for the child to participate; parents thinking that the children are OK and don't need to participate; parents not giving consent to their child participating - particularly when parents are separated and in high conflict; parental alienation; children feeling conflicted in telling their story and the impact it may have on parent relationships; parental conflict and acrimony, including bargaining around the final orders that do not account for the needs of the child;

Time sensitivities: there can be pressure from legal services and organisations to get people through the Family Dispute Resolution process as quickly as possible – with reluctance to prolong the process to include child consultancy;

Safety: the need to balance the risks to children emotionally and otherwise in participating; safety issues regarding family violence and child abuse;

Cost: service and transport cost can also be a barrier for children participating in counselling;

Lack of collaboration: a lack of communication between services; a non-child friendly System;

Lack of federal support: there is a lack of adequate federal funding to properly hear children's voices.

How to best have children participate

There are a range of ways children can participate, centring giving them a voice. Practitioners hearing what they'd like to do and receive from services, with appropriate boundaries, is imperative. Family Law Service providers in the FRSA network have found that strong outcomes are obtained when taking an opt out rather than opt in approach in child inclusive practice, unless there are sound reasons that they should not be involved, such as they are already seeing a counsellor or they have been interviewed for a Section 7 report. Service providers also find beneficial Child Informed Mediation, which involves bringing the voice of the child into the mediation process to determine parenting arrangements and developing the final parenting plan). Meaningful outcomes are also achieved by focussing on the needs of children in designing services and assessment processes, and implementing child orientations (in the delivery of Children's Contact Services) and periodical child reviews to discuss with the children about how the contacts are going and how they are feeling. Taking a whole of family and family therapy approach, inclusive of children's voices, is also good practice in getting children to participate.

There are numerous aspects of child-centred services that foster greater participation among children. It is beneficial to ensure services and staff support the participation of children as much as possible and where it is safe, and ensuring children are not required to tell their stories repeatedly to numerous professionals and agencies. Family Law Service



providers in the FRSA network indicate that Family therapeutic camps, practitioners being inclusive of children during home visits, working one to one with children, linking children with children's supports has also been found to engage children effectively. Screening for family violence and safety aspects, offering dedicated children's counsellors and rooms, providing a confidential environment (unless there are safety concerns) and ensuring access to counsellors who specialise in children's work is also valuable. Specifically, reconnection work in Parenting Orders Program and providing a "wrap around service for counselling in one location" in such services as Family Dispute Resolution, Family Relationship Centres, Parenting Orders Program, Family Law Counselling and Family and Relationship Services counselling also achieves desired outcomes in enhancing the participation of children.

It is also been deemed appropriate by Family Law Service providers in the FRSA network for services to work with the whole family unit, involving educating parents that they are the primary carer and closest influence on the child, and establishing at intake with the parent/s prior to engaging with the child what the parents' goals are. The professional development of staff can ensure practitioners understand child development, and involve training family counsellors and Family Dispute Resolution practitioners in Child Inclusive Practice and supervision is tailored to support them in this work. Research is also conducted by some agencies into how to strengthen children's voices in the delivery of a variety of services.

Increasing children's participation in family law courts

Children's participation in court can be better supported while their safety ensured and maintained through a variety of ways. It is essential that children are consulted and listened to the children as part of the Court Orders, that their views are taken into account in the Orders and the child's opinion are reviewed on a regular basis. Also beneficial would be the provision of more timely outcomes, to better ensure the safety and wellbeing of children, and providing children with easier and greater access to supervised contact centres to maintain contact with parents while court process unfolds. Parents cannot be excluded from the picture. Parents need to be provided with clear information about the process of child engagement to allay fears, and to prepare them and have them commit to protecting their child's safety and wellbeing in the process. Greater education of parents regarding the impact their grief and anger has on the child.

It is important to increase family law professionals' understanding of children's needs, as based in research. While it is effective for Independent Children's Lawyers to speak to the child/ren and or the Contact Service, in some cases this does not happen. Providing specialised training to Independent Children's Lawyers around techniques for interviewing children and ensuring that the provision of their information takes their safety into account would also be of benefit. In addition to the Independent Children's Lawyer and family consultant, the appointment of a child advocate or supporter throughout the process that is available only to the child to speak to and gain support would also be of benefit. So too is assigning a support person who is not attached to the Family Law Court, and referring them to child practitioners in community organisations who will work with the court. Also beneficial in court is having mandatory mechanisms like Child Informed Mediation in place to ensure the voice of the child is being included in every court decision, and increasing the use of technology to assist children in providing remote presentations to the court. Courts also need an investigation arm, as in most cases the child protection department does not investigate if there is a protective parent, and children subsequently fall through the loop due to this lack of investigation. What can help is information to be provided from the services when there is risk identified needs to be made more readily available to the court.



It is also important to ensure the participation of children when courts determine custody of children when an “alienating parent” denies the other parent access to the child/ren. Sometimes, the court will issue a “no contact” ruling where the child cannot have any contact with the alienating parent for a period of time, usually six months, which often does not consider the best interests of the child/ren, and cause psychological trauma. In these cases the needs and wants of the child should also be heard, and where appropriate some contact with the alienating parent be maintained to ensure the child/ren's safety and wellbeing.



iii. Improving access and engagement for all Australian families

It is FRSA's position that there needs to be greater inclusivity and safety for all kinds of families. The Productivity Commission acknowledged in its *Access to Justice Arrangements Inquiry Report* (No 72, Vol 1, 2014) that the cost of legal and other services can be a significant barrier to access to justice, as well as the following access and engagement barriers:

- court websites can be difficult to navigate for both clients and professionals;
- readily available information for clients about family law proceedings and the Family Law System's processes and services is limited;
- information catering to people with language and/or literacy barriers is limited; and
- clients find it difficult to access information that would allow them to identify and connect with relevant legal and non-legal services.

A significant barrier preventing clients from better accessing and engaging with the Family Law System are significant waiting lists, and FRSA recognises the value of triaging court applicants in reducing these. Among the suggestions made by the House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13) include a triaging approach to court applications, to ensure that urgent cases are identified and dealt with expeditiously and families are referred to resolution pathways appropriate to their needs in a timely fashion.

We suggest other barriers include a lack of community awareness. A survey of 1000+ people by the Family Mediation Centre revealed that fewer than 4% of the population were aware of and understood what mediation is. Service providers work with referrers to develop referral pathways. FRSA member organisations also suggested the barriers that prevent clients from accessing and engaging with the Family Law System include:

- the high cost of litigation;
- demand on services, lengthy delays in the court process and waiting times;
- clients being charged for preparation for their case and then the case date being rolled over;
- a general fear of a large system which can have a huge impact on the lives of families;
- the emotional distress involved;
- the endless paper work;
- bad previous experiences;
- lack of funding to provide more after hours or weekend access to services or business hours services with available child care;
- the cost and location of services;
- judicial officers' availability and delays; and
- a lack of diversity training.

FRSA recommends a number of changes to increase client access to the Family Law System for all clients:

- ensuring clients are provided with easily accessible and understood information about the Family Law system;
- educating referrers to be sensitive to diverse needs and improve the availability of enabling services;
- mitigating bias in referral and treatment;
- ensuring trained advocates are available for vulnerable clients to receive earlier intervention;



- providing education and information about Family Law Services in areas where families are in contact, e.g. at schools and early learning settings;
- simplifying clients' navigation of the system (the system in its current state being difficult and clients' knowledge of it limited);
- supporting parents who are unable to afford services, especially if the process draws out;
- appointing more judicial officers.

In terms of increasing clients' continued engagement with the Family Law System, FRSA suggests:

- placing continued emphasis on training family law practitioners in non-adversarial attitudes and approaches;
- making consistent the wrap-around service provided by Family Dispute Resolution services (currently varies per Family Dispute Resolution site);
- providing a consistent case management model to support persons moving through the system (both non-adversarial and court);
- taking a family violence support approach to service delivery right through a family's family law experience;
- ensuring courts are culturally sensitive;
- case managing clients so they are apprised of the situation on an ongoing basis;
- offering feedback mechanisms to ensure clients have a 'voice' and agency in the process;
- avoiding clients having to re-tell their story;
- ensuring diversity in staffing,
- adopting culturally appropriate language around post separation processes;
- co-locating multiple services such as Family Dispute Resolution, Parenting Orders Program and counselling;
- providing greater support for men who are not supported in the child support system;
- increasing education about the purpose of the Family Law System; and
- increasing funding and the appointment of more judicial officers.

Improving access and engagement for Aboriginal and Torres Strait Islander people

FRSA strongly supports the need for greater representation of Aboriginal and Torres Strait Islander people to work as Family Dispute Resolution practitioners and in other family law services in order to improve access and engagement for Aboriginal and Torres Strait Islander people and communities. In responding to this section, FRSA has drawn on the expertise and experience of the FRSA network in working with Aboriginal and Torres Strait Islander people. Some of these responses incorporate the direct views and voices of Aboriginal and Torres Strait Islander people.

For numerous years FRSA has administered the Attorney-General's Department-funded post-separation support services scholarship scheme for Aboriginal and Torres Strait Islander people and people of culturally and linguistically diverse (CALD) backgrounds. Over 30 scholarships have been awarded and over 90% of students have completed their studies, with another 13 having just recently commenced. A large number of these scholarship recipients remain employed in the family law services sector.

Best practice principles to better ensure remote and regional Aboriginal families better access of and engage in services have been set out in the research report Model of



Practice for Mediation with Aboriginal Families in Central Australia¹⁶. This Model of Best Practice suggests that the fundamental principles include the need to: be patient; resist the temptation to fill silences; respect individual knowledge; be flexible in defining your work duties and role; describe clearly the role of a mediator; know your boundaries; proceed at the client's pace; respect the level of engagement of the client and understand the reasons why it might be different than anticipated; be confident and demonstrate that to the clients; care for yourself; carry out a regular reality check; simplify language and jargon used.

FRSA recognises and is mindful of the barriers Aboriginal and Torres Strait Islander people face in accessing and engaging with Family Law Services. The Closing the Gap: Prime Minister's Report (2017) by the Department of Prime Minister and Cabinet identifies that barriers to Aboriginal and Torres Strait Islander families accessing Family Law Services and the courts face are inseparable from the history of colonisation, dispossession of land and forced removal from country and the separation of children from families through historic government policies of child removal. The Model of Practice for Mediation with Aboriginal Families in Central Australia report acknowledges various barriers around language, culture, distance and transport, and mediators engaging in bad practice, which includes: rushing; having unreasonable expectations; disrespecting community space; forcing the process; introducing unnecessary issues; over-analysing the parties and their situation; giving direct advice; promising unrealistic outcomes; and overstating their role and knowledge.

The Family Law Council and SNAICC reports¹⁷ recognise the cultural and geographic diversity of Aboriginal and Torres Strait Islander peoples, As well as issues of cost, language, cultural safety and geographic and physical accessibility. Also, Aboriginal and Torres Strait Islander clients can present with complex and inter-connected needs and issues that limit their participation in the process, such as language barriers or transport problems. It is important that, where necessary and appropriate, Family Relationship Centres and other Family Law Services refer them to other services that can best support them. Contact with Family Relationship Centres and other services may be difficult for people living in remote communities given the general lack of knowledge of and access to relevant services. This may be compounded by the often large distances involved and limited access to transport and telephone services¹⁸. For Aboriginal and Torres Strait Islander people living remotely, there are additional circumstances that affect their ability to engage with the service provided by the Family Relationship Centre in Alice Springs, such as transport to town, access to a telephone and limitations on the resources they have available to become involved in an intensive process¹⁹.

FRSA supports the range of recommendations made by the Indigenous Legal Needs Project (Submission No 19 to Senate Standing Committee on Finance and Public Administration, Parliament of Australia, Inquiry into Access to Legal Assistance Services

¹⁶ Ross C, Mallard D and Fisher S. 2010. Model of Practice for Mediation with Aboriginal Families in Central Australia. Relationships Australia Family Relationship Centre, Alice Springs.

¹⁷ Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 1; Secretariat of National Aboriginal and Islander Child Care Inc, Working and Walking Together: Supporting Family Relationship Services to Work with Aboriginal and Torres Strait Islander Families and Organisations (SNAICC, 2010).

¹⁸ Ross, C., Mallard, D. & Fisher, S. 2010. Model of Practice for Mediation with Aboriginal Families in Central Australia. Relationships Australia Family Relationship Centre, Alice Springs.

¹⁹ Ross, C., Mallard, D. & Fisher, S. 2010. Model of Practice for Mediation with Aboriginal Families in Central Australia. Relationships Australia Family Relationship Centre, Alice Springs.



[2016]) around the need to enhance accessibility of the Family Law System for Aboriginal and Torres Strait Islander communities and provide families with culturally safe services:

- the development and delivery of Family Law System responses, including planning and dispute resolution processes, by or in conjunction with Aboriginal and Torres Strait Islander communities and organisations (see also Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report [2016]*);
- embedding workers from Aboriginal and Torres Strait Islander specific services in the family courts and Family Relationship Centres as liaison officers;
- strategies to support the development of an Aboriginal and Torres Strait Islander workforce across the Family Law System, including the appointment of Indigenous counsellors, lawyers, family dispute resolution practitioner and judicial officers; and
- developing tailored education programs about the family law and child protection systems for Aboriginal and Torres Strait Islander communities.

FRSA also supports recommendations put forward by the House of Representatives Standing Committee on Social Policy and Legal Affairs Committee in 2017. This includes that, 'as a matter of urgency', the Australian Government implement the Family Law Council's recommendations from its 2012 Report, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, as well as the Council's additional recommendations in its 2016 report on families with complex needs 'as they relate to Aboriginal and Torres Strait Islander families':

- the provision of culturally secure family assessment reports in matters involving Aboriginal and Torres Strait Islander children;
- the development of culturally secure court hearing processes in the family courts similar to those applied in state and territory Koori and Murri courts (Family Law Council *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems Final Report [2016]*); and
- a greater use of cultural healing and trauma-recovery approaches that are grounded in Indigenous knowledge (Aboriginal and Torres Strait Islander Healing Foundation, *Bringing Them Home 20 Years On: An Action Plan for Healing [2017]*).

Reports have also questioned the appropriateness of Family Law System responses to family violence for Aboriginal and Torres Strait Islander peoples (such as by the House of Representatives Standing Committee on Social Policy and Legal Affairs [n 11]), including the effectiveness of mainstream conceptualisations and responses to family violence in Aboriginal and Torres Strait Islander communities²⁰. In particular, recent research²¹ and Alice Springs Women's Shelter's submission (No 121, April 2017) to House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into A Better Family Law System have raised questions about the implications for Aboriginal women of the coercive control paradigm in the Family Law Act's definition of family violence.

Regarding the barriers preventing Aboriginal and Torres Strait Islander people from accessing and engaging with the Family Law System, FRSA member organisations suggest these include:

- suspicion and misunderstanding of the Family Law System;
- lack of culturally appropriate processes;

²⁰ Blagg, H. et al, 'Innovative Models in Addressing Violence against Indigenous Women: Final Report' (Horizons No 1, ANROWS, 2017)

²¹ Nancarrow, H., *Legal Responses to Intimate Partner Violence: Gendered Aspirations and Racialised Realities* (Griffith University, 2016)



- lack of flexibility in processes;
- lack of Aboriginal and Torres Strait Islander professionals in the system;
- fear of service/government interventions;
- a general antipathy for western law given colonial history;
- a misunderstanding or lack of understanding about the difference between the Family Law System and the care and protection system, leading to fear about the removal of children;
- a general lack of understanding about the Family Law System along with concerns about the courts understanding of Aboriginal and Torres Strait Islander culture, lore and kinship;
- high costs;
- system is seen as too 'white' and not fair, applicable nor appropriately tailored.

FRSA recommends there are a number of ways to increase access to the Family Law System for Aboriginal and Torres Strait Islander people, by:

- increasing Indigenous employment, including liaison officers in the courts
- provide more intensive family liaison and capacity building in the lead up to building understanding, confidence and general capacity to participate
- increasing knowledge and information about the system and how it differs from the Care and Protection system, including by working with communities to increase knowledge of services;
- reducing fear or mistrust of authority, and fears of negative outcomes such as children being removed;
- providing explanations in simple language and Indigenous language if English is not first language;
- allowing support persons to accompany clients;
- providing single contact points and easy access procedures (such as simple forms/ less requirements online, etc.);
- creating culturally appropriate, safe and friendly places, including branches and office environments
- better training representatives to support and advocate specific needs;
- increasing family law professionals' capacity to co-work with Indigenous support workers,
- increasing the provision of cultural competencies training.

Once in the Family Law System, to better ensure Aboriginal and Torres Strait Islander people's continued engagement with the Family Law System, FRSA suggests:

- increasing supported engagement, with caseworker walking with the family through the system;
- ensuring courts understand kinship and family ties for Aboriginal and Torres Strait Islander people, as well as cultural obligations and how these impact on family (e.g. how decision on issues are made and who is involved);
- increasing courts understanding of the diversity of Australian Indigenous peoples and levels of community engagement;
- offering feedback mechanisms to ensure Aboriginal and Torres Strait Islander people have 'voice' and agency in the process;
- avoiding having Aboriginal and Torres Strait Islander clients repetitively tell their story; and
- increasing the number of Aboriginal and Torres Strait Islander staff in the court system.



Improving access and engagement for people of CALD background

In 2017, as a result of House of Representatives Standing Committee on Social Policy and Legal Affairs (n 11, 257) concluded that 'the Family Law System is not currently accessible, equitable, responsive' to culturally and linguistically diverse families, nor is it one which 'prioritises the[ir] safety'. Furthermore, Allen Consulting Group's Research on Family Support Program Family Law Services Final Report for the Attorney-General's Department (Cth, May 2013, 55) concluded that people from culturally and linguistically diverse backgrounds are underrepresented as users of the Family Law System (2016 Census). This is despite more than one quarter (26%) of Australians were born overseas, 49% of all Australians were born overseas or had at least one parent born overseas, and more than one fifth (21%) of the population spoke a language other than English at home.

People from culturally and linguistically diverse backgrounds, particularly those from newly arrived or refugee communities, may have limited knowledge and understanding of the Australian Family Law System. Access to information about family law can often be impeded by language and literacy barriers: information about family law and Family Law Services may not be available in some community languages, and limited literacy even in a person's own community language may mean that even where available, translated material is not accessible (Family Law Council *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* [2012, ch 2, 31-3]).

People from culturally and linguistically diverse backgrounds who experience family violence face additional barriers in accessing Family Law Services, which may include a lack of understanding by Family Law System professionals about culturally specific instances of family violence, and cultural norms and pressures relating to disclosure of family violence (House of Representatives Standing Committee on Social Policy and Legal Affairs [n 11, 241-8]). Another factor affecting the Family Law System needs of people in newly arrived communities is a high rate of intergenerational conflict, which can lead to inter-parent conflict and marriage breakdown (Family Law Council *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* [2012, ch 2, 31-3]).

FRSA supports the recommendations made by the Family Law Council to improve the Family Law System for clients from culturally and linguistically diverse backgrounds (also recommended by the House of Representatives Standing Committee on Social Policy and Legal Affairs family violence Report (House of Representatives Standing Committee on Social Policy and Legal Affairs [n 11, 241-8]):

- community education about family law and Family Law Services;
- cultural competency in the Family Law System;
- service integration;
- numbers of culturally and linguistically diverse personnel working within Family Law System services;
- engagement and collaboration with culturally and linguistically diverse communities in the development, delivery and evaluation of services; and
- the use of interpreters in the Family Law System (Family Law Council *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* [2012 ch 5]).

In addition to this, FRSA identifies a number of key recommendations for increasing client access to the Family Law System for people of CALD background:

- ensuring cultural liaison officers are available in courts;
- increasing the efficient and effective use of interpreters;



- increasing the number and capacity of support people available;
- growing awareness among people of CALD background of the concept of Family Dispute Resolution as an effective cost saving legal pathway option over suffering in silence (trained culturally aware practitioners can guide this process with the sensitivity and an understanding of eth cultural factors at play);
- increasing the number of people from CALD communities pursuing a career in Family Dispute Resolution is recommended, and provide greater support for them;
- training family law professionals to develop a greater appreciation for cultural nuances around parenting, obligations of couples, roles in families, how decisions are made, involvement of others (e.g. religious staff, dowry systems, etc.);
- increasing the number of culturally diverse staff in the court systems who speak diverse languages;
- ensuring that decisions are clear and timely so that situations do not drag on and disengage clients;
- increasing funding to make interpreters and support workers for cultural groups more accessible;
- rolling out translator services which have been found to be easy to access for people from CALD backgrounds.

In terms of increasing people of CALD background's continued engagement with the Family Law System, FRSA member organisations suggest Family Law System professionals better appreciate: cultural nuances around parenting; obligations of couples; roles in families; how decisions are made; involvement of others such as religious staff; dowry systems; and other aspects of culture. Have culturally diverse staff in the court systems who speak languages would also assist, as would ensuring ongoing communication and client agency in the process. In terms of the barriers that can prevent people of CALD background from accessing and engaging with the Family Law System, FRSA identifies these as including:

- a shortage of culturally responsive services;
- a lack of awareness and cultural misconceptions about Family Law Services;
- a lack of understanding of the system and how it fits with more familiar processes (such as going to religious or cultural leaders for advice);
- an inability for some people of CALD background to produce required paper work;
- fear of government systems which, for some, in their home country, would produce harsh penalties, including torture;
- difficulty accessing same interpreters for repeat or on-going sessions with clients; and
- a lack of suitably qualified bi-cultural workers.

Improving access and engagement for people living in rural, regional and remote areas

In 2009, 69% of Australians lived in major cities, 20% lived in inner regional areas, 9% in outer regional areas and around 2.3% lived in remote or very remote areas. Those living in remote or very remote areas are more likely to be Aboriginal or Torres Strait Islander people, and a greater proportion of those in very remote areas live in multi-family households²². As the KPMG *Future Focus of the Family Law Services: Final Report* (Attorney General's Department, 2016, 57–8) points out, while some regional areas are well served by Family Law Services, others may face a number of access challenges. People living in rural, regional and remote Australia can face geographical barriers to accessing the

²² Baxter, J., Gray, M. & Hayes, A. 'Families in Regional, Rural and Remote Australia' (Fact Sheet, Australian Institute of Family Studies, 2011) 2



Family Law System and its associated services, which are predominantly located in major metropolitan areas. Geographic isolation from such services is often compounded by limited public transport, and the expense of private transport. People living in remote communities in particular may have to travel great distances to reach services and family law courts located in regional areas (Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* [2012, 54]).

In those locations where in-person legal services are available, a further barrier to accessing the Family Law System may arise where the services available are insufficient to avoid a conflict of interest, meaning both parties to the dispute are not able to seek advice (Family Law Council *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* [2012, 48]).

The Productivity Commission points out in its *Access to Justice Arrangements Inquiry Report* (n 9, 784) that Aboriginal and Torres Strait Islander people who live in rural, regional and remote areas face additional barriers to accessing the Family Law System. These include the overarching issues of poorer socio-economic, health and education outcomes for Aboriginal and Torres Strait Islander people living in remote communities. Specialist family law assistance for Aboriginal and Torres Strait Islander people is also limited in rural, regional and remote areas²³, and while some mainstream services are available in these locations, Aboriginal and Torres Strait Islander people may not engage with them due to concerns that these are not culturally secure or appropriate. In addition, Aboriginal and Torres Strait Islander people may speak English as an additional language and face further barriers to access because of limited availability of interpreter services in regional and remote locations, or limited familiarity of interpreters with the Family Law System (Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* [2012, 42–3]).

FRSA is aware that people experiencing family violence in rural, regional and remote areas can also experience additional barriers to accessing the Family Law System, such as a lack of available support services, including crisis accommodation, particularly where access to finances or transport is limited. Where services are available, a feeling of 'visibility' can be experienced—that is, the likelihood that the person who has experienced and the person who used violence will be both known to local support workers, which may impede disclosing family violence and seeking assistance²⁴.

FRSA supports the suggestions made in Family Law Council's *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems Final Report* (2016, 134–6), including around improving access for people in rural, regional and remote areas have included making greater use of communication technology to provide services, including for court appearances and conferencing, coupled with efforts to improve availability of such technology, as well as to improve digital literacy.

The Family Law Council, in its *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (2012, 43, 102–3), report that for Aboriginal and Torres Strait Islander clients in rural and remote areas, access to justice may be improved by measures including increasing the availability and family law expertise of interpreters in these locations, improving the cultural competency of mainstream services in these areas, and improved collaboration with Aboriginal and Torres Strait Islander specific services.

²³ Ibid 779

²⁴ George, A. & Harris, B. 'Landscapes of Violence: Women Surviving family violence in Regional and Rural Victoria' (Centre for Rural and Regional Law and Justice, 2014) 57–9



In addition to this, Family Law Services providers in the FRSA network indicate that there are a number of key actions that can be taken to increase client access to the Family Law System for people living in rural, regional and remote areas:

- increasing the range of technological options for accessing Family Law Services, including for lodging documents;
- adequately funding for Family Relationship Centres and Family Law Services to deliver in rural and remote communities, including recognising that some such communities have an aversion to 'virtual' services or phone service delivery, with a clear preference for face to face/community presence of services;
- increasing the availability of outreach locations that are accessible and have the provision for Family Dispute Resolution, including shuttle, financial support for transport to larger centres;
- increasing the provision of reliable online communications methods, including internet access and video linking, in order to reduce the cost and need to travel long distances to access services);
- providing the option of the courts coming to the people rather than the people coming to the courts.
- educating clients in terms of court processes and knowledge around Court Orders, Apprehended Violence Orders, processes for self-representing litigants, etc.; and
- providing visiting clinics to support face to face interaction to get information and referrals.

In terms of increasing continued engagement with the Family Law System for people living in rural, regional and remote areas, FRSA suggests professionals in the courts gain a greater understanding of issues that negatively impact on engagement, such as natural disasters, family ties to land and farming, suicide risks and financial stresses. Also, professionals must develop a greater understanding of issues of: intersectionality and diverse communities in rural areas; social isolation; lack of supports; and conservative communities. Regarding the barriers preventing people living in rural, regional and remote areas accessing and engaging with the Family Law System that need to be overcome, Family Law Services providers in the FRSA network suggest these include: long distances and associated travel requirements; a lack of technology; being forced (for lack of other options) to utilise virtual or phone based services; and a mistrust around services that are first-in first-out, or only provide phone assistance.

Improving access and engagement for people with a disability

People with disability face a variety of barriers to participating in court and in the broader Family Law System, such as communication barriers, difficulties accessing the necessary supports to participate effectively in proceedings, and in giving instructions to legal representatives (Australian Law Reform Commission *Equality, Capacity and Disability in Commonwealth Laws Report* [No 124 2014]). Particular concerns have been raised in relation to the safety needs of women and girls with disability. Women and girls with disability are twice as likely as women and girls without disability to experience violence during their lives²⁵. Women and girls are also more likely to experience violence over a longer timeframe, resulting in more severe trauma, and are more vulnerable to particular types of abuse, such as sexual assault, financial abuse and forced or coerced sterilisation (COAG Advisory Panel *Reducing Violence against Women and their Children Final Report* [2016, 11, 37]).

²⁵ Krnjacki, L. et al, 'Prevalence and Risk of Violence against People with and without Disabilities: Findings from an Australian Population-Based Study' (2016) 40(1) Australian and New Zealand Journal of Public Health 16



The report by the Office of the Public Advocate in Victoria *Whatever Happened to the Village, the Removal of Children from Parents with a Disability* (December 2013) outlines the level of understanding of disability held by judicial officers and legal practitioners and other professionals working in the Family Law System may also act as a barrier to access to justice. Limited understanding of how disability can affect a parent in a family law matter may see a parent lose their care role, or be persuaded to consent to limited contact arrangements, because of assumptions made about a person's parenting capacity or capacity to manage the stresses of litigation. A parent with disability may sometimes incur the additional expense of securing a specialist report that can address the issue of their disability because of a lack of particular expertise among family consultants.

Also, service providers may not have a clear understanding of how to identify and support both adults and children with disability who experience violence. Within the Family Law System, one potential consequence of such lack of expertise is that disclosures of sexual abuse by girls who have an intellectual disability may not be believed (Women with Disabilities Victoria, Submission to the family violence Royal Commission [15 June 2015]).

FRSA supports the number of suggestions made by the Office of the Public Advocate in Victoria's report in regards to access to justice issues for people with disability, including:

- improving awareness of the types of violence experienced by people with disability, as well as cross-sector collaboration with disability-specific services (see also COAG Advisory Panel *Reducing Violence against Women and their Children*, [n 51]);
- training and accreditation for Family Law System professionals to enhance their competency in working with parents and children with disability; and
- incorporating relevant provisions of the Convention on the Rights of Persons with Disabilities into the Family Law Act.

We suggest there are a number of barriers that prevent people with a disability from accessing and engaging with the Family Law System include:

- a lack of understanding and training among professionals in working with people with disabilities;
- a lack of trained support people;
- little use of innovative technological resources.
- the 'newness' of National Disability Insurance Scheme and the restrictions around how people can use their funds may mean that accessing higher levels of support to assist with participation is not available to the person; and
- wheel chair / disability access.

FRSA recommends a number of actions to improve access to the Family Law System for people with a disability including:

- ensuring resources are available to people with disability, including access to a disability advocate;
- designing buildings to be more accessible for people with disability
- providing more intensive support to build understanding and capacity to participate (this requires additional time and access supports, including engagement with extended family where appropriate);
- creating a whole of system support for cultural change, including judicial and legal professional support for Alternative Dispute Resolution;
- strengthening training requirements for vocational and university training course content to ensure all new graduates possess the relevant competencies;



- providing ready availability (e.g. centralised database) of approachable literature, competency-based training courses and webinars;
- fostering greater cross-service collaboration, such as in the form of networking days and collaborative case management;
- increasing physical access and safe and accessible environments (hearing loops, chair access, adjusted environments for people with anxiety, etc.);
- allowing flexibility of process to allow for episodic disabilities;
- ensure costs are minimal or are aligned with National Disability Insurance Scheme provisions;
- allowing carers/family greater involvement to provide support where required;
- ensuring privacy as required; and
- providing a single point of contact to avoid the need for people with disability to re-tell their story.

And, to increase continued engagement with the Family Law System for people with a disability, FRSA suggests:

- professionals engaging in ongoing communication with each other and with clients, and being sensitive to needs;
- ensuring courts are culturally sensitive;
- offering feedback mechanisms to ensure people with a disability have 'voice' and agency in the process; and
- avoiding clients having to re-tell their story.

Improving access and engagement for people who identify as LGBTIQ

A 2017 study based on interviews with 24 people who had experienced separations involving children in same-sex couple contexts reported that this group had experienced 'an added layer of difficulty to their separation process due to their concerns around finding the support of a service provider'²⁶. This is significant in light of the increase in individuals and couples identifying as LGBTIQ—the Australian Bureau of Statistics (ABS) Census of Population and Housing data on Same-Sex Couples in Australia in 2016 recording a higher numbers of same-sex couples than previous counts. Just under 46,800 same-sex couples living under the same roof were recorded, representing a 36% increase since the 2011 Census. Same-sex couples account for 0.9% of all couples in Australia, with slightly more same-sex male couples (23,700) than female (23,000).

The issues facing people identifying as LGBTIQ accessing the Family Law System are complex. In relation to property matters, the federal Family Law System has been available to people in non-heterosexual relationships since 2009, provided the relationship falls within the definition of 'de facto' in s 4AA(1) of the Family Law Act. However, in relation to parenting matters, recognition of same-sex parenthood is complex and will depend on whether a child was conceived using reproductive technology and the circumstances in which this occurred. Reforms to provisions recognising partners of women who conceive through artificial conception as parents were enacted in 2008 and provide recognition for lesbian co-parents in some circumstances (Family Law Act s 60H). These provisions do not cover children of male same-sex relationships and academic critiques have argued that despite these reforms, non-biological lesbian co-mothers continue 'to be treated as secondary figures in their children's lives'²⁷. The Family Law Council in its

²⁶ Gahan, L. 'Separated Same-Sex Parents' Experiences and Views of Service Providers' (2017) 17(2) Journal of Family Strengths Article 2, 26

²⁷ Kelly, F. Robert, H. & Power, J. 'Is There Still No Room for Two Mothers? Revisiting Lesbian Mother Litigation in Post-Reform Australian Family Law' (2017) 31(1) Australian Journal of Family Law 1, 25.



Report on Parentage and the Family Law Act (2013, 31) considered the parentage provisions of the Family Law Act in 2013 and concluded that the present legal framework did not 'reflect the reality of parenting and family life for many children in Australia'.

The House of Representatives Standing Committee on Social Policy and Legal Affairs family violence Report (n 11, 252) said that 'multiple submissions noted a need for improvement in the quality and accessibility of services for people from LGBTIQ communities', and recommended that family law professionals receive 'training on working with these groups to ensure that the Family Law System is accessible and responsive'. FRSA supports these recommendations.

Access barriers due to limited professional knowledge may also arise in relation to LGBTIQ people who experience family violence. While the evidence base on family violence among these groups is underdeveloped, the indications are that prevalence rates are similar to those in the general population (Victoria, Royal Commission into family violence, Report and Recommendations [2016, vol V, 143]). A key issue for young people in these groups is that they may experience violence from family members as a result of their sexuality or gender identity²⁸. In addition to the forms of family violence that occur generally, people in these groups may experience other types of violence arising from their sexuality or gender identity, such as threats to reveal this identity to those who may be unaware of it. The Victorian Royal Commission into family violence highlighted a significant need for improvement in understanding of and response to this issue. Family Law Services providers in the FRSA network identify the main barriers preventing people who identify as LGBTIQ accessing and engaging with the Family Law System include:

- systems are too often designed for heterosexual parents;
- there is little understanding of legal rights of LGBTIQ people;
- inappropriate questions on paperwork
- there is concern about perspectives/judgement about relationships;
- issues of bias, stigma and discrimination; and
- a lack of resource material which is inclusive for LGBTIQ families.

FRSA recommends a number of ways to increase client access to the Family Law System for people who identify as LGBTIQ, including by:

- providing more readily available/centralised information on LGBTIQ related legislation (e.g. parental responsibility for donor conceived children);
- addressing legislation gap for gay fathers;
- re-designing data collection to take into account LGBTIQ identities (e.g. client forms which allow for diverse expressions of gender in recording of gender and honorifics such as Ms, Mr, Mx);
- improving family violence responses which account for the needs of LGBTIQ people, including: increased knowledge and recognition of LGBTIQ issues in family violence response and protection (e.g. police, magistrates courts);
- improving access to protection services (e.g. family violence shelters available to gay men and transgender individuals);
- increasing practitioner knowledge across the whole sector in supporting LGBTIQ clients in appropriate ways (e.g. knowledge of how to correctly use preferred pronouns, knowledge of LGBTIQ specific issues);

²⁸ Hillier, L. et al, 'Writing Themselves in 3: The Third National Study on the Sexual Health and Wellbeing of Same Sex Attracted and Gender Questioning Young People' (Monograph Series 78, Australian Research Centre in Sex, Health and Society, La Trobe University, 2010) 46



- ensuring information is LGBTIQ user friendly, and language used is non binary and allows for varying configurations of family, inclusive of all family structures (e.g. ensure we talk about 'parents', not 'mum' or 'dad'); and
- mitigating against bias by training staff.

As well as for increasing their ongoing engagement:

- offering LGBTIQ specific services with appropriately skilled and qualified practitioners and resources;
- improving general knowledge of LGBTIQ needs with all service providers, to improving the experience for those who do not access LGBTIQ specific services;
- being mindful of LGBTIQ families in documentation, visual representations (e.g. photos of families) and processes;
- addressing and resolve the question of data collection – under what circumstances and how should service providers collect information from clients about their sexual orientation in order to respectfully collect data for research and quality improvement purposes?;
- ensuring ongoing communication and continued assurances of a non-biased system;
- ensuring courts are sensitive; and
- case managing clients so they are apprised of the situation on an ongoing basis.

Improving access and engagement for people on low incomes

The House of Representatives Standing Committee on Social Policy and Legal Affairs family violence Report (n 13, 59) noted that the costs associated with seeking negotiated or adjudicated outcomes in the Family Law System can sometimes impoverish families, particularly in the context of the significant limitations on the availability of publicly subsidised legal services and legal aid. The House of Representatives Standing Committee on Social Policy and Legal Affairs family violence Report, indicated that on multiple occasions the Committee was told of legal costs in family law matters that had amounted to over \$100,000. The National Association of Community Legal Centres also noted that people who are ineligible for legal aid but earn less than \$50,000 or \$60,000 a year are unable to afford the private legal fees necessary to access the Family Law System.

Australian Institute of Family Studies research²⁹ has shown that the median personal income for separated parents some 12 months after separation is \$55,000 for fathers and \$33,800 for mothers. Financial stress among this cohort is common, with only 37.4% of fathers and 26% of mothers *not* reporting one of seven potential indicators of financial stress, such as being unable to pay bills on time. This suggests that incurring legal costs in relation to a family law dispute would be unsustainable for many separated families.

The House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13, 61) reported that among the factors that contribute to the high costs of litigation are court delays, multiple court hearings, and a lack of compliance with court orders. In children's matters, costs can be associated with obtaining a private family report. The Committee noted that these reports can cost many thousands of dollars, depending on the experience and reputation of the report writer.

The Productivity Commission's Access to Justice Arrangements Report (Inquiry Report No 72, Vol 2, 2014) also highlighted the limited availability in the Family Law System of resolution avenues that are proportionate to the issues in dispute. It noted that financial

²⁹ Kaspiew, R. et al, Experiences of Separated Parents Study (Evaluation of the 2012 family violence Amendments) (Australian Institute of Family Studies, 2015) 11



barriers to accessing the family courts may lead parties to not act on their legal problems, to not seek legal advice, or to withdraw from or settle cases prematurely. In these circumstances, parties may agree to unsafe, unfair or unworkable arrangements. This may leave children exposed to ongoing parental conflict or family violence, with significant negative impacts on their wellbeing. The Productivity Commission suggested that the resolution of less complex family law matters was best achieved through expanded availability of low-cost family dispute resolution (Family Dispute Resolution) services and affordable legal advice on parenting and financial issues, especially in matters involving family violence. As noted in the section, 'Resolution and adjudication processes', it argued that increased use of Family Dispute Resolution would reduce the expense involved in litigating in the family courts when resolving a dispute. It proposed augmenting the availability of low-cost resolution mechanisms, such as offering Family Dispute Resolution for financial matters, and simplifying the law applicable to these cases. The Productivity Commission also raised a range of other possible strategies to address cost related access barriers. One involves 'unbundling' of legal services—that is, separating the legal services that are necessary for dispute resolution into their constituent parts and offering these discrete services for a fee. The constituent parts of 'unbundled' legal assistance fall into three main categories: general counselling and legal advice, preparation or assistance with drafting of documents or pleadings, and court appearances.

More so, the House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13, 160) states that parties who have experienced violence may also be exposed to continuing violence through these arrangements or feel pressured to accept unfair property settlements that leave them and their children financially disadvantaged post-separation. Self-represented parties may also impede access to justice for the other party to a matter. For parties who have experienced family violence, fear of being cross-examined by the person who has perpetrated the abuse may lead them to avoid the court and consent to arrangements that do not provide the security they need (House of Representatives Standing Committee on Social Policy and Legal Affairs [n 13]). On issues of safety and security in cross-examination, the Attorney-General's Department advises that an Exposure Draft of the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill was released for public comment on 17 July 2017, and the Government is currently considering the stakeholder feedback received on the Bill.

Family Law Services providers in the FRSA network identify that other barriers preventing people on low incomes accessing and engaging with the Family Law System are also the same as that of some of the other minority client groups, including the cost of legal costs of representation when not eligible for a grant of legal aid and difficulties in accessing affordable legal advice and representation. To increase access to the Family Law System for people on low incomes, FRSA suggests:

- providing greater support to protect the interests of victims of financial abuse through Family Law System (in cases where the perpetrator has greater access to financial resources, the system can be used to further abuse or disadvantage the victim);
- reducing costs of accessing Family Law Services;
- offering instalment payment plans;
- making clear what is free and what is not;
- reviewing if there are any unintended costs (e.g. prerequisites for services which cost).

In terms of increasing continued engagement with the Family Law System for people on low incomes, FRSA member organisations have found that it is best to provide: ongoing



communication; a single point of contact and case management to ensure they are apprised of the situation on an ongoing basis; feedback mechanisms to ensure they have 'voice' and agency in the process; avoiding clients having to re-tell their story; and appreciating and responding accordingly to intersectionality, e.g. the interplay between family issues and health issues.



iv. Better addressing parenting and property disputes

The Productivity Commission in its *Access to Justice Arrangements Inquiry Report* (No 72, Vol 2, 2014) suggested that the resolution of less complex family law matters was best achieved through expanded availability of low-cost family dispute resolution (Family Dispute Resolution) services and affordable legal advice on parenting and financial issues, especially in matters involving family violence. As noted in the section, 'Resolution and adjudication processes', it argued that increased use of Family Dispute Resolution would reduce the expense involved in litigating in the family courts when resolving a dispute. It proposed augmenting the availability of low-cost resolution mechanisms, such as offering Family Dispute Resolution for property and financial matters, and simplifying the law applicable to these cases.

A number of suggestions have been made for changes to the Family Law Act's property regime, including the codification of the Full Court of the Family Court's decision in *Kennon and Kennon* in 1977, or otherwise providing clearer guidance about how family violence will be taken into account in property matters (House of Representatives Standing Committee on Social Policy and Legal Affairs [n 13, rec 13]). Particular concerns have been raised in this context about the limited availability of less formal and lower cost dispute resolution options for property matters that involve small asset pools, including the implications of this limitation for women who have experienced family violence (Productivity Commission *Access to Justice Arrangements Inquiry Report* [No 72, Vol 2, 2014]).

A number of suggestions for change to address these problems have been made. These include:

- a recommendation by the Productivity Commission that the requirement in s 60I of the Family Law Act to attempt Family Dispute Resolution prior to lodging an application for children's orders be extended to financial matters (Productivity Commission *Access to Justice Arrangements Inquiry Report* [No 72, Vol 2, 2014]).
- recommendations by the House of Representatives Standing Committee on Social Policy and Legal Affairs and Women's Legal Service Victoria that the family courts promote early resolution of small property disputes through a streamlined case management process with simplified procedural and evidentiary requirements (House of Representatives Standing Committee on Social Policy and Legal Affairs [above n 13, rec 14]);
- recommendations by the Victorian Royal Commission into family violence, the Family Law Council (Family Law Council *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems Final Report* [2016]), and the House of Representatives Standing Committee on Social Policy and Legal Affairs [n 13, rec 17]), that state and territory magistrates be encouraged to increase the exercise of their Family Law Act powers in relation to property when parties with family law needs are already before the court;
- the implementation of a small claims list in the Federal Circuit Court (Victoria Legal Aid, Submission No 60 to the House of Representatives Standing Committee on Social Policy and Legal Affairs Committee, Parliament of Australia, Inquiry into A Better Family Law System [2017] along the lines used by the Federal Circuit Court in claims of up to \$20,000 under the Fair Work Act 2009 (Cth) and claims up to \$40,000 under the National Consumer Credit Protection Act 2009 (Cth); and
- the roll out of an arbitration process for small property claims along the lines of Legal Aid Queensland's arbitration model, which is available to legally aided clients for resolution of property disputes of between \$20,000 and \$400,000.



Following the introduction of the 2006 reforms to the Family Law System that encouraged greater use of non-court based mechanisms for resolving parenting disputes (when the FRC's, FDRP's and other Family Law Services were introduced) an analysis of family law court filings over a nine year period between 2004-05 and 2012-13 conducted by the Australian Institute of Family Studies found a 25 per cent reduction in Family Court matters involving Children³⁰. The former Attorney-General, the Hon George Brandis QC, described the sector as an 'outstanding success'.

FRSA believes the Family Law Services sector is well placed to provide mandated property dispute resolution services.

Property matters consume a significant proportion of legal services accessed by families. The Australian Institute of Family Studies³¹ reports that of 3,728 cases observed in 2014, the main issues lawyers helped with were: property settlement (59.2%); parenting arrangements (52.2%), court proceedings (22.3%), child support matters (18.6%); Family Dispute Resolution services (12.8%); protection orders (9.6%); other divorce/separation matters (27.4%); none of these (6.1%). Of 794 parents' court cases observed in 2014, property disputes were also prominent: children's care arrangements (66.8%); safety issues (41%); division of property/finance (32.5%); child support / financial support for children (10.5%); and other things (8.7%).

It is, of course, important to consider how property matters can be most effectively dealt with alongside or separate to parenting matters. The intersection of property resolution and parenting matters being both complex and fraught with risks, especially where children are involved and family violence, poor capacity to engage in the process or other risk factors are present. Family Dispute Resolution as well as Property Dispute Resolution and Alternative Dispute Resolution practitioners currently work in informal collaboration with lawyers whereby parties are encouraged to seek independent legal advice during the process.

The benefits of such Property Dispute Resolution include: keeping many cases out of court; assisting parties to consider the needs of children in relation to property and financial decisions; and supporting parties through a holistic and less adversarial approach, which includes for screening and suitability. Still in 2018, courts and legal processes do not deal well with family violence. The impact of family violence on a relationship before and after separation must be taken into account when assessing both parties' actual and prospective property contributions and future needs. The work of Family Dispute Resolution, Property Dispute Resolution and Alternative Dispute Resolution practitioners outside of court is imperative.

Should parenting and property matters be dealt with together?

There is support among Family Law Service providers in the FRSA network for parenting and property matters be dealt with together. When one matter (property or parenting) affects the other they need to be dealt with together, and how they are should be assessed on a case by case basis. Often a parent will need property matters to be determined in order that they can adequately care for his/her children. Dealing with both matters together can reduce costs and delays, but should always aim to get the best outcome for children and families. Family Relationship Centres and Family Dispute Resolution processes have a philosophical view that children's best interests and therefore arrangements must be the priority and therefore managed early on in the process.

³⁰ Kaspiew, R., Maloney, L., Dunstan, J., De Maio, J. (2015) Family Law court filings 2004-05 – 2012-13

³¹ Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L., Smart, D., Qu, L., Coulson, M. & Tayton, S. (2015) AIFS Experiences of Separated Parents Study



However, there is increasing recognition that there are a number of factors that impact on the settlement of these arrangements, including whether parents are separated under the same roof, and if not whether adequate care can be provided to the child (and if no, whether the other parent can financially assist).

However, service providers also note that in combining the two children are never viewed or treated as property, and property should at no time impact on a child's contact with their parents and parents trying to manage property issues. One member organisation suggested that a good 'start point' is having the two matters separated and it then be determined whether they can be dealt with together. The safety and protection of the child and family must always be the primary consideration in determining both parenting and property arrangements.

Treating both matters together creates a 'one stop shop' for clients who then do not have to retell their stories to new professionals, and also provides efficiencies in that preparation for property matters, including gathering documentation, can happen while the parenting agreements are being made. Once this is completed a quick and smooth transition can take place to move on to property.

How to best support families in parenting and/or property disputes

There are a number of approaches that FRSA member organisations take in their service delivery to best support families in parenting and/or property disputes. Some agencies keep the two matters separate, or do not deal with property disputes while parties are managing parenting orders, whereas other organisations intertwine the two, or separate the two but not exclude either. When property mediation is being conducted the practice is generally to first provide a children's session, followed by a property session. If both children and property matters were mandatory however a more integrated approach could be considered where both matters are dealt with in the one session. What has been found to work in dealing with property and parenting matters together has included:

- equipping all staff involved in this area with specialist training in property mediation;
- focusing on improving parental relationships rather than simply resolving issues;
- taking comprehensive intake and assessment process to support families' needs;
- providing prompt response to families (within challenges of demand on service);
- providing a model of information sessions and educative child focused approach;
- delivering the service through a creative and flexible process (particularly at the Family Relationship Centres where resources are greater);
- providing access to group interventions (6 week post separation parenting groups) and seminars (especially when co located);
- developing strong relations with solicitors;
- providing regular family reviews; and
- referring clients to parenting programs.



v. Families affected by family violence

The needs of families experiencing family violence

FRSA recognises that the definition of family violence in the Family Law Act is integral to the application of the provisions designed to protect children from harm. The relevant section, introduced in 2012, defines family violence as 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family ... or causes the family member to be fearful'³². The section also provides a non-exhaustive list of examples of behaviour that may constitute family violence, including: assault; sexual assault or other sexually abusive behaviour; stalking; repeated derogatory taunts; intentionally damaging or destroying property; intentionally causing death or injury to an animal; financial abuse; social isolation from friends, family or culture; and deprivation of liberty. However, the House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Parliament of Australia, Inquiry into A Better Family Law System (April 2017) report some concerns about this definition:

- may not adequately reflect the experiences of violence in Aboriginal and Torres Strait Islander communities;
- does not include misuse of process as a form of abuse;
- does not mention psychological abuse; and
- is not consistent with state and territory family violence legislation, whose definitions do not include a requirement of coercive and controlling behaviour.

In terms of families who have experienced or are at risk of experiencing family violence (including allegations of family violence), there are numerous ways families can be better supported, including through:

Service delivery: making available services to support all members of the family; linking family with services; greater availability of Children's Contact Services which for the most part do not currently receive adequate funding; ongoing support to services; considering the impact of family violence on parental capacity; creating better links with specialist family violence services;

Assessment: appropriate risk assessment and education on the impacts of family violence; include questions around family violence and its impact on parenting in assessment forms; Family Dispute Resolution, Family Relationship Centres and Parenting Orders Program processes are in unique position of often assessing and working with both survivor and perpetrator of family violence; families should undergo an assessment of their needs to create a case plan to be managed by a case manager;

A focus on safety: creation of timely interim parenting arrangements with safety as the focus; working with families on safety plans; re-evaluating and monitoring safety plans; increasing visibility of perpetrators (particularly fathers);

A focus on children: a funded therapeutic service particularly for children whilst their parents' legal action waits to be heard - to acknowledge the impact of psychological and emotional abuse upon children and enable continuity of support whilst the wait for court happens; and

Collaboration: greater collaboration across services and sectors.

³² Richard Chisholm, 'Re-Writing Part VII of the Family Law Act: A Modest Proposal' (2015) 24(3) Australian Family Lawyer 17.



We also suggest a range of ways the Family Law System can better support children impacted by family violence, including via:

A focus on safety: a dedicated children's worker who monitor safety and risk from the child's perspective; risk assessment, education on how to stay safe, who to report to; taking care when having children participate in legal proceedings (can have an adverse impact on children); implementing safety plans; linking with supports that focus on children;

Early intervention: liaising with schools, educating on impacts of family violence and what to do in family violence; specialist counselling and group programmes;

Federal support: Greater support for accredited children's groups; greater resources to support and protect children and families; ongoing support to services.

Family Law Services providers in the FRSA network suggest a range of ways the Family Law System can better support victims of family violence, including:

Collaboration: collaboration and integration with specialist family violence services that support victims; a well-coordinated service system;

Guidance: greater protection and direction from the courts (and services) to reduce the impact of negotiating post-separation arrangements; education on how to stay safe; therapeutic interventions that not only focus on their individual experience but the relationship with their children and the impact on their parental capacity

Safety measures: safety plans that are linking them with services; immediate access to handyman if need to secure property; implementing a central registry of certificates and attempts may reduce the potential for one partner to use mediation services numerous times to harass the other;

Relationship counselling: support for women if they want to stay in the relationship; educating women on the cycle of violence; assisting women to access to financial support, case management and crisis accommodation;

Federal support: Greater support for accredited women victims groups; more resources to supervised access services and perhaps easier guidelines for access to help to ease some of the tensions around contact visits; ongoing support to services; greater resources to support and protect women.

We suggest a range of ways the Family Law System can better support perpetrators of family violence, including:

Men's programs: Perpetrators engaging in men's behaviour change program; men learning from being involved as a provider of the Men's Behaviour Change Program; delivering 'Taking Responsibility' groups for men who have used DV; provision of a Family Advisor to speak with and to provide referral and support; the transitional housing initiative; men's education on the impacts of family violence; counselling and therapy

Integration: integrated case management approaches to supporting families at risk of family violence;

Collaboration: collaborative partnerships with Indigenous organisations and victims support services that allow streamlined and integrated responses to families experiencing family violence; making linkages to support services and programs (priority supported referrals); liaising with family violence support services; information sharing in the context of family violence; making appropriate referral to funded services and legal services; commonly utilising referral pathways to support services;



Staff training: providing training to staff to best support families experiencing family violence or at risk of experiencing family violence; training all staff on a common risk assessment framework that continuously monitors risk and to have safety plans noted; training all staff in a comprehensive Family Safety Model; ongoing internal and external training in family safety which includes separate training for working with individuals, couples, men and women; training in a trauma informed approach;

Risk assessment: utilising the risk assessment framework; screening, assessment and intensive safety planning for the duration of involvement in services.

How to best support families experiencing family violence

Family Law Services providers in the FRSA network suggest a number of things to support families affected by family violence, in relation to improved communication; collaboration; federal support; integration; and regular assessment.

Communication: improving communication protocols between services - including clear expectations around sharing of information (competition and tender processes can all too often prevent agencies from collaborating); building better relationships and increase information flow between Family Dispute Resolution services and other services - including child protection agencies; child protection workers providing Family Dispute Resolution practitioners and/or counsellors with information that may assist them in working with the families irrespective of whether the child protection file is open or closed would benefit children and families; inviting case workers to attend Family Dispute Resolution sessions and be actively involved, toward them making their recommendations; reviewing the sharing of information between services to enable a better collaboration between services that support families; clarifying ethical practices and guidelines about making appropriate referrals to funded service providers who employ specialist workers for issues;

Collaboration: expanding of family law pathways networks to work at bringing together service providers; working with other organisations through informal networks or more formal partnerships; generating greater connection between outreach services and the court system; providing clear guidelines and practices to support working collaboratively to case manage clients across service providers;

Federal support: funding national gatherings for practitioners to share experiences and ideas; increasing funding; supporting consortiums and partnerships instead of competitive tendering; bolstering both the funding and remit of the Family Law Pathways Network's (network activities have been found to greatly strengthen families and build professional capacity); providing standardised templates or models or must-have sections of different kinds of collaboration such as MOU's and service agreement so that these are not invented from scratch each time; providing greater education and distribution of information about mechanisms for information sharing;

Integration: developing a more integrated approach for assisting clients with multiple and complex needs; and

Regular assessment: assessing regularly the needs of clients, objectives and outcomes.

FRSA concurs with the reporting of the House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13, 160–1) that parties who have experienced violence may also be exposed to continuing violence through these arrangements or feel pressured to accept unfair property settlements that leave them and their children financially disadvantaged post-separation.



The FRSA network has been involved in trialling services aimed at helping clients in conflict and experiencing violence. Feedback from services in our network suggests there may be a greater role for the Family Support Program in supporting people experiencing family violence issues including collaboration with legal assistance services in delivering Family Dispute Resolution, effective use of technology and adapted mediation methods.

FRSA are long-term advocates for Legally Assisted Family Dispute Resolution dating back to the Attorney-General Department's funded co-ordinated family dispute resolution pilot in 2012. The process applied a multiagency, multidisciplinary setting to provide parents with a safe, non-adversarial and child sensitive approach to resolving post separation parenting disputes.

FRSA welcomes the legally assisted FDR pilot that commenced in June 2017 in eight Family Relationship Centres, with the aim of assisting families Aboriginal and Torres Strait Islander people and people from Culturally and Linguistically Diverse backgrounds. We anticipate the findings of that Pilot will feed into the deliberations of this Inquiry process.



vi. Integration and collaboration

The need for greater integration of services is a clear response to the different social and health risks and problems so many children and families all too often experience simultaneously. FRSA acknowledges the findings from 2012 *Legal Australia-Wide Survey: Legal Need in Australia*, that revealed that individuals with family-related legal needs often have a co-occurring range of non-legal support needs³³, such as housing needs, financial needs and therapeutic support needs. For many Family Law System clients, these needs arise out of the experience of family violence or other behaviours that raise safety concerns for their children and/or themselves, which includes parental mental illness or drug or alcohol dependency (see also Family Law Council *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems Final Report*, 2016). Previous reviews, including *family violence—A National Legal Response* (Report No. 114) by the ALRC and NSW Law Reform Commission in 2010, suggest that navigating between these different services can pose significant difficulties for client families.

There is a greater need for triaging clients to ensure that families facing complex and severe problems are treated first. Australian Institute of Family Studies' Evaluation of the 2012 family violence Amendment (2015) showed that in 2012 to 2014 there were high levels of complex issues in families engaging in Family Dispute Resolution / mediation and in court. These complex issues in Family Dispute Resolution/mediation include: alcohol and gambling (22.4% in 2012 & 27.5% in 2014); mental health (40.5% & 45.8%); gambling (6.3% & 8.7%); internet and social media (27.5% & 26.2%); pornography use (9.3% & 13%); emotional abuse (72.2% & 73.7%); and physical violence (33% & 26.6%). In court these complex issues include: alcohol and gambling (27.5% & 41.6%); mental health (55.4% & 59.3%); gambling (6.1% & 12%); internet and social media (28% & 31.2%); pornography use (13.9% & 15.2%); emotional abuse (92.6% & 85.3%); and physical violence (49.7% & 53.7%). As noted previously, FRSA is currently progressing the recommendations made in its *Strengthening Prevention and Early Intervention for Families into the Future* research report. This includes developing and trialling a common risk assessment tool for services in our network to take a more coordinated approach in identifying problems families face, and determining the dose and prioritising services for families facing greatest need.

FRSA also acknowledges the limitations caused by fragmentation of services. Some reports, including the Family Law Council's *Families with Complex Needs and the Intersection of the Family Law and Child Protection Final Report* (2016), have pointed to problems associated with the siloed nature of service provision, and the lack of information sharing between agencies. The fragmented character of the wider justice system that governs the protection of children and families in Australia, in which the family law, family violence and child protection jurisdictions operate independently of one another (identified by Family Law Council in the *Interim Report to the Attorney-General in Response to the First Two Terms of Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, 2015). The same report highlights a number of safety and wellbeing issues for children and their families resulting from this fragmentation, including the potential for:

- the risk of harm to children or parents to be underestimated or ineffectively responded to, with negative impacts on their safety and wellbeing (also identified by the COAG Advisory Panel on Reducing Violence against Women and their Children);

³³ Coumarelos, C. et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Law and Justice Foundation of New South Wales, 2012)



- perpetrators of family violence to be able to exploit this jurisdictional fragmentation because 'the systems are not working as "one whole entity"' (see also House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, n 13, 66);
- a child to 'fall through the cracks' between the different systems and services and be left unprotected;
- re-traumatisation of a person who is required to recount their experiences of family violence or abuse to multiple service providers; and
- a client disengaging from services due to the frustrating and time-consuming process of being referred to multiple services, which may leave people with little faith in the ability of available services to assist or protect them (see COAG Advisory Panel on Reducing Violence against Women and their Children, n 51, 106).

FRSA supports the emphasis made by the ALRC and NSW Law Reform Commission in *family violence—A National Legal Response Report* (No 114, NSWLRC Report No 128, 2010) on the value of integrated services models, where service providers with mutual clients collaboratively address client's multiple needs in a coordinated way. The Family Law Council in the *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report* (2016) stressed the importance of developing effective collaborative relationships and information-sharing protocols between agencies to the success of these models.

FRSA acknowledges there are a number of existing integrated service models operating in the Family Law System, including models that are case managed by agencies in the family relationships sector and court-based integrated services models. The Family Safety Model, developed and delivered by Relationships Australia Victoria, is one such model.

Also, the Post Separation Cooperative Parenting (PSCP) service is intended to provide the bridge between services and to assist those clients in high conflict (often with multiple and complex issues) to traverse the difficult family law and related support services (e.g. counselling, group education, alcohol and other drugs, mental health etc.). Their core role is to assist in the integration of services by actively referring and supporting clients. We believe that these services are drastically under-funded for them to effectively undertake this key role. Across family relationship funded services the case management offered is minimal. If clients were allocated a specialist case worker/manager to assist and direct (and journey with) clients from the beginning this would assist clients to be less likely to slip through the gaps between services. Equally, it would provide an individual who could advocate for clients and report back to courts about services accessed and progress made. These specialist case managers could also assist client post-orders as, again, our experience is that this is a time where client struggle to truly understand what orders mean and, thus, what is expected of them.

The Family Advocacy and Support Service was launched in response to a recommendation of the Family Law Council and is a court-located model which is currently operating on a pilot basis in 23 family law registries across each Australian state and territory.

Like the Family Safety Model employed by Relationships Australia Victoria, the Family Advocacy and Support Service model provides an initial risk assessment, safety planning and warm referrals to relevant support services, such as counselling and/or drug and alcohol services, as well as the duty lawyer service. The Family Advocacy and Support Service pilot is funded until 2019. It would be hoped that an interim evaluation of the FASS pilot could be conducted so as to inform the deliberations of the ALRC in this Inquiry process.



Numerous changes are needed to better support integration and collaboration between services, including communication within and across agencies as well as integrated case management cross referrals. A better flow of information between services and additional funding would be beneficial, and clear ethical practices and guidelines should set out how to make appropriate referrals to funded service providers who employ specialist workers, and for working collaboratively to case manage clients across service providers.

Impediments on the integration of services due to concerns about privacy and confidentiality

FRSA in its submission *in September 2015 to the Family Law Council regarding information sharing*, made numerous comments about the impediments on the integration of services due to concerns about privacy and confidentiality. While confidentiality increases the likelihood of clients being open and willing to negotiate or work therapeutically through their issues, maintaining client confidentiality often prevents services from sharing information, and, subsequently, from better meeting clients' needs. To foster greater integration of services, in its submission FRSA supported (and continues to support) the recommendations that were made in the Independent Review of Family Law Pathways Networks, and calls on Government to resource and implement them:

- increasing cross-sectoral training;
- developing and maintaining local directories;
- providing Information kiosks at courts;
- developing action plans to ensure Aboriginal and Islander and CALD representation on networks;
- where funding is available for state-wide 'inter-network communication', all networks within the state should collaboratively develop a single workplan detailing the agreed state-wide activities;
- holding a regular national meeting of project officers, and
- creating a national network facilitator role.

Whilst many of FRSA members hold in high regard the Family Law Pathways Networks and their effectiveness in aiding and promoting a culture of integration and collaboration, the low level of funding this program receives is indeed an impediment towards it reaching its full potential. The Family Law Pathways Network should be expanded and financially supported to do so.

The disinclination of agencies to share information impedes integrated service delivery. Integration between the court and other services is definitely affected by differing expectations and interpretations of the confidentiality provisions of the Family Law Act. Family Law Services providers in the FRSA network indicate that there are impediments on the integration of services due to concerns about privacy and confidentiality. Each organisation has its own policy around privacy and confidentiality, and these policies sometimes do not align or complement each other. There is also often a lack of or different understanding of the privacy legislation from agency to agency. Where families are involved around family violence issues can arise around providing information for a subpoena. While there should not be concern, as all providers should have clear procedures around sharing information with other providers and the information that will be shared, many agencies fear litigation from clients for breaching confidentiality, and are accordingly reluctant to work with other agencies.



Collaboration between Family Law Services and the courts has been constrained by the issue of privacy and confidentiality has been a barrier to effective collaboration. The FRSA *submission to the Family Law Council regarding information sharing* outlines concerns clients have with information they share in mediation being shared with courts. While there is a strong argument against information sharing in order for us to gain trust and engage with clients and not be seen as an agency of the courts, there are times when we would like to share information but how we might go about doing this and how this might fit with legislation is not clear.

The rigidity of funding parameters and non-movement of funds from year to year have been our greatest impediments to innovation and new initiatives.

There is also a lack of clarity in the Family Law Act around whether or not the intake session in Family Dispute Resolution is admissible or not. The Act is open to differing interpretation, whereas it should be clear in order to be able to inform clients with full confidence. Similarly, a lack of clarity around whether or not the inadmissibility rule for family counsellors and Family Dispute Resolution practitioners only applies in family law courts is also unhelpful.

In cases where family violence is present, appropriate safeguards need to be put in place to protect victims of domestic violence, including children. Also, where family violence is reported to be present the Family Dispute Resolution agency does not have access to the history of the violence. This information would help inform the mediator in terms of the negotiation and the power imbalance. Clients experiencing family violence may be concerned about their information being shared. Many clients experiencing family violence are traumatised and sharing information is often threatening, humiliating and shame inducing. They may also fear being placed at risk of being located by the perpetrator.

Compromised by fragmentation of services and/or the System

Fragmentation of services and the Family Law System has often compromised outcomes for families. FRSA member organisations report that their work with clients is compromised by the fragmentation of funding agreement areas and the variation in service provision by catchment. While agencies can apply the boundaries somewhat loosely to give better service coherence, there remains significant variation between an agency's locations. A significant issue that this leads to is confusion for referrers, which is particularly acute when an agency wants to align State and Federal funded services. The client is faced with a confusing array of options and service acronyms. Another consequence of this is the additional complication of training and support issues across an organisation's sites. Organisations face structural challenges endeavouring to organise their workforce with so much variation in service type and geography. An additional challenge to be considered is that potential clients will be provided with a different bundle of services and charged different prices depending upon what door they work through. For example the Supporting Children after Separation program cannot be offered consistently to all clients because of the fragmentary nature of the grant. The benefits of the program are evident but it cannot be offered to families consistently.

Even with the existence of state-based Family Relationship Centres geographic protocols it can still be unclear as to where clients should be serviced or referred to. In Parenting Orders Program often clients are referred to services out of their area (via court orders) and are uncertain whether accessing a closer service will compromise adherence to these orders. Clients in regional areas have been less likely to get access to activities like children's counselling or child inclusive practice due to the limited resources available.



How to best integrate and collaborate between different services

Family Law Services providers in the FRSA network identify a number of approaches they take to fostering integration and collaboration between agencies, both on a case-by-case or more consistent basis. Approaches include attend intra-agency meetings (supported through State government), forums, networking activities and partnerships. Shared service hosting (use of other services facilities and offices) to extend service footprints to key areas of need has proven financially efficient and improved collaboration and worker safety. Some agencies have an organisational partnership framework and a designated Executive General Manager Partnerships and New Business role to oversee new and existing partnerships, including across other sectors, such as mental health, legal and financial sectors.

Other approaches to integration and collaboration include some agencies abiding by the Court Model where they appear at Federal Circuit Court hearings and discuss issues with lawyers and work with the federal Judge. Family law service providers also manage information kiosk that enable lawyers, judges and families to access information and intakes on the day rather than having to wait on clients to contacts the agency, which would increase the waiting for a family.



vii. Professional skills and wellbeing

FRSA acknowledges that recent reports, including the House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13) have identified significant concerns about the skills and knowledge of Family Law System professionals in a number of areas. These include deficiencies and gaps in relation to:

- understanding the nature and dynamics of family violence and child sexual abuse and their impact on children, including knowledge of the ways in which perpetrators of family violence can use the Family Law System to continue abuse;
- understanding the impacts of trauma on clients and an ability to practice in a trauma-informed way;
- the capacity to identify risk, including the risk of family violence and risk of suicide;
- cultural competency, including an understanding of Aboriginal and Torres Strait Islander kinship systems and child rearing practices and the particular experiences of family violence of Aboriginal and Torres Strait Islander peoples, and an understanding of the experiences and access to justice barriers affecting clients from culturally and linguistically diverse backgrounds, parents and children with disability, and LGBTIQ clients and families; and
- knowledge of the intersections of the family law, child protection and family violence systems.

The House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13), has also raised concerns about the competency or practices of particular professional sectors. These include concerns about:

- the level of knowledge of some private family report writers and judicial officers in relation to family violence and child sexual abuse;
- the competence of some legal practitioners with respect to knowledge of family violence and/or commitment to trauma-informed practice (see also Productivity Commission's *Access to Justice Arrangements Inquiry Report* [No 72, Vol 1, 2014] and the Family Law Council's *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report* [2016]).
- the practices of some lawyers that operate to extend the conflict between the parties;
- the skills of some Independent Children's Lawyers in regard to child-inclusive practice; and
- the limited knowledge of family law and family violence among interpreters who assists family law clients (see also Family Law Councils report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* [2012]).

FRSA recognises the number of recommendations made by the Family Law Council in its *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems—Final Report* (2016), including:

- modules on family violence and child sexual abuse to be included in the National Family Law Specialist Accreditation Scheme and/or continuing professional development requirements;
- joint professional development and training for family law, child protection and family violence sector professionals;
- greater training around family violence in the accreditation process for Family Dispute Resolution practitioners to improve consistency of practice (see also House of Representatives Standing Committee on Social Policy and Legal Affairs [n 13, 280];



- the development of a national accreditation program for family consultants;
- a greater focus in legal training and professional development on non-adversarial and non-court options for dispute resolution (see also Productivity Commission's *Access to Justice Arrangements Inquiry Report* [No 72, Vol 2, 2014]);
- training in risk identification for family lawyers;
- improved training for Independent Children's Lawyers to enhance skills in working with children;
- training for interpreters to improve their understanding of family law and family violence (see also the Family Law Council's report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* [2012]); and
- professional development for judicial officers in family violence, cultural competency, trauma-informed practice and the impacts of family violence on children and their attachment relationships (see also House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, n 13, rec 27);

The House of Representatives Standing Committee on Social Policy and Legal Affairs (n 13, 285) reports that the use of training to address perceived gaps in the knowledge of judicial officers is limited by the principle of judicial independence, as judicial officers cannot be compelled to attend or participate in training following appointment to the bench. Against this backdrop, the House of Representatives Standing Committee on Social Policy and Legal Affairs, and some early consultations, have called for appointments to the family courts to occur only where judicial officers already have family law and family violence expertise.

The possible negative impacts on the health and wellbeing of practitioners, such as Family Law System professionals, who work with clients who have experienced family violence or abuse, are well recognised³⁴. The ALRC and NSW Law Reform Commission in the *family violence—A National Legal Response* (Report No 114) identify these include the risk of vicarious trauma, which can mirror the effects of trauma on those who experience it first hand, and may include anxiety, depression, disturbed sleep, hyper-vigilance, and disruptions in interpersonal relationships³⁵.

The risk of vicarious trauma to individual practitioners also raises concerns around the flow-on effects it may have on co-workers and the ability of the practitioner's organisation to provide high-quality services³⁶. The particular needs and behaviours of clients who have experienced trauma, coupled with the possible impact of vicarious trauma on a legal practitioner's ability to provide quality services to meet those needs, may go some way to explaining the high number of complaints made against lawyers practicing in the area of family law. Whether or not this is the case, Legal Service Commissions around Australia consistently report high numbers of complaints received in relation to family law matters.

Research³⁷ has also identified a lack of effective supervision and large or unmanageable caseloads as factors that can increase the risk of vicarious trauma, and pointed to the

³⁴ Dunkley, J. & Whelan, T. 'Vicarious Traumatisation: Current Status, T. and Future Directions' (2006) 34(1) *British Journal of Guidance & Counselling* 107

³⁵ Morrison, Z. "'Feeling Heavy": Vicarious Trauma and Other Issues Facing Those Who Work in the Sexual Assault Field' (ACSSA Wrap 4, Australian Institute of Family Studies, September 2007) 1

³⁶ Morgillo, 'Do Not Make Their Trauma Your Trauma: Coping With Burnout as a Family Law Attorney' (2015) 53(3) *Family Court Review* 456.

³⁷ Morrison, Z. "'Feeling Heavy": Vicarious Trauma and Other Issues Facing Those Who Work in the Sexual Assault Field' (ACSSA Wrap 4, Australian Institute of Family Studies, September 2007) 1



need for this issue to be addressed at the organisational, rather than individual level. Literature³⁸ also suggests that this might call for the provision of:

- training on how to identify and manage vicarious trauma;
- effective supervision, which includes making workers feel safe to express their fears, concerns and difficulties;
- caseload management;
- staff and peer support;
- support programs to build resilience and emotional wellbeing;
- ensuring safe workplaces, including safety from firsthand abuse or aggression in the course of service delivery; and
- building a workplace culture that encourages self-care and work-life balance.

In response to such reports as well as feedback from FRSA member organisations, FRSA has been committed to building Australia's capacity to provide quality services to families in an environment of growing demand and complexity. The FRSA 2012-17 Workforce Development Strategy set out three priorities: ensuring workforce supply to meet current and future need; acknowledging, developing and retaining the existing workforce; and building capacity of the workforce to deal with increased complexity. The full range of each with objectives, strategies and implementation steps attached to each priority are too many to capture here, but some of the strategies that lead to increasing practitioner skills and wellbeing include:

- develop better links between education providers, professional bodies and the family and relationship services sector;
- develop approaches that address the recruitment and training of a workforce that will meet the needs of specific groups in the community;
- target mature aged workers with appropriate backgrounds to move into the family and relationship services sector;
- support ongoing professionalisation and development of professional standards for the family and relationship services sector;
- build systems to inform needs-based workforce planning;
- share knowledge and experience in workforce issues; and
- maintain up-to-date workforce mapping information to inform workforce development and maintain sector engagement in strategy development, implementation and monitoring.

Core competencies of professionals working in the Family Law System

We identify a number of core competencies they perceive are integral for professionals working in the Family Law System under the larger themes:

Family violence: an understanding of family violence and its impact on each family member; family violence screening, assessment and safety planning; capacity to identify family violence, support victims and avoid supporting perpetrators to use legal processes to abuse; a know-how of what constitutes family violence and the subtle nuances and control mechanisms of the perpetrator and the impact for victims;

Child protection / development: knowledge and application of Child Centred Approaches; training and understanding of child development stages (physically, emotionally, psychologically); training in child protection and what is harm to children; to

³⁸ Wall, L., Higgins, D. & Hunter, C. n 2; Richard Collier, 'Wellbeing in the Legal Profession: Reflections on Recent Developments (Or, What Do We Talk About, When We Talk About Wellbeing?)' (2016) 23(1) *International Journal of the Legal Profession* 41



understand the impact of parental conflict on children; child safety screening and assessment; strong understanding of children's needs in separation; to engage with parents with a child focussed approach; ways of working with children safely and therapeutically;

Social-emotional: compassion, empathy and relational skills; a capacity to see themselves as a part of a service system and ability to work well with others in that system; an ability to form and maintain a non-judgemental working relationship with family members who enter the system; cultural awareness and minority group sensitivity (CALD, ATSI, LGBTIQ etc.); understanding and appropriately responding to grief and loss; development of parenting skills / communication and conflict resolution.

Other general competencies: a thorough knowledge and understanding of the system, mandatory reporting; family law pathways and the Family Law Act; a tertiary understanding of the dynamics of family functioning; Knowledge and understanding of complex family structures, including LGBTIQ families and cultural awareness of additional competencies required by practitioners and those managing cases; conflict resolution/de-escalation skills including: collaborative practice to reduce adversarial approaches for identification and management of high conflict behaviours; A knowledge and understanding of not only the Family Law Act but the Child Protection Act and the Family & Domestic Violence Act; a basic training in counselling; and training on all the resources and funding available.

Practitioners should also have an understanding of the range of risks present during separation and for some to be able to carry out risk assessment, and of the complexities of families, e.g. mental health, drug and alcohol abuse etc.

Maintaining these core competencies

To ensure core competencies among family law professionals are maintained, FRSA suggests:

- accreditation programs that drive practice and behaviour;
- to ensure that a significant component of legislative training requirements require practitioners to show and develop core competencies;
- annual professional development log that are reported in a template annually to Attorney-General's Department to ensure minimal professional development hours and service delivery hours are met;
- a whole of system support for cultural change;
- enhance cohesion by specifying training requirements for vocational and university training course content to ensure all new graduates possess the relevant competencies;
- the sector would benefit from taking a coordinated approach in service delivery through a clearing house (e.g. centralised database) of approachable literature, competency-based training courses and webinars;
- a Federal-State approach to cross service collaboration (e.g. networking days, collaborative case management);
- regular supervision and audits of staff competencies;
- regular training and opportunities to hear and reflect on women and children's stories;
- set clear information about obligations of family counsellors, with minimum standards specified;
- improved training for Independent Children's Lawyers to enhance skills to work with children;



- assist organisations with access to training and costs of professional development;
- inter-agency cooperation and government funding; and
- training budget allowed in contracts.

Better supporting the wellbeing of family law professionals

It is imperative the wellbeing of family law professionals is supported, and Family Law Services providers in the FRSA network identify a number of ways this is best done:

- ensure clinical supervision of all professionals in this system, including lawyers;
- Reduce caseloads;
- reduce pressure to get matters through the system or increase staff;
- support and training around vicarious trauma;
- provide supervision with a focus on debriefing following cases of family violence in which practitioners might experience vicarious trauma;
- provide sector monitoring and reporting on the rate of practitioner distress, and provide needed assist and resources as a response;
- develop and maintain (refresh regularly) a common set of core competencies;
- diversify work in recognition of levels of complexity;
- increase access to professional development and training peer support networks;
- make available confidential mentoring/feedback sessions with other professionals working in the jurisdiction

How to best ensure the development of professional skills among practitioners

Family Law Services providers in the FRSA network ensure their practitioners develop and maintain the professional skills they require, including via:

- identifying professional development needs during annual performance review discussions;
- setting training budgets in each program area;
- participating in annual internally organised professional development that brings practitioners from like services together;
- providing scholarship programs for selected staff to obtain further qualifications;
- allocating professional development time each year;
- making supervised training mandatory for all leaders;
- providing regular professional development;
- participating in Communities of Practice every 2 months (where practitioners get together to discuss practice and skills);
- setting minimum annual training expectations;
- providing incentives and support for further study;
- supporting staff taking initiatives in the work place
- internal training for practitioners to ensure they have the skills to deliver the service for which they are employed;
- tracking the skills and proficiency through twice yearly audits and face to face supervision;
- determining what new skills or refresher training they might require;
- providing one on one and peer group supervision;
- sharing training opportunities through email networks;
- contributing to the costs of the training or negotiating some part payment or payment of normal standards hours for staff to attend; and
- attending conferences (including the annual FRSA National Conference held in November each year), seminars and webinars.



How best to maintain the wellbeing of practitioners

Family Law Services providers in the FRSA network do a number of things to maintain the wellbeing of their practitioners, including setting minimum levels of supervision requirements for all staff who work face-to-face with clients. Organisations review their staff's caseloads and manage their workload and set strong wellbeing initiatives and policies. Some of the other many provisions made by organisations to maintain the wellbeing of practitioners include: flexible work hours; peer and individual support and supervision; meditation sessions; a safe work environment; positive work culture; group sessions; reflective practice opportunities; clinical supervision; support from senior staff; staff wellbeing days; generous annual leave days; communities of practice; involvement of staff in embedding processes; regular supervision; opportunities to debrief; external supervision as required; employee assistance scheme; peer supervision; weekly meetings; and one on one discussions around mental health issues.

Conclusion

As Australian families grapple with social changes and the complexity of issues these changes bring, a Family Law System that understands, supports and (wherever possible) adequately meets their needs is required. Family Law Services are essential in getting good outcomes for families outside of court, and greater funding and resourcing for these services is a must.

However, more than dollars is required, and no simple answers or minor tweaks will solve all problems with the System. FRSA encourages the ALRC and the different services in the System to engage in consultation toward improving how services: are integrated; collaborate; support children's experiences and perspectives; improve access and engagement for all Australian families; better address parenting and property disputes; protect families affected by family violence; and build and maintain the skills and wellbeing of all professionals in the System.

FRSA is keen to support the ALRC in its Review over the coming months and even beyond as, together, we look to support and ensure the safety and wellbeing of Australian families. We would welcome the opportunity to discuss any of the above in person.