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SUBMISSION

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

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ALRC Discussion Paper: Review of the Family Law System

FRSA Submission 27 November 2018

Introduction

Family and Relationship Services Australia (FRSA) is pleased to submit a response to the Australian Law Reform Commission's *Review of the Family Law System Discussion Paper.* Our submission draws on the experience and expertise of the extensive FRSA network of Member Organisations, all of which have witnessed, and responded to, significant change in Australian social and family life since the *Family Law Act (Cth)* was introduced in 1975.

About Family and Relationship Services Australia

As the national peak body for family and relationship services, FRSA has a critical leadership role in representing our extensive network of Member Organisations to support their interests and the children, families and communities they serve across Australia. FRSA plays a significant national role in building and analysing the knowledge and evidence base relating to child and family wellbeing, safety and resilience. We undertake research and work with government and non-government stakeholders to inform policy and shape systemic change.

All 66 Commonwealth-funded Family Law Service providers are active Members of FRSA, and our response to the Discussion Paper draws heavily on their direct experience of working with children and families across the range of family law and related services. The range of services[1] provided includes:

- Family Relationship Centres
- Children's Contact Services
- Family Law Counselling
- Family Relationship Advice
- Family Dispute Resolution (FDR) and Regional FDR
- Parenting Orders Program
- Supporting Children after Separation Program
- Family and Relationship Services

Our submission is also informed by Members' responses to a November 2018 Survey which focused specifically on the Discussion Paper's proposals; and we have included a number of 'real world' case studies provided by Member Organisations to illustrate their experience of working within the current family law system and the ways they rise to the challenges presented by both the system and the complex family situations they attempt to deal with.

[1] See **Appendix 1** for a breakdown of activity delivered by the 66 Government-funded Family Law Services providers for the six month period July – December 2017.

FRSA's previous calls for reform

FRSA's response to the ALRC's March 2018 *Review of the Family Law System Issues Paper*[2] centred on the wellbeing and best interests of children in the context of increasingly complex issues and needs of families. We noted that family and relationship services are well equipped to provide whole-of-family, multidisciplinary supports across the lifecycle and in close cooperation with family law services. We recommended that any review of the family law system be considered through the lens of a public health model that prioritises prevention and early intervention and collaboration across systems and jurisdictions.

FRSA's response to the *Issues Paper* called for a family law system that is flexible and responsive to people's needs, easy to understand and navigate, affordable and accessible, intentional about minimising conflict and keeping children and family members safe, and always keeping children's best interests at the forefront of any decision-making. FRSA also recommended strategies and approaches for better integrated, holistic service delivery accompanied by appropriate training and professional development for the family law workforce; and called for appropriate and better-connected mechanisms for information sharing.

FRSA's response to the *Issues Paper* and accompanying recommendations for improving the system were supported by a call for an increase in Government funding to more realistically meet the increasingly complex demands on the sector. Indeed, any system change needs to factor in an appropriate and adequate level of funding to resource new models of service as well as mechanisms for collaborative and coordinated service delivery, to ensure easier access to services for all families and to support a change management processes that encourages a non-adversarial approach to conflict resolution and problem solving.

This submission refers to, but does not repeat, FRSA's specific comments in response to topics raised in the *Issues Paper*. We point to those aspects of the family law system requiring restructure and/or improvement and refer to those areas in which the expertise of the family and relationship sector has already achieved significant outcomes for children and their families, and which should be further enhanced or expanded.

We also reinforce, where relevant, our responses to the findings and recommendations of other recent Inquiries, including the House of Representatives Standing Committee on Social Policy and Legal Affairs: *A better family law system to support and protect those affected by family violence (2017)*and Family Law Council: *Enhancing collaboration and information sharing between the family courts, family relationship services and other relevant support services (Interim Report 2015 and Final Report 2016)*. We are encouraged that the ALRC has drawn considerably from the findings of these Inquiries.

[2] *FRSA Submission to the Australian Law Reform Commission Inquiry - Review of the Family Law System Issues Paper*, 11 May 2018 (Submission No. 53)

The structure of this paper

Rather than respond to each proposal and question individually, we have indicated a level of (qualified) support for that chapter's proposals and pointed to those proposals requiring further reconsideration or further fine-tuning. Our response reflects feedback and, where relevant, notes Members' responses to a November 2018 Survey (which focused on *Discussion Paper Issues)* and case studies to demonstrate the real-life implications of existing or proposed legislation, activities and processes. We have also referred to the significant resource implications of the proposals for existing services and proposed systems, structures and services.

Our submission concludes with a summary of FRSA's three key recommendations for ensuring that a revised family law system meets the objectives expressed in the original Terms of Reference. We encourage the ALRC to continue to draw on the experience and learning of the family and relationship services sector before finalising its recommendations. To that end, FRSA is willing to participate on relevant advisory groups, and act as a conduit between the ALRC, relevant government departments and judicial institutions, and FRSA Member Organisations.

1. The Need for Reform: Strengthening family relationships through a public health approach to family law services

FRSA is pleased to note that the ALRC's Discussion Paper has incorporated much of the feedback provided by FRSA and its Members in the context of the *Issues Paper*. Overall, the proposals for improving the family law system resonate positively with the FRSA network's own high level objectives for the family law and family relationships sectors: valuing children and young people and keeping them safe; focusing on early resolution of parenting matters in the best interests of children; ensuring all families have access to the services they need and supporting them through complex issues and service pathways; and making the legislation and processes clearer and more accessible.

Endorsement of the ALRC's objectives for a new family law system

FRSA endorses the high-level objectives expressed in the *Discussion Paper* and welcomes the ALRC's proposals for improving the accessibility and workability of the family law system in order to improve outcomes for children and their families. Indeed, FRSA's position is that the *primary* purpose of any system change is to support the wellbeing of children, young people and families. *They* are at the centre; the various parts of the family law system only exist to support them.

FRSA welcomes the ALRC's promotion of a public health model for family law services within a holistic and coordinated system that lowers risk factors overall and offers targeted and specialist responses in situations where high risk remains. We support the multi-disciplinary and cross-sector, cross-jurisdictional approach to redeveloping 'the system,' noting also the emphasis on a shared (and non-adversarial) approaches to language, knowledge and understanding, cooperation and integration.

The pivotal role of family and relationship services in the family law system

By the very nature of its support services, the family and relationship sector already operates to identify and act on risk early and to integrate prevention and early intervention strategies across universal and targeted services in the community, health, education and family law sectors. Family and relationship services bring a range of expertise into working with complex families and have well-established links into other specialised and multi-disciplinary services across. Family and relationship services also operate across the life course, with a particular focus on those transition points which are most often implicated in situations of increased volatility, including relationship conflict and separation.

FRSA endorses in principle the ALRC's 'action plan for change' within a public health paradigm that starts with prevention and early intervention. The place of the family and relationship sector as a critical component of a public health model of family law services cannot be overstated. As noted in FRSA's

Strengthening prevention and early intervention services for families into the future, "family and relationship services can play an expanded role in supporting the development of children and adults within key family and relationship transitions, within an integrated effort with other sectors."[3] Family and relationship services are in a unique position to identify and act on risk *early*, before problems escalate, and to do this right across the family law and related sectors. Family and relationship services bring a range of expertise into working with complex families, and have links to other specialised expertise across disciplines and sectors. In addition, family and relationship services engage with families at critical transition points of the life course. Building the capacity of family law and family relationships services to identify risks and act early can have a demonstrably significant impact on the costs and impacts associated with antisocial behaviour (including family violence), mental illness, child abuse and neglect, school failure and social exclusion.[4]

Case Study 1: The complicated maze that is the family law system in action
FRSA Member Organisation Anglicare WA works closely with the Family Court of WA, Legal Aid WA, the Aboriginal Legal Service, the Family Law Pathways Network, other family law service providers, judges, lawyers and community organisations. In collaboration with several of these partners, Anglicare WA developed a family law 'blueprint' or 'map' of family law clients' engagement with the family law system in WA from pre-filed proceedings to resolution. The pictorial blueprint speaks louder than words about the complexity faced by separating families – see Appendix 2.

[3] Toumbourou, J., Hartman, D., Field, K., Jeffery, R., Brady, J., Heaton, A., Ghaymour-Minaie, M. and Heerde, J. (2017). *Strengthening Prevention and early intervention services for families into the future, Prepared by Deakin University and Family and Relationship Services Australia.*
[4] Range of evidence cited in Toumbourou et al, *Strengthening Prevention and early intervention services for families into the future,* page 3, page 17 and pages 29-31

2. Education, Awareness and Information

Overall support for proposals 1-1 to 2-3

FRSA Members acknowledge that there is a lack of community awareness about 'where to start' in family law processes and how to find correct information about mediation and dispute resolution. Information and advice about navigating 'the system' must be easily accessible, easily understood and trusted.

Survey Responses 1: Many clients find the family law system confusing

Most respondents to FRSA's November 2018 survey indicated that 70-90% of clients experience some level of confusion about the family law system; and the remainder noted that at least 30% of clients report confusion. Sometimes the confusion relates to a different cultural background, where clients have scant understanding of Australian law and/or insufficient command of the English language to build understanding. Specific points of confusion include uncertainty about why mediation is required ('all I want is for the Court to decide') and just how long FDR can take. Some clients wonder what the Judge's role is, and why their children can't speak in Court and be heard directly by the Judge. The wording of Court Orders is seen to be open to interpretation, and parts of the FLA are confusing, e.g. why and when s60I is to be applied, and what this means for the client. While clients (parents) usually understand their own rights, there is often confusion about their children's rights – what are the children's 'best interests' and what does this mean for FDR and, in particular, for each parent's responsibilities? Clients are also confused by the purpose of, and information provided by, different organisations – the Child Support Agency, Centrelink, the FRC and the Courts.

FRSA supports the ALRC's recommendations for a national education and awareness campaign, to be developed in consultation with Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, the LGBTIQ community, disability sectors, children and young people, older people, and involving universal settings such as state and territory health and education systems. We note that the information package is to be tailored to take account of jurisdictional differences. It would cover the current legal framework for family law services and the range of support services and family law services available to families and the different processes for dispute resolution and aims to be accessible through web-based and printed material and be developed with extensive consultation and user testing.

Proposal 2-4: development of referral relationships

FRSA supports the concept of strengthening referral relationships to family law services, but has questions about the detail (see Section 4 in relation to the proposed Families Hubs).

Proposal 2-5: standing working group to advise on development of, and regularly review, the information package

FRSA recommends that, as the national peak body for family and relationship services, FRSA should be appointed to the working group.

Proposals 2-6 to 2-8

FRSA supports the suggested tailoring of the information package to take into account jurisdictional differences, be accessible in a range of languages and formats, and have reference to existing government and non-government information resources and services.

An awareness campaign should also make appropriate use of radio and television, which FRSA Members have identified as effective media for getting traction with post-separation clients. Extensive use of (moderated) social media is also essential for ensuring wide dissemination of information and online education options.

A focus on prevention and early intervention

FRSA recommends that the awareness campaign focus on prevention and/or early intervention services, building on the public health model proposed by the ALRC and including resources for strengthening relationships among family members (parents, parents and children, children and other family members). The public health 'lens' will be assisted by simple-language explanations of key family law concepts, e.g. 'what is parental responsibility'; 'how will mediation benefit decision-making'; and by using culturally appropriate language and communication formats.

Case Study 2: Information and education to strengthen relationships

The sign outside all FRCs tells people that the FRC is there for:

1. Strengthening family relationships
2. Helping families stay together
3. Assisting families through separation.

(FRCs) are good at number 3, but how well do they achieve 1 and 2? There is now a lot of evidence about the effectiveness (including cost effectiveness) of prevention and early intervention – so instead of rescuing and rehabilitating families after a car wreck, why not teach parents how to drive? Broadmeadows FRC[5] took just that approach, using Legally Assisted and

Culturally Appropriate FDR to mediate with intact culturally and linguistically diverse families and focus on problem solving and communication. FDR practitioners found that the existing FDR framework and procedures were supportive and appropriate. These included intake, face-to-face assessments with Common Risk Assessment Framework (CRAF), mental health and drug and alcohol risk screening, FDR with relevant parties and, at the end, an agreement rather than a certificate or parenting plan. Families have been supported in culturally sensitive ways to resolve disputes and to stay together.

[5] The Broadmeadows FRC, Melbourne is managed by FRSA Member Mackillop Family Services.

Focusing on public awareness and education provides an opportunity to alter the current paradigm which views separation and serious relationship challenges through a legal lens. Reframing public understanding to see complex issues, even family violence, through a public health lens first, and then, when necessary, also through a legal lens, offers opportunities for broadening responses to encompass other community supports such as support in relation to mental health or family violence issues.

Assurance of accuracy

However, access to information is only one part of the equation. People want to know the information they are getting is correct, and they want to be certain that, regardless of how and where they access the information – in person, online, via the telephone, in universal settings, specialist social service settings or the courts – they receive advice that is consistent and is not contradictory.

Case Study 3: Embedding information in the family law process.
The Geelong FRC[6] uses a number of opportunities to share information with clients to help them understand the family law system and the FRC's processes. At the initial phone call the process is explained; during the intake call the process is explained again; and written information about the process is provided with appointment letters. Clients then attend an information session which the FRC conducts in partnership with a local community legal centre. The legal centre provides the legal context for FDR and the FRC provides information about process and child-focused support and education. Feedback from clients indicates that the sessions help them understand and navigate the system. CatholicCare Melbourne's senior FDRP who was previously a family lawyer provides invaluable assistance to practitioners and clients in FDR, FRC and POP services. The Geelong FRC, through its partnership with the community legal service and Victoria Legal Aid, also offers clients a one-off free legal appointment for initial advice and support.

Questions which the ALRC paper does not fully address

Is the proposal essentially a one-off awareness campaign, or an ongoing process of education? If the latter, the strategy needs to be continually maintained, reviewed and adapted. This will require both substantial initial investment at the time of introducing the substantive changes, and an ongoing investment of resources for continuing education and awareness raising materials and strategies. Clarification is needed about who or what will oversee the initial and ongoing facets of information relating to family, education and awareness-raising, and how this activity will be sustained into the future. Budgetary requirements (and constraints) will need to be clearly identified from the outset, and funding secured.

How will information and education be integrated within universal settings such as schools, early learning centres and other universal access points? As it stands, the proposed 'public health model' understates the importance of prevention and early intervention at the level of universal services. Information and education have a key role here.

[6] The Geelong FRC is managed by FRSA Member CatholicCare Melbourne.

Survey Responses 2: Where people might look for information
Respondents to FRSA's November 2018 survey noted that pathways to FDR are varied, but often start at a legal rather than service-based entry point, for example with a lawyer or community legal service. People are more likely to find out about that legal starting point through friends, family or a community service rather than online.

FRSA Members made several suggestions about where to locate information materials so they are most likely to reach the client groups Members see. Suggestions included community centres, Child Support Agency, Centrelink, domestic violence services, mental health services, community health centres and prisons, noting that detainees tend to be unaware of FDR and associated family law processes.

Ensuring accessibility of information to children and young people

FRSA recommends that children and young people are given the opportunity to provide input and help develop and test information and education packages as well as the proposed awareness campaign.

Promotional and educational material actively needs to be designed to help children and young people understand the situation they are in, understand and have access to the system and its various processes and learn about support available to help them participate in decisions about them and maintain/strengthen their relationships with parents as changes take place. Material should also provide a guide for building resilience, keeping safe and knowing how to access avenues of communication.

Case Study 4: Young people educating each other
R4Respect[7] is a youth-participation model of gender-based respectful relationships education. The model, which is based on the respectful relationships approach developed by YFS Ltd in 2015, uses a peer-to-peer learning framework in which young people have an active role in developing the model and using it to educate their peers and challenge them about the harm that unhealthy relationship behaviours can cause. Youth ambassadors help to facilitate understanding of consent, the dangers of control and coercion, victim blaming and gender stereotypes. The peer-to-peer model uses creative digital communications including short film clips that promote respect in relationships.

The design of communications tools and social media hubs must be specifically tailored to children's and young people's needs and abilities, and might include (as recommended in the August 2018 evaluation of South Australia's Young People's Family Law Advisory Group pilot program[8]):

- A 24 hour phone hotline for children and young people
- Information, resource and referral network APP designed by and for children and young people

[7] FRSA Member YFS Ltd is based in Logan, South East Queensland.
[8] Family Law Pathways Network, August 2018, *The Tip of the Iceberg: Report/Evaluation, Young People's Family Law Advisory Group Pilot Project 2016/17, page 35.*

- A dedicated family law website targeted at children and young people
- Utilisation of major social media platforms such as Facebook, Twitter and Instagram to post information and resources targeted at children and young people

Survey responses 3: Other characteristic of an optimal information package
Sensitivity to diverse cultural needs
Inclusion of examples/case studies of the benefits of other interventions such as relationship support, mental health and substance abuse services, and ways to connect with universal support services.

Interactive online tools to aid easier navigation of the system and ensure that the FDR process is as streamlined as possible – from initial contact and intake/assessment, through the relevant mediation and dispute resolution processes, to final resolution and evaluation.

Consistency of information provided to practitioners – across sectors and disciplines.

Embedding of information and educational products in the training of practitioners to minimize the possibility of conflicting advice.
Ensuring that online resources have search engine marketing capability and a strategic approach to optimisation capability. Some FRSA Members felt that Family Relationships Online falls short in this area.

3. Simpler clearer legislation

Support for proposals 3-1 to 3-2

The ALRC Discussion Paper recommends 'simpler and clearer legislation' achieved through a comprehensive redraft to simplify and restructure and modernise all relevant legislation including the Act, Regulations, Rules and forms. While FRSA is in full support of simplifying and clarifying the legislation, the critical question is what the legislation will actually say, and how readily re-drafted legislation will be understood. Re-drafted legislation will need to be user-tested for clarity and accessibility.

Proposals 3-3, 3-5 and 3-6: Children's best interests

FRSA agrees with the essence of these proposals but wishes to make a specific comment about adding 'safety' as a separate concept to 'best interests'. While it is imperative that appropriate steps are always taken to protect children and families, it is also imperative that all relevant human rights are reflected in the definition of children's best interests. Children's wellbeing encompasses physical, emotional and social development, loving relationships, material basics, learning and participation, positive sense of identity and culture, and safety. This is not a hierarchy of needs - all need to be taken into account when considering children's best interests, balancing competing needs and working out an appropriate complement of services.

Respondents to FRSA's November 2018 survey were divided about whether s60CA of the *Family Law Act 1975 (Cth)* should be amended to note 'safety' as an additional concept to 'best interests'. Some felt that as a matter of principle and in accordance with international human rights, safety should be treated as one of several aspects of a children's best interests. Others commented that for their work with children, safety is always a paramount consideration and it may be useful for the legislation to reflect that. Regardless of whether the legislation is amended to refer to 'safety and best interests', all promotional, educational, training and service access information should make clear to parents, practitioners and the public that 'best interests' includes a number of equally important factors, including safety, which must be taken into account in all matters affecting children.

Proposal 3-4: Assisting interpretation of provisions governing parenting arrangements

The Discussion Paper notes that "the presumption of equal shared parental responsibility is commonly misunderstood to be a presumption of equal time, rather than a presumption of equal decision making responsibility" (paragraph 3.21, p.38). Concerted effort needs to be made to address this misinformation.

The paper recommends that any re-drafted legislation be user-tested to ensure that it is understood as intended. In the experience of FRSA Members, much of the confusion lies not from the term itself, but from other parts of the legislation. The current situation is that parents share responsibility for their children and the law does not seek to regulate how this is exercised. If parents do not agree and one takes the other to court, the matter will be resolved based on the children's best interests, not the parents' respective responsibilities. The law should not be made more complicated. In addition, the law needs to be careful to distinguish between the authority of parents in relation to third parties (e.g. in relation to seeking medical treatment), and parental responsibilities to be agreed between the parents themselves, with no need for the law to spell things out.

Survey Responses 4: Confusion about equal shared parental responsibility

Respondents noted that clients commonly believe it is a parent's 'right' to see a child and that this presumes 50/50 equal shared care. Parents assume that equal shared parental responsibility is all about them, not about the child's rights. It is often challenging to change this mind-set, so Members use a variety of resources to help – booklets about post separation parenting and encouragement to undertake the post separation parenting course, fact sheets and other information sheets, presentations (often in a group) prior to mediation.

Proposals 3-10 to 3-13 Provisions for property division

FRSA agrees in particular that property determination needs to take account of the effect of family violence on families' contributions and needs.

4. Getting advice and support

Cautious response to proposals 4-1 to 4-8

The Discussion Paper recognises a number of current barriers to accessing and navigating the family law system. The paper acknowledges the complexity of families interacting with the system and the range of support needs they might require at various stages of their relationships and life transition points. While the Discussion Paper proposes the development of 'clearly designated community-based Families Hubs'[9], the rationale presented for proposals 4-1 to 4-8 requires further development and research.

Case Study 5: Getting advice that seems to contradict the client's actual needs

A client contacted Better Place Australia[10] seeking a mediation for a parenting agreement. The separating parents had commenced a FDR process two years earlier however had not proceeded to a final mediation as they had decided that they could work things out themselves.

Circumstances had changed recently and the initiating party considered that a more formal agreement was required to make sure both parties' expectations were clear.

Prior to contacting the FDR service, party 1 had contacted a family lawyer upon the recommendation of a friend. In the initial meeting with the lawyer the client mentioned an intention to seek some psychological support for the children. The client was disturbed by the lawyer's advice that this was not a good course of action as the case notes could be subpoenaed. The client had then come to the FDR service to obtain some advice about how the FDR process works and what support there was available for the children and herself.

The client was then supported through the mediation process, and the children were consulted by a child consultant to provide feedback to both parties. Party 1 was referred to a Medicare funded psychological service. The children were supported through child counselling.

The recommendation of the Family Lawyer may have been technically correct, but it was in direct contradiction of ensuring the welfare of the client and the children.

Understanding the 'Families Hub' model (proposals 4-1 to 4-4)

The ALRC paper proposes a network of community-based Families Hubs that provide a 'visible entry point' for accessing a range of legal and support services. FRSA notes that a key feature of the Hubs is that services would be community based, designed and delivered[11]. While this is commendable, it is already a feature of existing 'hub' models, notably the Family and Relationship Centres. The ALRC does suggest that any new hubs would be flexible in design and located in or adjacent to existing services where appropriate, so a key question asked by FRSA Members has been: why not

[9] Australian Law Reform Commission, March 2018, *Review of the Family Law System: Discussion Paper*, page 79.

[10] FRSA Member Better Place Australia is based in Melbourne.

[11] As noted by ALRC representatives at the FRSA pre-conference Family Law Workshop, Cairns, 19 November 2018.

resource existing services, particularly the FRCs more adequately, and add new resources for case management to ensure effective, joined-up and holistic wrap around services over the life of the client's engagement with the family law system? FRSA Members have also noted that many of the Family Law Pathways Networks have the mix of services required in a hub to provide a model of integrated service delivery.

While FRSA has previously called for a better consolidation of assistance to families seeking to navigate a complex system, and supports the principle of integration and coordination of appropriate services in appropriate contexts, it is not clear that the Hubs, as currently described, would adequately overcome current barriers and meet people's ongoing needs. Indeed, unless family law service entry points and pathways are clear, regardless of the location, adding a new layer of 'hubs' might make matters more, not less, confusing. It is the concept of collaboration and seamless integration of services, and the way practitioners are enabled to work together and across service types, that is important. To that end, FRSA underlines the importance of adequately resourcing the Family Law Pathway Networks (see page 15). The proposal needs a lot more explanation in terms of how it would work 'on the ground' within a public health model, and an indication of the level of resource investment required for associated referral and follow-up services, case management and 'backbone' infrastructure (e.g. for coordinating wrap-around services). The culture of a joined-up system is also important. Any hub model needs to be developed not through the lens of a legal framework first, but through child-centred and family focused approaches to prevention and early intervention.

Case Study 6: An existing 'families hub'

The new Family Life[12] Frankston/Mornington Peninsula FRC has an enhanced range of services tailored to meet the needs of families at one central location. The FRC provides child inclusive family dispute resolution (FDR), counselling, and post separation parenting education groups. The FRC is also co-located with the State-funded 'Orange Door' Family Violence Support and Safety Hub which provides a single entry point to access the suite of Family Violence support services and Integrated Family Services offered at Family Life (as well as other providers of these services across the Bayside Peninsula Area).

In addition, the service is co-located with the Commonwealth funded Children's Contact Service (CCS), Parenting Orders Program (POP) and the Family and Relationship Services (FaRS) as well as State-funded Cradle to Kinder (a service which provides intensive parenting support to mothers aged up to 25 years with their children aged 0-4 years) and the Therapeutic Family Violence Demonstration Project 'Strength 2 Strength'.

With co-located partner organisations, the service teams are able to provide earlier, timely intervention where family violence is identified, drawing on the expertise and functions provided under each jurisdiction. Co-located colleagues promote a coordinated multi-system response to the families' needs. For children this also means identification of early adversity and developmental concerns for timely response and harm mitigation due to integration with trauma informed services.

[12] The Frankston FRC is managed by FRSA Member Family Life.

State and Commonwealth funded Specialist Family Violence services are on site to provide safe, timely support to separating families. These services include Men's Behaviour Change Programs, Women and Children's Counselling services, victim survivor women's support group and the 'Dad's in Focus' program that seeks to reduce violent behaviour in male respondents and support men to become better fathers.

The Peninsula Community Centre (PCLC) and Victoria Legal Aid (VLA have continued to work closely with the FRC to support separating families. PCLC lawyers provide parents using FRC services with information and education as part of the FRC parenting education sessions. Both PCLC and VLA provide families at the FRC service with timely legal advice, and specialist support for families experiencing family violence.

The FRC, CCS, FaRS and POP practitioners liaise with the legal and support services at the the Family Court and Federal Circuit Court (FCFCC) to support better outcomes for separating families experiencing family violence. These practitioners refer families to the Family and Advocacy Support Service (FASS). They also consult with barristers, family lawyers, family consultants, psychiatrists, psychologists, General Practitioners and Independent Children's Lawyers where appropriate.

An integrated approach to service delivery allows true wrap around support to be provided to families with multiple and complex needs. FRC, CCS and POP staff are available to consult with the Orange Door staff if there are clients requiring Family Law Services. Through co-location of State and Commonwealth-funded services, Family Life has bridged the gap between siloed systems and allowed families to be provided with support that is tailored to their needs.

Anecdotally, 70% of the total cohort of families that Family Life has supported through the service were affected by Family Violence in 2017/18. The reality is that a large number of families seeking legal support services will also be seeking support from State-funded Family Violence and Integrated Family Services. Rather than create two separate entry points which requires families to repeat their stories on multiple occasions, Family Life supports the full integration of these services to allow comprehensive access to families and the establishment of information sharing principles (further suggesting that consideration be given to integration of the Commonwealth approach with that of the Multi-Agency Risk Assessment and Management Framework and the Child Information Sharing Scheme in Victoria).

Consideration of expanding FRCs to become, or to complement, Hubs

When established 12 years ago, the FRCs were branded as the place for families to turn to when seeking relationship advice or support through separation and dispute resolution. The FRCs were set up as a no-wrong-door 'hub' of information, advice and referral support to a range of family law and related services.

However, that original concept did not include funding for broad 'wrap around' services and over the years, resourcing has been insufficient to ensure clients' smooth transition through family law processes and positive

outcomes for children, both parents and all family members within a non-adversarial, supportive service pathway. While FRCs and other FDR programs have found other, unfunded ways to connect clients to wrap-around services (often through the auspicing organisation's range of holistic services), they still do so within tight financial constraints with no assurances of long-term financial security.

Indeed, government funding to FRCs and other family law services has not increased for a number of years, even in relation to CPI, despite the fact that costs have increased substantially. The three-year Indexation Pause placed on family law services (2014-2017) provided increased stress on service providers to meet the needs of children and families accessing family law services as they arise. The net result is that service funding is going backwards, and there has been no capacity to respond to either increasing demand or increasing complexity. And proposals for introducing new models or expanding on existing models cannot be taken seriously in the absence of a parallel commitment to funding, and funding growth[13].

While there is reference in the Discussion paper to the Hubs 'building on and supporting, but not replacing, the FRCs', more information is needed. It is important not to disregard the learning and experience of the FRCs and other models of co-located/co-designed service delivery[14]. Consideration should be given to the option of boosting FRC resources so that, where appropriate and workable, FRCs become Hubs, and/or locating hub-type services in locations where FRCs do not reach, or where there are gaps in service, for example in rural areas which find it hard to attract (and pay for) suitably qualified professionals.

[13] A case in point is the SCHADS Equal Remuneration Order. Supplementation for award wages increases will conclude at the end of 2020, meaning that organisations will have to fund the difference themselves – an anticipated 20% increase to the wages bill. Unless organisations' core funding from government increases to bridge that difference and allow for growth, the only option will be to reduce service.
[14] For other examples of 'joined up' services, see FRSA's 2016 *Linkages Collaboration Report*: http://frsa.org.au/wp-content/uploads/2016/05/FRSALinkagesCollaborationReportvWeb.pdf

Survey Responses 5: What resources are need to make 'hub' models work?

FRSA's November 2018 survey asked Members about what makes a hub model optimal in terms of resources, culture, structure and location. Survey respondents referred to the co-location of assessment workers, collaboration across organisations (which often compete for funding, so the funding model would also need to change), excellent case management and ready access to specialist child workers and family violence workers. Physical hubs need to be accessible to families (public transport access, free parking) and would ideally be located in close proximity to other services, community facilities, schools, shops, medical centres, etc. They also need to have sufficient space to accommodate all out-posted workers and their clients. In cities and larger towns, a network of hubs could utilize shared resources, with client access to professionals and specialist services enabled by the case manager. Networking of shared resources would be even more important in rural and remote areas, with case management and connections perhaps relying more heavily on online and telephone resources.

Some survey respondents suggested that families hubs could build on existing FRCs and the multi-disciplinary and cross-sector connections they have made over many years. Others noted that FRC-based hubs would require considerable expansion and remodeling – not only of the FRC in question, but also of service delivery across the broader network of service providers, including those which are currently not connected with an FRC, offering opportunities for more comprehensive multi-disciplinary collaboration. Sensitivity would need to be given to excluding certain services from a colocation model, particularly in relation to safety of clients.

Respondents noted that, from the client's perspective, hubs only work well on a day to day basis when workers on the ground have good working relationships with each other, and have developed smooth referral pathways and information exchange mechanisms. Ongoing attention must be paid to maintaining working relationships, especially when there are staff changes.

Respondents also noted that some services should not be collocated in hubs, especially those that increase the chance of perpetrators of violence and victims of violence being in the same location.

The family law 'system' currently comprises many parts – jurisdictions, universal services (themselves operating within systems – education, health, social services), specialist services such as domestic and family violence, mental health and drug and alcohol services (again, operating within and across existing systems). The ALRC's paper does not provide details about how the Families Hubs would connect across legal and non-legal systems, and across state-funded and federally-funded programs, to manage joined-up service delivery that meets client objectives first, but also the potentially different objectives of different services. No mention is made of how the Family Law Pathways Networks might be assisted in their role of supporting and resourcing family law organisations and professional (see below) and the role of positions such as the Family Advocate or Child Consultant is not specified in any detail. The latter position already exists in FRCs; a parallel role within a Hub would need to be clearly defined, accredited, qualified and funded. A

final question relates to how clients will know which particular 'no wrong door' is the right one, when several might exist in close proximity to each other.[15]

Case Study 7: Case management – the essential (yet underfunded) ingredient
When parent resilience is depleted through trauma and ongoing high conflict, the separated family's daily life is consumed by juggling survival needs with other complex needs that might require multiple interventions and support. Many people accessing family relationship services and family law services are already marginalized and disadvantages, or at high risk of becoming so; and the likelihood of the most vulnerable clients making their own connections with referral contacts has been shown to be low.
The FRC at Logan, Queensland[16] has responded to this predicament by taking a strengths-based approach to improving outcomes for clients – from the first point of intervention (such as FDR).

FRC Logan provides hands on connection and support for clients through the professional development of a Family Advisor - Intake and Community Engagement role. This function integrated in the FDR case management process provides further assessment with clients of their needs and options for internal and external assistance. This hands on approach ensures no one is left unsupported as they transition through and out of the FDR process.

Optimising the learning and collaboration models of the Family Law Pathways Networks

The Family Law Pathways Networks (FLPNs) have provided strong support for a collaborative model of practice across family law and other sectors (including the police), resulting in the breaking down of barriers between key stakeholders. Despite this good work, the family law system still faces barriers to collaboration and practitioners in the family law system are still 'siloed' into legal and non-legal. One way of enhancing a culture of 'joined up' service delivery across the proposed network of Families Hubs would be to strengthen and resource other components of the system, including the FLPNs, with the primary objective of bridging gaps to aid people's navigation of system components. For example, regardless of their entry point to the family law system, separating clients could have a mental health check, a legal check, an FDR assessment and other relevant checks, the order of which would depend on which 'front door' was accessed. The key to ensuring client understanding of process would be the joining up of all parts, and the coordination and case management that entails.

[15] FRSA Members cited several examples of closely located services that all could be considered the first point of contact for family law services – e.g. an FRC, a Community Legal Centre, a Families and Communities Centre – how would the 'families hub' deal with this and what protocols would be needed for collaboration, information sharing, resource allocation, etc?
[16] The Logan FRC, located in South East Queensland, is managed by FRSA Member Uniting Communities.

FRSA supports the recommendations of the 2012 Independent Review of Family Law Pathways Networks[17] and urges their implementation. These recommendations focused on cross-sectoral training, improved access to information, action plans for ensuring ATSI and CALD representation, state-wide activity plans an inter-network communication and national liaison and coordination across the FLPNs.

However, FRSA and other organisations in the family law services sector are concerned about the future sustainability of the FLPNs. Bringing family law professionals together to breakdown silos and build understanding across services is critical to the effective functioning of the family law system and has proven to be cost-effective. Current funding for FLPNs is only assured until end June 2019; however, ongoing funds are critical for ensuring that this important work continues into the future. Many of the ALRC's Discussion Paper proposals point to improved communication, collaboration, education, information-sharing and service integration across the family law system, but without adequate resourcing of mechanisms to engage the various parts of the system toward a shared approach to such activity, the proposals remain un-implementable.

Survey Responses 6: Case management and wrap-around services – it all takes time
Responses to FRSA's November 2018 survey pointed to the variety of 'hub' and 'wrap-around' service models already operating. Respondents emphasised the importance of case management that stays with the family from the very beginning of their family law journey, and does not conclude until 12 months (minimum) after final orders. Case management requires regular communication and interaction across all disciplines concerned.

One recommendation from FRSA members is that FLPNs be better resourced for their work of providing a knowledge-sharing platform and bridging the gaps between professionals who are both directly and indirectly involved with separating families and family law matters.

90% of survey respondents indicated that they are providing at least some wrap-around services to family law clients and/or enabling referral pathways to various services which the child, parent or family might need.

The need/demand for wrap-around services is high; however the availability of specialised services, e.g. domestic/family violence services, does not always meet demand. One major factor contributing to gaps in service is the confusion of responsibilities between state and federal government departments (i.e. funding bodies).

A particular gap noted by a NSW survey respondent was the lack of new funding for men's behaviour change programs.

FRSA concurs with its Members' support for expansion of the FRCs. Partnerships Victoria, for example, has noted that the FRCs already have strong policy alignment, many features in common, and already provide (or have referral pathways for) the majority of the services listed in proposal 4-3. In addition, some offer services tailor-made to the specific community, e.g elder abuse program at Traralgon FRC, homelessness support at Mildura FRC.

[17] Encompass Family and Community, Pty Ltd, August 2012, *Independent Review of the Family Law Pathways networks,* prepared for the Attorney-General's Department.

Consideration of recommendation to expansion of Family Advocacy Support Services (Proposals 4-5 to 4-8)

The Discussion Paper proposes expansion of the Family Advocacy Support Service (FASS). This had also been recommended in the 2015 Report on *A better family law system to support and effect those affected by family violence*, with the proviso "subject to a positive evaluation".[18] However, by November 2018 the evaluation of FASS has not yet been finalised, and more detail will be needed regarding the way the Hubs would work with FASS and the courts and other models of service delivery.

FRSA Members have provided feedback to suggest that location of FASS at the courts has been helpful to clients because triage and referral services can be provided 'on the spot.' However, sometimes clients need services other than those to which FASS can (or is funded to) currently connect them. How would these gaps be filled? Would FASS remain located within the courts and/or be co-located under different models of service delivery in connection with the Hubs? Would FASS and Hub services be complementary? How would it be determined which models of service delivery would work better, e.g. i-Pilots and other alternative models? How would the legal aid commissions be involved?

Regardless of whether FASS is expanded, it is critical that case management services start at the 'front door', the first point of entry, wherever that is (it may be a FASS, a court, or elsewhere in the system). In addition, case management services need to be expanded and better resourced so that people with complex needs can be supported over time.

Case Study 8: FASS is a good start

Relationships Australia NSW[19] manages the Men's FASS program in NSW. This has proved extremely valuable. However, current funding only allows the FASS staff one day a week at court in three locations (Sydney, Parramatta and Newcastle), and half a day in court in Wollongong. Much more time is needed to gain the full advantage of this service which is provided for women on a 5 day a week basis.

Planning ahead

The ALRC Discussion Paper does not make recommendations about planning for the future or equipping services to adapt to population need and growth. FRSA reiterates the recommendation of KPMG's 2016 report, that close consideration is given to funding of family law services in growth corridors and catchments where there is limited or no service provision since establishment of the FRCs over 12 years ago."[20]

In summary, any proposal for further development of a hub model in a family law context must be based on careful analysis of what currently exists and how well that works in practice, and specify how new models will fit with,

[18] House of Representatives Standing Committee on Social Policy and Legal Affairs, 2017. *A better family law system to support and protect those affected by family violence*, Commonwealth of Australia, page xxix

[19] Relationships Australia is a Member of FRSA.

[20] KPMG, 2016. *Future Focus of the Family Law System, Final Report* (Report Prepared for the Attorney-General's Department)

complement or replace existing models of service delivery and coordination. If ensuing 'hubs' are to provide comprehensive wrap around services then all hubs, new or existing, need to be adequately funded to provide a comprehensive suite of services and excellent case management, and supported professionally and organizationally (e.g. through better resourced FLPNs).

Any proposals to further develop existing or introduce new 'families hubs' model must be developed in parallel with detailed funding proposals and (long-term) government commitment to that funding. Primary consideration needs to be given to enhancing what already works and supporting a higher level of 'glue' or 'wrap-around' – case management and referral pathways that support clients through all stages of their family law journey – and consideration of the long-term benefits of investing in children and families and the services that support them through life's transitions[21].

[21] See FRSA's 2016 *Value for Everyone* Report http://frsa.org.au/wp-content/uploads/2016/05/FRSAValueforEveryoneReport.pdf

5. Dispute Resolution

Qualified support for proposals 5-1 to 5-11

While FRSA supports the thrust of chapter 5, Dispute resolution, we have some specific comments about the proposals and their likely impact on the sector.

Enhancing and expanding FDR

The ALRC paper proposes a number of ways to enhance the availability and use of flexible and appropriate models of FDR across parenting, property and financial matters. The benefits of FDR and FRCs in resolving disputes relating to parenting only, and parenting and property together, are evidenced by the decrease in applications for final orders (across all courts) in these matters (25% decrease from 2004-05 to 2012-13[22]).

Case Study 9: Improving the family law journey

FRSA Member Better Place Australia[23] makes a strong case for expanding the role of FDR and relationship support services. They were aware, through feedback from clients, that despite the many positive effects of FDR, POP and FRCs over the last 10 or so years, the process of FDR has now been reduced to being part of an inevitable process and its true value diminished, with family relationship support not extended beyond the certificate issuing stage. Clients have said that their lawyers consider the certificate application process a 'tick in the box'.

To better understand what is happening for clients as they try to navigate an adversarial system, Better Place Australia focused on an actual client's three-year journey through separation, FDR and the subsequent family court experience. The journey included 18 family court appearances, a trial, and expressions of devastation and despair. Each step in the journey was closely examined and then mapped. The resulting client journey map showed the key flash points and barriers that facilitated the real life client's journey to despair. The system was shown to work perversely against the interests of the children and court participants.

An alternative map was then developed, illustrating how the journey could have been much improved – even if the client still proceeded to court – if FDR and its hub of services, and post-separation care arrangements had been adequately resourced and supported by a culture of relationship strengthening. The client said that if they had had a hub of support including financial counselling, they would have made substantially different decisions and been much better prepared for life after court.

[22] Kaspiew, R, Moloney, L, Dunstan, J and De Maio, J, *Family Law Court Filings 2004-05 to 2012-13,* Research Report No. 30, Australian Institute of Family Studies, 2015

[23] FRSA Member Better Place Australia is based in Melbourne.

Case Study 10: Engaging parents in the exploration phase of FDR

Interrelate's[24] model of FDR (including the intake session, Building Connections Program, pre-FDR and joint session) is structured to assist parents to focus on the needs of their children. The mediation room is a space where parents can set aside conflict and have in-depth conversation about the needs of their children. Often this has not occurred for a long time because of relationship issues. The couple relationship and the parenting relationship, however, are not one and the same, and the relationship must be coaxed back into being for the sake of the children.

Experienced FDRP's working within Interrelate use facilitative methods to hold parents in the exploration phase for longer than is usual for most process-driven mediators, and aims to draw parents together into a head space where they are considering the needs and experiences of their children in a way that incorporates both parents' perspectives in an open and non-judgmental manner. Upon completing this phase of FDR, parents have a better grasp of shared parental responsibility and, as a result, agreements are reached more smoothly. Even high conflict parents participate effectively, taking turns to respond to the FDR practitioner's set questions, visual aids and documentation, and to witness the other parent's participation.

Case Study 11: Legally assisted, culturally aware, therapeutic dispute resolution

Mediation is not always an appropriate forum for families experiencing high conflict or violence to resolve their parenting disputes. Conversely, the court system may not lead to sustainable outcomes or agreements and can in fact further damage relationships and lead to more animosity and stress. By providing a therapeutic model backed by legal advice and advocacy, Centacare New England North West's[25] LACAFDR program draws together legal services and family dispute resolution. This provides families with the support needed to develop their own parenting arrangements. Flexibility in case management allows time to work with these families, as sustained intervention is required to address complex issues.

Barriers to engagement such as mental health, family violence and access to services in remote locations can be successfully overcome by utilising Centacare's programs and solid presence in the communities. Understanding a family's culture and history allows clients to feel supported and acknowledged. Centacare's LACAFDR clients report outcomes in terms of strengthened relationships, better communication and safety, and often return for further mediation instead of commencing court proceedings. The future success of LACAFDR relies on a commitment of time and resources, as well as further research, evaluation and development of legally assisted models to ensure that the most vulnerable families are not left behind.

[24] FRSA Member Interrelate provides services across NSW.
[25] FRSA Member Centacare New England North West is based in northern NSW and operates a broad range of family law, family relationship and other community services.

Case Study 12: Culturally sensitive dispute resolution
FRSA's submission to the ALRC's March Issues Paper made many suggestions about culturally sensitive access to family law services, and individual FRSA Members also provided real-world examples of cultural considerations taken into account in various forms of dispute resolution. See for example Issues Paper submission no. 59 from Port Augusta Family Relationship Centre[26], which listed specific factors necessary for inclusion in culturally appropriate responses - cultural protocols, kinship ties, language, knowledge of family groups and their relationship to each other, and their ways of providing support and nurturing to each other and their children which may be quite different to the way non-Aboriginal families may parent.

FDR in property and financial matters

FRSA endorses the recommendations for expanding the availability of FDR into property and financial matters and welcomes the ALRC's restating of the value of FDR and its objective of keeping people out of Court. It is important that the system provides appropriately qualified FDR dispute resolution resources that can swing into action both in relation to property and financial matters and in relation to children – both together and separately. Experience to date would suggest there is no one-size-fits all model, and any model used needs to be adaptable.

The Government's decision to fund FDR for property matters in FRCs (20 November 2018) was a welcome initiative. It also provides a great opportunity to evaluate and assess the roll-out of property FDR in FRCs across Australia. FRSA would be willing to assist the coordination of the evaluation and related research.

Case Study 13: FDR for financial and property matters
FRSA Member Organisation Relationships Australia (RA) is currently undertaking a study of FDR outcomes with 1700 participants. Although the majority of participants were doing FDR for parenting matters, at intake 28% cited property and finance matters among the issues they wished to resolve. More specifically, of the 22% who wanted a property settlement, 75% were also hoping for a parenting agreement; and 24% of clients reporting parenting issues also wanted a property agreement.

Conclusion: there is considerable overlap of parenting and property clientele, despite the distinction that is reinforced by compulsory attendance for parenting matters only.

The study also looked at the value of shared property. The asset pools of property clients in the sample were greater than those of parenting clients, which can be expected when property clients (a) have some property to divide, and (b) have had to attend a fee-paying service. Nevertheless, the asset pools were far from high:

- *A quarter (25%) were under $200K (including 8% where the pool is comprised of debt)*
- *More than half (53%) were under $500K*
- *More than ¾ (81%) were under $1 million*

[26] The Port Augusta FRC is managed by FRSA Member Centacare Catholic Country SA.

These values must be considered alongside the cost of going to court. RA noted that, based on a 2014 estimate, a more straightforward family law case will cost parties $20,000-$40,000, while a complex case can cost in excess of $200,000 to litigate. For many of the clients in RA's sample, costs in this range would represent a prohibitive proportion of the total value of the shared assets. For some, the cost of going to court would be greater than the value of the shared property.

Conclusion: Property FDR services help meet the identified need for assistance in low value property disputes.

By three months post-intake (when the FDR process may or not have been completed), just over half (52%) of clients who had discussed property matters had reached agreement on some or all of their property matters in FDR. This was higher (57%) among those who attended non-FRC venues (property cannot be discussed in isolation at FRC venues). Among property-only clients (i.e. those with no concurrent parenting issues), 71% had reached agreement in some or all of their property matters.

Conclusion: Three months after intake, rates of agreement ranged from 52%-71%, with 12-month follow-up data still to come. Agreement rates in property matters were higher where the FDR process offers space for these matters to be properly addressed, independently of parenting matters.

FRSA supports the ALRC's proposal to make FDR in property matters mandatory. We believe there is a need to look at what can be described a shift in culture in the family law system that appears to have resulted in a dropping off of FDR even in parenting matters

Filing parenting applications with the Court (and commence a case) requires either filing a s60I certificate issued by an accredited FDRP, or attending upon a Registrar to obtain an exemption from attendance at FDR. Even though the onus is on parties to demonstrate they have attempted dispute resolution, the number of exemptions to FDR have been steadily increasing. A 2016 study of parenting cases before the Parramatta and Albury Federal Circuit Courts suggests that a significant proportion (52%) of parenting cases sought exemption from attending FDR (for a variety of reasons).[27]

In relation to the 2017 changes to the FRCs' Operational Guidelines that allow private lawyers participating in mediation to go on and represent their clients in court, we have received anecdotal evidence that while there has been some increase in the number of lawyers participating in the FDR process, this is not consistent and depends on the availability of lawyers to take up LAFDR.

27 Judge Joe Harmon, 'Should Mediation be the First Step in all Family Law Act Proceedings?' in *Australasian Dispute Resolution Journal*, February 2016.

FDR in context

Any proposed expansion of FDR needs to promote the benefits of FDR and the necessity for the whole legal system (i.e. in a public health model, across universal and specialist services as well as the courts) to support FDR processes.

Some concerns:

- Children's best interests must be kept at the forefront of dispute resolution if parenting matters and property/ financial matters are to be considered together. FRSA Members have observed that some lawyers have a vested interest in keeping property and parenting mediation adversarial, potentially putting children's best interests last instead of first[28].
- FRSA members agreed that there is a need to review s60I certificates for parenting matters, suggesting that a simplified version of the certificates should be developed. Similarly, a simplified genuine steps statement is needed as the current version is considered as not fit for purpose. Guidelines for both are required, and should make clear that the certificates have a particular purpose and it is not the purpose of FDR to 'get a certificate' for its own sake.[29]
- In the experience of many FRSA members, one of the main issues relating to property and financial mediation is that of debt, rather than the size of the asset pool. The Longitudinal Study of Separated Families was undertaken between late 2008 and late 2012. According to the key findings, reported in 2014[30], around one-third of the parents reported the value of their net assets as being under $140,000, with 19% having less than $40,000 and 15% having $40,000–$139,000. 19.6% of separating parents reported 'no assets to divide.' It is critical to understand how debt is best managed.
- Better feedback loops are needed between FDR and the courts, and with family lawyers, especially as judges often rely on lawyers to provide advice to inform the judge's decisions. The importance of FLPNs to facilitate networking across federal circuit court judges and other family law service providers cannot be underestimated. A legal outcome is only one desired result of the FDR process. The chief outcomes relate to children's wellbeing, parents' relationships with their children and each other, and families' capacity to continue relating as family.

[28] Anecdotal feedback provided at FRSA Pre-Conference Family Law Workshop, Cairns, 19 November 2018.
[29] Feedback from FRSA Members attending FRSA pre-conference Family Law Workshop, Cairns, 19 November 2018.
[30] Qu, L., Weston, R., Moloney, L., Kaspiew, R. and Dunstan, J., *Post-separation parenting, property and relationship dynamics after five years*, Australian Institute of Family Studies, 2014.

6. Adjudication landscape

General support for proposals 6-1 to 6-12:

FRSA welcomes the proposed changes for supporting the family law system within a public health paradigm. A core objective is to better support those families needing to use the courts by ensuring the family law system's tertiary interventions reduce the effects of harm experienced by families and prevent its recurrence. FRSA welcomes these proposals, especially when placed in the context of strengthened primary and secondary interventions in a public health model of family law services. We also underline the need to ensure that all parts of the family law system are as non-adversarial as possible.

Survey responses 7: making decision-making processes less adversarial
Survey respondents suggested that, while the family dispute resolution processes support families well, more funding and better wages and career opportunities need to be provided for FDR practitioners, who go 'over and above' to prevent adversarial interactions. Better access to legally assisted mediation was also suggested, as was a stronger focus on putting children's needs first (see section 7) and support for flexible post order programs (see section 6).

FRSA also welcomes proposed improvements to triage and risk assessment processes in the family court, co-location of family law registries in local courts, establishing a post order parenting support service and enhancing safety and accessibility of court precincts.

FRSA notes the greater emphasis being placed on system regulation and governance rather than on the individual practitioner. We support a national accreditation system that applies consistently across all family law services, including Children's Contact Services which are currently not consistently covered by existing accreditation requirements.

Universal screening and assessment (discussed in Chapters 5 and 6 of the Discussion Paper)

FRSA Members were supportive of the introduction of a universal intake and assessment process which screens for risks (to both children and parents) in relation to the impact of parenting and other intervention orders. Early risk identification provides an opportunity for education and other forms of parenting support to focus on parenting behaviour that might impact negatively on children's adjustment and wellbeing, and behaviours and protective factors that promote children's resilience and wellbeing following separation or divorce and the parents' wellbeing and competence as parents, communicators and negotiators.

Case study 14: Universal screening

Many practitioners are reluctant to use universal screening tools, despite evidence that the tools work. Relationships Australia Tasmania (RA Tas)[31] *planned to launch a universal risk screening tool in 2017 knowing that many of its staff might remain unconvinced. So they provided significant support for staff to 'get over the barriers and onto the benefits', and arranged an independent evaluation of the multi-faceted tool implementation by Relationships Australia SA (RASA). RA Tas staff were asked to complete an anonymous 'before and after' Attitudes to Screening survey. As expected, the 'before' results indicated that staff were already confident in their practice, and they also identified many barriers to adopting screening. But after the launch of the screening tool, the experience of actually doing screening meant that staff had much greater confidence and knowledge in practice, and, crucially, far fewer worries about clients' reactions to screening and poor engagement. Staff reported being delighted by 'screening to engage' rather than 'screening to exclude' clients.*

Survey Responses 8: Parenting support to strengthen parent-child relationships and improve child wellbeing

FRSA's November 2018 survey also resulted in a number of suggestions for:

- *A stronger focus on prevention and early intervention – e.g. better access to parenting support information and services through schools, child care and early learning centres, community centres.*
- *A mandated requirement (for parents experiencing child-related conflict) to attend education programs before entering any court order process. Particularly successful are programs that communicate those aspects of parenting behaviour that increase risk to children's development and social and emotional wellbeing, and those behaviours and attitudes that serve as protective and strengthening factors for increasing children's (and parents') wellbeing, resilience, communication skills and positive interactions.*
- *Inclusion of any form of abuse, with greater weight given to psychological control, in the family violence list, as criteria for establishing eligibility for the family violence list (question 6-1).*
- *Intentionally returning to a focus on children – before, during and after court order processes.*
- *More access to legally assisted mediation.*
- *A better wages and career structure for FDR practitioners who invest a high level of skill and emotional energy into their work with complex and high conflict families, often over extended periods of time.*
- *Support for standard and universal intake and assessment to screen for risk to parents and children intervention orders, with children named in the orders.*

Helping people to understand and comply with parenting orders (Proposal 6-9)

FRSA's November 2018 Survey invited Members to comment on the experience of families needing to use the courts for parenting orders and to share examples of 'what works' to support parents through the process and once orders are in place.

[31] Relationships Australia Tasmania and Relationships Australia SA are Members of FRSA.

Survey Responses 9: helping parents comply with parenting orders

The critical starting point is clear information about why the orders are needed and what they are intended to achieve. Survey respondents noted that parents often find it difficult to interpret orders, partly because of the complex language used but also because of the high levels of conflict they are experiencing. Misunderstanding can lead to protracted engagement with the court and/or resulting orders that are impractical or unworkable.

Suggestions for improving this situation included appointment of parenting case managers to help embed the 'reality' of the orders, a focus on the wellbeing of parents in order to reduce tension and conflict, better education about focusing on children and co-parenting coaching where parenting arrangements are not working. It would also be useful to give parents (and children, where appropriate) the opportunity to review orders and to other support (for individuals or the family as a whole) through an ongoing referral process.

Survey respondents had a lot to say about post order support, noting that significant time is tied up within the courts because a large number of people 'simply do not comply with the orders'. They noted the increasing tension and conflict caused by order non-compliance as well as the damage a volatile and protracted adversarial processes does to children and to their relationships with parents and other family members. Helping families to comply with orders is a resource intensive and emotionally demanding process for the families concerned but also for the FDR practitioners who are essentially working with many individuals within a complex intersection of relationships.

When examining parenting coordination for high conflict families in the post-order setting in 2011, Lieberman[32] noted that '…it is very time-consuming, and very expensive … *But this is what it takes'* (emphasis added).

The Post Order Program Enforcement Pilot was evaluated in 2017[33]. While it did not include significant evidence about the value of the program, it did reveal the gap in services for clients who do not understand their orders and cannot implement them without assistance. More work needs to be done to test the efficacy and cost effectiveness of intensive, post-order interventions and compare that to the efficacy and cost-effectiveness of multiple court events. In addition, attention needs to be given to the underlying complexities and issues that contribute to high parental conflict. This will require a serious investment of resources and time, ideally targeting long-term, therapeutic approaches to building parental capacity and dealing with entrenched problems rather than providing sporadic, crises-led funding and support.

It is important that any changes build on what is currently working and to learn from experience of what has worked less well, or required adapting to suit different contexts. For example, the ALRC's proposal for a Post Order Program (POP) should consider the findings of the Centre for Family Research and Evaluation's examination of the Parenting Orders Program Enforcement

[32] Lieberman, A., Zeanah, C., & McIntosh, J. (2011). Attachment perspectives on domestic violence and family law. *Family Court Review*, 49(3), page 537.
[33] Centre for Family Research and Evaluation, October 2017. *Parenting Order Program Enforcement Pilot – Evaluation Report.*

Pilot in 2017[34]. Two POP providers were funded to trial a Parenting Orders Program Enforcement Pilot involving alternative models for families with high and entrenched conflict including family violence. Although the two models piloted were quite different in their structure and operations, they both made positive gains in the outcome domains identified. Positive outcomes included statistically significant improvements in reciprocal respect between parties, understanding of and complying with parenting orders, improved mental health and wellbeing in adults and improved wellbeing in children, improved safety and reduced exposure of children to violence. The evaluation recommended the strengthening of pathways for post-orders support services through substantial collaboration with court staff, including developing two-way protocols for Orders in respect of ongoing conflict, compliance issues and ambiguity.

Case Study 15: Post Orders Intervention – improving outcomes for court-ordered families

In 2016, the Attorney General's Department invited Uniting[35] to participate in a one-year Post Orders Intervention Pilot (POI) as part of a Parenting Orders Program Enforcement Pilot (see above). The program was based at Uniting Counselling and Mediation, Parramatta, and delivered a hybrid therapy/mediation model to court ordered complex family law cases. POI was designed to support families with interim or final parenting orders to build parenting cooperation, address contraventions and reduce the need to return to court.

The pilot demonstrated how POI helped to address the needs of post-separation parents exhibiting entrenched high-conflict and mental illness, substance abuse, trauma and family violence issues; and how POI addressed the developmental needs of children, most of whom had lived through a number of years of court proceedings.

The majority of referrals into POI came from Federal Circuit Court judges. Uniting fostered relationships with the court to support suitable referrals, and judges became enthusiastic advocates for the POI program. The program utilised a flexible model of interventions based on an assessment of client needs, and included a broader mix of therapeutic, legal and mediation interventions such as Child Inclusive Practice, individual counselling, the use of interpreters, the involvement of lawyers, Independent Children's lawyer and support persons, and anything else clinically assessed as helpful for achieving positive outcomes for families, particularly children.

The POI program achieved many positive outcomes, including reduced parental conflict, increased parental insight and direct benefits for children's wellbeing and development.

[34] Clancy, E, Pryor, R, Skvarc, D and Nekonokuro, A. October 201. *Parenting Orders Program Enforcement Pilot Evaluation Report*, Centre for Family Research and Evaluation
[35] FRSA Member Uniting provides services across NSW and the ACT.

FRSA supports enhancement (with appropriate resourcing) of the Post Order Parenting Program, and we note the importance of assuring POP interventions are based on individual assessment for each adult client, and flexibility to adapt interventions to meet identified and changing needs. POP, like case management, should not be based on a 'one size fits all' model.

We also note that Member organisations not using POP are trialling other methods to assist those families requiring intensive post-order support.

Case Study 16: When post-order support requires even more intensive case management

Relationships Australia Western Australia[36] is currently running an unfunded pilot of Parenting Co-ordination[37]. The program is a high-intensity therapeutic service to assist high conflict families with a court order, or a parenting agreement in applying the order or agreement. It provides a simpler, faster and less expensive response to families' needs for some assistance in giving effect to orders and agreements, and frees up court resources.

It has been the experience of Relationships Australia Western Australia that high conflict families often have multiple court events. An important outcome achieved by Parenting Coordination is a reduction of the demand on court services and more timely resolution of issues. Parenting Coordination is a more intensive intervention than most others and can only be undertaken by consent. Coordinators are usually contracted to work with the family, and with both parties in the conflict, for a significant period of time (two years in some jurisdictions). Processes vary, but usually include meeting individually with each parent and together, depending on the needs of the family, allowing the Coordinator to develop a thorough understanding of the nature of the relationships in the family they work with including the conflict styles of family members.

The relatively continuous nature of Parenting Coordination is justifiable on the grounds that it should only ever be considered an option in cases identified as high conflict. The majority of families negotiate their own way through the family law system with relatively little problem. It is also quite likely, should the option of Parenting Coordination become more widely available, more victims of family violence will come forward, who currently may not disclose to anyone through the family law engagement, and likely suffer suboptimal outcomes as a result.

[36] Relationships Australia WA is a Member of FRSA.
[37] Parenting Co-ordination is in use in parts of the United States of America and Canada, as well as in South Africa.

7. Children in the Family Law System

Qualified support for proposals 8-1 to 8-7

The ALRC's proposals for embedding children's participation across the family law system, and making the system more child-centred, hit a positive note in regard to realising children's rights to be heard and to participate in processes and decisions that will affect their lives.

FRSA supports a focus on children's rights, and refers the ALRC to our submission to the March 2018 Issues Paper (where we note five children's rights themes – a right to be heard; freedom form violence, abuse and neglect; the opportunity to thrive; engaged citizenship; action and accountability).[38]

FRSA also notes that supporting children to participate in the family law system, including keeping them safe through the various stages of parental separation and family dispute resolution, is by necessity time-consuming and resource-intensive. In the experience of FRSA Members, the investment is worth it. An intentional, well supported, non-adversarial child focus is the most important ingredient for successful outcomes to family law processes, i.e. the long-term wellbeing and safety of children and the strongest possible family relationships in the face of significant disruption. To achieve this, it will be necessary to find and provide the right supports for children outside the adversarial court structures. These might include child counselling, Child Inclusive Practice, Child Inclusive Mediation and other intensive support services for children.

Taking children seriously

Paragraph 7.104 of the ALRC's Discussion Paper refers to several mechanisms or vehicles in Australia that have been established for the purpose of 'giving children and young people a voice'. In our May 2018 submission to the ALRC's Issues Paper, FRSA endorsed in particular one of those vehicles, the Young People's Family Law Advisory Group (YPFLAG).

We note in particular YPFLAG's call for a charter of Children's rights[39] as they might relate specifically to rights within the context of the family law system, including the right to feel secure and heard in all aspects of the FL system, the right to have orders and arrangements explained, the right to talk to a judge if they wish to, the right to find and access information before, during and after parents' court proceedings and be informed about parents' court orders and how these will affect them, and the right to seek follow-up post-parenting orders/agreements to check whether they are working for them.

The model of engagement utilised by YPFLAG recognises that children and young people want to be taken seriously, and acts on that by providing opportunities for serious participation by children and young people. The 2018 evaluation of YPFLAG attributed its success as an advisory vehicle to the

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[38] *FRSA Submission to the Australian Law Reform Commission Inquiry - Review of the Family Law System*, 11 May 2018 (Submission No. 53)

[39] Refer here to YPFLAG evaluation, page 34

Family Court's active support of, and open engagement with, children and young people. The children's trust in family law processes grew through their experience of the Group, and they reported increased confidence that their participation in and contributions to the work of YPFLAG would benefit other children and young people involved in the family law system. The challenge now is to maintain that effort in the absence of dedicated funding, and to continue to raise awareness in the courts about the YPFLAG's existence and usefulness. FRSA recommended expansion of the model to become national.

Child Inclusive Practice

FRSA underlines the importance of hearing children's voices in family law processes and contexts and is pleased to note the ALRC's endorsement of FRSA's push for Child Inclusive Practice in dispute resolution. Indeed, FRSA would prefer to see CIP embedded as an opt-out rather than opt-in approach. However, it is important to also recognise that Child Inclusive Practice is resource intensive. Giving children a voice requires care and professionalism, and doing it badly or incompletely risks damaging children's trust and emotional state. At present, child consultant roles are few and far between because of the resource-intensiveness of this highly specialised practice.

Case Study 17: Child Inclusive Practice with very young children

It is usually considered unsuitable for children under 5 years to be included in Child Inclusive Practice. Uniting's[40] Developmental Feedback approach ensures young children are included in the decision-making process by bringing their needs to the forefront and taking their development and attachment needs into account at specific points in time. This information is then woven into an ongoing FDR process. The model works through four steps:

1. Parent interviews to gain insight into children's development within the context of parental separation and conflict

2. Developmental Feedback session based on the parent interviews, and theories of attachment, child development and trauma

3. Review and Monitoring session to check children's responses to parenting plans and consider ongoing needs and further psycho-education

4. Reflection and Future Planning session: final check-in and assessment of parental insight and capacity to make child-focused decisions

The benefits of CIP were recently quantified through a research project undertaken by AIFS[41]. The findings paper recommended that CIP:

- Facilitate children's and young people's participation in decision-making processes
- Keep them independently informed about these processes

[40] FRSA Member Uniting is based in Western Sydney.

[41] https://aifs.gov.au/cfca/2018/10/18/give-children-bigger-voice-more-time-findings-children-and-young-people-separated?utm_source=CFCA+Mailing+List&utm_campaign=5fad85ea0f-EMAIL_CAMPAIGN_2018_10_29_12_13&utm_medium=email&utm_term=0_81f6c8fd89-5fad85ea0f-201361993

- Provide clear and accurate explanations of decisions made
- Provide access to ongoing therapeutic support and assistance as required
  allow the flexibility to change parenting arrangements and have ongoing and meaningful communication.

Case Study 18: When children aren't listened to

One case coming to a Parenting Orders Program of an FRSA Member Organisation[42] *had already involved a 3-4 year court process. There were two children, aged approximately 12 and 15 years when involved with POP. At least two family reports were completed. The children did not have any contact with their father due to their experience of family violence perpetrated by their father when their parents were in a relationship. The children described feeling as if no one was listening to them (especially their desire not to have contact with their Dad), they did not want to be part of the legal or POP process and yet felt they were being forced to. This reinforced their hatred of their Dad, it increased the stress on their mother which affected her parenting capacity and ultimately it affected their relationship even more with their father as he continued attempting to pursue a legal process.*

Resourcing Child Inclusive Practice

The Discussion Paper makes no recommendations about increasing resources, but any proposals for including children in family law processes must be supported by a concomitant funding boost across all family law services involving children. The ALRC might consider assessing the true cost to clients of following a mainly legal path (utilising lawyers, an ICL and/or a family report) to reaching a satisfactory outcome, versus the costs of a child inclusive FDR. Costs of educating parents and professionals about Child Inclusive Practice also need to be factored in to the initial and ongoing awareness raising, information and education campaign.

The actual costs of providing child-inclusive expertise should be weighed up with the longer-term costs to children, families and society if investment is not made in supporting children through high conflict situations, enabling them to be taken seriously and to 'have a voice,' and providing therapeutic support as and when needed.

While the benefits of CIP are supported by research and there is a clear case for investing further in CIP, there is no accepted definition of a Child Consultant and the position is neither accredited nor directly funded. Accreditation, training and funding are crucial if the availability of Child Consultants is to be increased and the voices of children can be heard.

[42] Case study provided in response to FRSA November 2018 Survey.

Case Study 19: Therapeutic model of support in children's contact services
CatholicCare Sydney's[43] integrated therapeutic model for children's contact services optimises opportunities to address the safety risks that resulted in a court order for supervised time in the first place. The model promotes safer contact and progression to self-management of contact by providing families with a better opportunity to safely repair and develop parenting relationships, and providing increased scope to monitor ongoing risks for families and to allow children more spaces to process their supervised time experiences. The model involves referring families to other family relationship services, including POPs, men's behaviour change, family dispute resolution and parent education providers, and liaising with these services to provide a coordinated approach to addressing areas of concern and facilitate safe repair of parent-child relationships. The service shares information about safety concerns with the family court, so that they receive a clearer view of an ongoing risks to assist in their decision-making regarding the readiness of families for less-supervised forms of contact.

Context is important

There are some families where cultural and family norms do not support children expressing views about certain things. In such families the consequences of giving children a voice could be complex, even adverse. The starting point should be that children are not forced to express their views or be involved, but where they are involved, all care should be taken to uphold their dignity and best interests.

Child safety is everyone's business

Child safety must be considered from a systems-wide perspective. FRSA recommends that the ALRC also gives consideration to the existing Child Safe Organisation Principles (developed by the National Children's Commissioner[44]) and the work of the Office for Child Safety as well as the application of Child Safety accreditation processes across the whole family law system.

FRSA also welcomes recognition of the need for children's advocates (Proposals 7-8 to 7-10) and separate legal representatives for children, but would like to see more detail about how these positions will operate 'on the ground,' including intentions for long-term commitment to these roles and capacity of the system to support them.

FRSA remains concerned about the impact of sometimes lengthy court processes and related arrangements such as Child Contact Services on children's wellbeing and development. Child Contact Services play an important role in getting families through family law processes, but, given the nature of this work, rely heavily on part-time and casual workers – a situation which is not adequately supported by current funding levels.

[43] FRSA Member CatholicCare Sydney provides services across much of greater Sydney.
[44] https://www.humanrights.gov.au/national-principles-child-safe-organisations

Children and young people's lives; children's voices

FRSA welcomes the proposal for a C&YP's Advisory Board (Proposal 7-13), which will help to keep children's views and the need for Child Inclusive Practice at the forefront. As mentioned in 8.1 and 8.2 (above), FRSA recommends that the YPFLAG model and its evaluation and recommendations be seriously considered as a guide for any the proposed C&YP Advisory Board.

Connect with existing national and state/territory Children's Commissioners

FRSA also recommends that planning and development of the proposed Children and Young people Advisory Board be undertaken with and by children and young people, and in close consultation with the National Children's Commissioner and the Children's Commissioners/Guardians of each State and territory. The National Children's Commissioner should be one of the appointees to the Advisory Board.

8. Reducing Harm

General support for proposals 8-1 to 8-7

The ALRC recognises that many families coming into contact with the family law system have complex needs, including those relating to violence and safety. The paper seeks to clarify definitions of violence, protect confidences and reduce opportunities for legal and other processes to be abused. While FRSA supports clearer definitions, we also note that the current definition already covers a range of behaviours; and in addition, the law is already able to appropriately deal with many behaviours which are reprehensible without calling all of them 'violence.' Any changes to the definition need to be carefully constructed.

The harsh reality – violence and protracted conflict resolution

For example, FRSA agrees that misuse or abuse of the family law system is a significant issue. While clarifying definitions may help, there are already certain appropriate measures in place (e.g. cost orders, and orders requiring people to seek the court's leave before they can bring fresh evidence) and caution must be taken about identifying such behaviour as violence. Dealing with (clearly-defined) abuse of the system will also require preventive action, i.e. it is important to reduce the time that processes take, and hold a central register of incidences of violence and abuse which is also accessible to non-court services such as mediation offered in family support services. For example, without a national register for s60I certificates, the process remains open to abuse.

Children's contact services

The lack of rigour and control around the operation of 'for-profit' services and services not funded by government remains a concern for FRSA. There are no quality measures or child safe standards of operation enforceable with these services and they have the potential to place children at undue risk.

Accreditation of staff will only go part of the way to reducing harm to children and families accessing these services.

Improving multi-disciplinary collaboration

FRSA refers the ALRC to the deliberations of a 2007 working group of experienced (family law) practitioners and researchers[45]. Their recommendations for ways to improve multidisciplinary collaboration toward better serving families affected by domestic and family violence are based on simple yet fundamental steps:

- **Identification:** of characteristics and variables significant for choosing appropriate interventions and outcomes for families; of patterns of domestic and family violence; and of a shared vocabulary to describe those characteristics, variables and patterns.
- **Cultural awareness:** for professionals who work with families experiencing domestic and family violence
- **Effective and culturally sensitive screening and assessment tools:** accompanied by protocols that are readily understood across disciplines
- **Identification:** of best practice for intervention and provision of services, including child-centred custody and determinations that provide for children's safety and security

Case Study 20: Harm Reduction in Cultural Contexts

CatholicCare (Diocese of Broken Bay)[46] uses the Salvation Army's 'Safe from the start: listening to the voices of children' program in schools and early learning centres. The program utilises a tailor-made, activity-based kit designed to help workers listen to the voices of children who have witnessed family violence and may be displaying feelings of fear, anxiety or sadness.

The resource kit and one-day training program have been designed for use with people who work in universal services – child care workers, school family liaison officers, school counsellors and Aboriginal liaison officers who previously had little or no training in identifying trauma in children. The program helps workers to understand the effects of domestic and family violence on children (whether directly experienced or witnessed) and the impact of trauma on children's brain development. Since introduction of the program, local child care centres and schools have been playing a pivotal role in intervening early and connecting children and their families to specialised support before crises occur.

FRSA supports in principle the proposal for a multi-sector working group to develop guidelines in relation to the use of sensitive records in family law proceedings, but we also recommend that a common language is used to avoid misinterpretation between the various sectors/disciplines represented on that group.

[45] Ver Steegh, N. and Dalton, C., 2008, Report form the Wingspread Conference on Domestic Violence and Family Courts, in *Family Court Review*, Vo. 46 No. 3, July 2008, 454-475.
[46] FRSA Member CatholicCare (Diocese of Broken Bay) provides services across much of northern Sydney and the Central Coast of NSW.

Survey responses 10 (specific responses to questions 8-1 and 8-2)
Regarding the present format and issues/behaviours within the family violence definition, survey respondents had mixed responses about the definition, but agreed on the need for more consistency. One recommendation was to adopt the recommendations of the Family Violence – A National Legal Response' ALRC report, p114.

While not all thought the definition should be broadened, those who did suggested inclusion of 'manipulative, controlling and psychological abuse'; and suggested that the impact of violence on children be made clearer in the definition. Others, however, felt measures already exist to deal with the abusive use of litigation (e.g. through costs orders and orders requiring people to seek the court's leave before they can bring fresh proceedings. It may be the measures rather than the legislation itself which needs to be strengthened.

9. Additional legislative issues

Support for proposal 9-1 to 9-8

The ALRC recommends additional supports and safeguards to be provided to people with a disability and responds to community feedback about the definition of family. FRSA agrees that there is a need to expand the definition of family, to take into account the changes in Australian society that have resulted in increased complexity of family composition, structure and living arrangements and consequent impacts on relationships between parents, between parents and children and among other family members.

Cultural sensitivities

FRSA also supports the amendment of 'family member' to be inclusive of Aboriginal and Torres Strait Islander concepts of family, and would recommend a similar cultural lens on other groups before new definitions are finalized. We also note that all families, not only specific groups, could benefit from specialist family support.

10. Skilled and supported workforce

Support for proposals 10-1 to 10-15

The ALRC paper offers a whole of system approach to developing and maintaining core competencies among practitioners working with separated families. That approach would start with a workforce capability plan and be supported by system-wide training and accreditation. Wellbeing programs for staff of federally funded family and relationship services and family law legal assistance services are also proposed. FRSA agrees that consistent competency is a key issue in a sector comprising a range of specialisations and efforts to ensure a high level of competency are welcome. Such efforts do, of course, need to be matched by adequate and sustained funding.

A systemic approach to supporting workforce development is required. We refer the ALRC to FRSA's submission in response to the March 2018 Issues Paper[47], in particular the recommended core competencies of professionals working in the family law system. Specific areas where better training and support are required include (but are not limited to):

- Better understanding of the nature and dynamics of family violence and child sexual abuse
- Knowledge and application of child-centred approaches, child safety protocols and child protection interventions
- Capacity to identify and act on risk, which could be linked to training associated with any common screening and assessment tool
- Social and emotional competencies, including empathy, non-judgmental relationship building, cultural awareness and minority group sensitivities, appropriate responses to grief and loss
- Property and finance mediation training for FDR Practitioners
- Consistency in relation to children's contact service guidelines.
- Better understanding of trauma informed practice and contexts for its application, including understanding of vicarious trauma and precautions workers can take
- Knowledge of intersections between family law, child protection, mental health and family violence systems, and how to deal with increased complexity across these and other sectors

[47] See FRSA, 2018, *Submission to the Australian Law Reform Commission Inquiry: Review of the Family Law System Issues Paper*, pages 49-54).

Survey Responses 11 (specific responses to questions 10-1 to 10-3)

Respondents suggested additional core competencies that could be considered in the proposed workforce capability plan – accredited property mediation training inclusive of a substantial number of hours of supervised practice; competency in regard to understanding courts' reasoning for equitable settlements; training for peer support financial counselling.

Additional training in child development and trauma informed practice was recommended for FDRPs working in family law disputes involving property and financial issues.

Respondents recommended referring to ACCSA for qualification requirements for people working at children's contact services.

Ensuring that core competencies are attained and maintained consistently across the range of family law services requires a concomitant commitment of resources, not only for direct training and education purposes, but for ongoing professional development practices, information sharing and peer support, up-to-date research on best practice, effective accreditation systems, regular opportunities to upgrade skills, supervision and support for change management, including that relating to organisational culture change.

The ALRC's proposals for more seamless, 'wrap around' services within a families hub model will require additional workforce planning to enable practitioners to work within and adapt to the much more collaborative system envisaged. That workforce planning would consider not only the expertise and levels competence required for specific roles, but also the structural supports and interpersonal skills required for organisational culture change and effective collaboration, information sharing and case management across services and disciplines. Practitioner expertise and capacity should be enhanced at various levels in recognition of the complexity of families' needs and the work required to align service systems in response to those needs.

11. Information Sharing

Support for proposals 11-1 to 11-12

The ALRC paper suggests holistic reforms to information sharing practices involving families and children who access the family law system, sometimes coming into contact with multiple and complex services systems all at once or over time. The paper calls for timely information exchange within a strengthened (national) legal framework and strengthened personal and institutional relationships. FRSA supports the principle of improving mechanisms for information sharing with the proviso that where confidentiality is paramount, it remains protected. As elaborated in our response to the

Family Law Council's 2015 Terms of Reference on Information Sharing[48], getting the balance right between client confidentiality and the courts' need to have relevant information is both critical and complex. It is important that information-sharing protocols and associated procedures are supported by comprehensive guidelines and training. Information sharing practice, and related implications, must be approached with caution.

Case study 21: Counteracting efforts to inappropriately share confidential information

Counselling is protected under the Family Law Act 1975 (Cth) and its content is not admissible in court (although there are some exceptions). Even so, lawyers, insist on sending family law service providers subpoena. The organisation concerned is then obliged to go through the process of 'objecting'. One FRSA Member Organisation[49] described just what it takes to complete this process, starting with the supply of information to be used at the judge's discretion, or to be not used at all if the lawyer withdraws the subpoena. It takes the organisation time and money to review the file and redact content as appropriate, and to then have a lawyer present at the court to argue the case for not having the notes submitted. Sometimes the judge accepts the objection with no argument; sometimes the lawyer needs to actively spell out the objection. All of this comes at a cost to the organisation – for which it is not funded.

Current impediments to system-wide information sharing

FRSA's submission to the Family Law Council (2015) commented on impediments to information sharing and service integration resulting from concerns about privacy and confidentiality. We also noted the impact of inconsistent information sharing arrangements and lack of clarity about what can be shared in our response to the ALRC's March 2018 Issues Paper, and will reiterate a number of sensitivities that still need to be taken into account:

- The confidential nature of the mediation process is respected by FDR practitioners. How will assurances of confidentiality hold up in an information-sharing environment? What safeguards will be put in place?
- Who/what will determine where information is to be held and who should have access to an Information Sharing Framework, and what that specifically entails (e.g. court documents, police records, child protection reports, expert reports and how what is sharable and what should remain contained will be made clear)
- Implications for FDR – e.g. should intake and assessment information be confidential and non-sharable, or not?
- More funding is needed to ensure integrity, security and functional effectiveness of information sharing processes
- The process of reaching effective sharing agreements is complex, and needs to be developed in careful consultation with all stakeholders.

[48] FRSA *Submission to the Family Law Council regarding information sharing, drawing on information obtained through a* member survey *(September, 2015)*
[49] Case study provided in response to FRSA November 2018 Survey.

Consideration also needs to be given to whether clients can give assent to information being shared, or whether a child's advocate/separate legal representative could consent or object to information-sharing.

Survey Responses 12 (specific responses to questions 11-1 to 11-5)
Survey respondents were divided about whether the information framework should include health records, but agreed on the appropriateness of including information about safety and violence concerns.

There were also mixed responses about whether records should be shared with family relationship services.

Regarding a child protection agency referring a parent to the family courts to obtain parenting orders, respondents suggested that evidence to be provided to the courts was that which related to risk, safety concerns, parental substance abuse and its impact on children, family violence assessment and parental capacity assessment.

Regarding information sharing between the proposed Families Hubs and the Courts, many suggested that all child safety concerns to be shared and one suggestion was to consider the Victorian information sharing scheme as a useful framework

12. System oversight

Comments on proposals 12-1 to 12-12

The ALRC proposes the establishment of a Family Law Commission to provide system oversight, monitor system performance, manage training and accreditation, conduct inquiries and develop a cultural safety framework. While there is room for improvement of public awareness about, and confidence in, the family law system, FRSA is not convinced that the proposed governance framework will provide that.

More clarity is needed on the scope and operation of the proposed Family Law Commission (Proposals 12-1 to 12-6)

The concept outlined in chapter 12 is confusing and the proposed Commission's scope and lines of accountability are not clear. Where do the Family Hubs fit? How would a Commission be resourced? Would the Commission cover all aspects of service provision including community services, FRCs, courts, states and territories? If so, would that level of authority be properly resourced? And what would 'authority' actually mean - to whom would the services be accountable, noting that many practitioners also work in other sectors and systems in addition to the family law system?

FRSA's submission to the ALRC's Issues Paper referred in some detail to integration and collaboration across the co-occurring range of non-legal support services. Many individuals with family law needs also require

assistance in other areas, such as housing, financial support, therapeutic support, mental and physical health, drug or alcohol dependency, etc. Does the ALRC have a vision for a broader system of collaboration and service integration that enables easier cross-system navigation for individuals and the practitioners supporting them and if so, will the proposed Family Law Commission have a role in this?

The Commission's proposed responsibilities suggest that it would essentially be somewhat removed from on the ground activity. Family and relationship services are not commercial enterprises; how would a Commission's deliberations impact on timing and delivery of services?

Accreditation

There is already an accreditation system in place, however it does not apply to all family law service providers/practitioners. A better argument needs to be made about the benefits and extent of a new national accreditation framework, together with a rationale for including specific modules, such as family violence and child centred approaches, child protection and child development, social and emotional intelligence, risk awareness and cultural sensitivity (see FRSA submission to ALRC Issues Paper, pages 49-50).

How would the Commission operate within a public health model, and how would it seek to foster prevention and early intervention through primary and to some extent secondary services? How can the Commission both review and deliver reforms at the same time? And indeed, might the Commission be constrained, and itself be an impediment to responding to the proposals? FRSA would be hesitant to support the concept of a Family Law Commission without fully understanding the answers to these questions.

Case Study 22: Support for a safety framework

Centacare NQ's[50] KIN-ections project uses a Safety Framework to fully understand who is involved in, and has influence over, care arrangements for children, including cultural factors. The project supports the development of a comprehensive understanding of a client's family and cultural structures as a platform for improved safety and flexible engagement in FDR. The project optimizes the capacity of parents to implement their parenting plan, engage broader family/kin in children's lives as appropriate and navigate initial transition issues in a way that fosters communication and conflict resolution.

[50] FRSA Member Centacare North Queensland provides family law, family relationships and other community services across north Queensland, covering 23% of that state's land area.

13. Conclusion

While FRSA supports in principle the general intent of the ALRC's discussion paper, we have pointed to specific components of the family law system that require further consideration before proposals are implemented.

Summary of key points/recommendations:

1. Investment in a child-focused, whole of family approach to family law services and their interconnections with the family and relationship services and other sectors is worth every cent. Current gaps in family law services exist largely because that investment is simply inadequate, and the cost to children's wellbeing and development, to families and to society are huge.

   FRSA recommends that the ALRC's final proposals include a recommendation to the Australian Government that new funding, without offsets and with assurance of short, medium and long term commitment to better outcomes for children and families, be made available to fund initiatives arising from the ALRC's final report.

2. One of the underlying strengths of the current family law system is also the key to its future reshaping and further strengthening – and that is its integration with the broader family and relationship services sector.

   Where that integration is already strong (as illustrated through case studies from FRSA Members, and through their own submissions to the ALRC's March 2018 Issues Paper and October 2018 Discussion Paper), the one single thing that would improve and strengthen integration and cross-agency collaboration is case management. Where that integration is weaker or lacking, the ALRC is encouraged to build on knowledge of 'what works' while facilitating a process of systems change, including organisational cultural change, that embeds case management as a key integration strategy.

   FRSA recommends that the ALRC prioritises a case for substantial investment in case management to enable a more integrated and streamlined system of support to families navigating the many stages of the family law system.

3. The proposed 'families hubs' model needs to be reconsidered, with primary consideration given to enhancing what already works through better resourced case management (see 2) and referral pathways that support clients through all stages of their family law journey; as well as consideration of the long-term benefits of investing in children and families themselves, as well as the services that support them through life's transitions (see 1).

   FRSA recommends that the ALRC continue to draw on the experience and learning of the family and relationship services sector before finalising any specific 'families hubs' models. To that end, FRSA is willing

to participate on relevant advisory groups, and act as a conduit between the ALRC, relevant government departments and judicial institutions, and FRSA Member Organisations.

4. As noted in section 5, FRSA endorses the ALRC's recommendations for expanding the availability of FDR into property and financial matters.

   FRSA recommends that the ALRC *mandatory FDR be extended to property and financial matters.*

Appendix 1

Breakdown of activity for FRSA's 66 Members providing Family Law Services: Data extracted from DEX on 18 April 2018 and provided to FRSA by the Department of Social Services.

The following table provides detail of 241,805 sessions delivered to 93,734 individual clients over the six month period July to December 2017. Note: there are 66 FLS providers but many provide more than one component of FLS meaning the total of the component providers will not equal 66.

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

Appendix 2

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