

AUSTRALIAN LAW REFORM COMMISSION - REVIEW OF THE
FAMILY LAW SYSTEM

ISSUES PAPER RELEASED 14 MARCH 2018



Open Submission

RELATIONSHIPS AUSTRALIA (Qld) and CULSHAW MILLER
LAWYERS

on behalf of

FAMILY RELATIONSHIP ADVICE LINE

The Family Relationship Advice Line

Family Relationship Advice Line
Information, legal advice and/or referral to appropriate services, including dispute resolution

Family Relationship Advice Line
(Relationships Australia Qld)
Immediate Referral
Screening, assessment, case management and short intervention counselling

Telephone Dispute Resolution Service
(Relationships Australia Qld)
Telephone and Online FDR services

Legal Advice Service
(Culshaw Miller Lawyers)
Free legal advice from Family Law Specialists

Supporting over 63,000 clients every year

Relationships Australia (Qld) (RAQ) and Culshaw Miller Lawyers (CML) operate in partnership the Family Relationship Advice Line (FRAL). The FRAL offers an essential support to over 63,000 people each year who are seeking support to navigate the Family Law System. Clients contact the FRAL seeking help and support – the most commonly asked questions are the following;



EXECUTIVE SUMMARY

This open submission is jointly prepared by Relationships Australia (Qld) (RAQ) and Culshaw Miller Lawyers (CML), following consultation with Commissioner Helen Rhoades on 9 April 2018.

As with the presentation delivered during the consultation, we seek to address some of the questions posed by the Australian Law Reform Commission's Issues Paper¹ regarding the review of the Family Law System.

We note that Relationships Australia has submitted a comprehensive paper responding to the Issues Paper, and RAQ does not seek to replicate that submission. Of particular focus in this submission is the true collaboration in approach to practice between social scientists and lawyers. This unique relationship has arisen as a result of RAQ and CML collaboration (a working partnership that has existed for over 12 years) to deliver services through the Family Relationship Advice Line (FRAL) and the Legal Advice Service (LAS), which each organisation operates respectively. The working partnership between these two organisations is in many ways unique in Australia; a seamless collaboration of Social Science support and Family Law legal advice based upon mutual respect for the attributes that both sectors bring to the table.

KEY RECOMMENDATIONS

The following are core recommendations that CML and RAQ wish to make to the Australian Law Review Commission:

Recommendation Number 1

Funding should be maintained and enhanced for existing telephony and online access services including FRAL, TDRS and LAS.

Recommendation Number 2

Expanding technology options should be encompassed within further funding to improve accessibility and service provision within a client focussed framework.

Recommendation Number 3

Further funding for enhancement and incorporation of therapeutic interventions in TDRS.

Recommendation Number 4

Enhanced options for client-led support services, where only one party engages in the dispute resolution process.

Recommendation Number 5

Funding should be enhanced funding for LAS to assist in actively reducing the wastage of Court resources by supporting and guiding problem solving for self-represented litigants.

¹ Issues Paper 48 (IP 48) dated March 2018.

BACKGROUND – The Family Relationships Advice Line

The FRAL is a national telephone based service funded by the Attorney Generals Department (Cth) providing information, referral and advice to assist families affected by separation or relationship issues. The FRAL provides a seamless service for clients across three distinct components:

- The Information, Advice and Referral services of the FRAL;
- The Telephone Dispute Resolution Service (TDRS) and
- The Legal Advice Service (LAS).

The FRAL and the LAS has been in operation since 1 July 2006, with TDRS coming on line on the 1 July 2007. The operation of the FRAL was transitioned to RAQ with effect from 1 July 2009. In this respect the FRAL and its various components have been in operation for 12 years. These services are available nationally and internationally across extended hours via telephone and online platforms (8am to 8pm in every State, Monday - Saturday). No other service with these components operates in Australia.

Clients are able to access case managed support and information from qualified social scientists, legal practitioners and family dispute resolution practitioners. Consistently high demand for these services demonstrates the desire for clients to access services through modalities that are flexible and available with immediacy.

The Legal Advice Service, operated by CML since 1 July 2006, delivers telephonic Family Law advice to national and international clients from its Perth and Adelaide offices in conjunction with the support provided by the FRAL. The Lawyers that operate within the LAS are all experienced Family Lawyers who have an explicit understanding of the differences that exist across various Australian Family Law jurisdictions.

“The overall objective of the **Family Relationship Advice Line** is that through the **provision of information, legal advice and/or referral to appropriate services, including dispute resolution**, separating parents and other family members affected by separation are given help to achieve workable and appropriate arrangements for children after separation. The **Legal Advice Service** is expected to focus primarily on **non-adversarial approaches to resolving family law issues**”

“The Family Relationship Advice Line provides a suite of service activities including **intake, assessment, information/advice, referral, dispute resolution, counselling, and research and evaluation**. The Legal Advice Service will be delivered in conjunction with the Family Relationship Advice Line. The Legal Advice Service staff will assess the caller’s need for advice on legal and related issues, and will provide legal advice on family law issues to the caller and/or refer the caller to appropriate services including other family law services or government services”²

² As defined in the Commonwealth Attorney Generals FRAL and LAS Grant Agreement

COMMENTARY ON RELEVANT QUESTIONS RAISED IN THE ISSUES PAPER

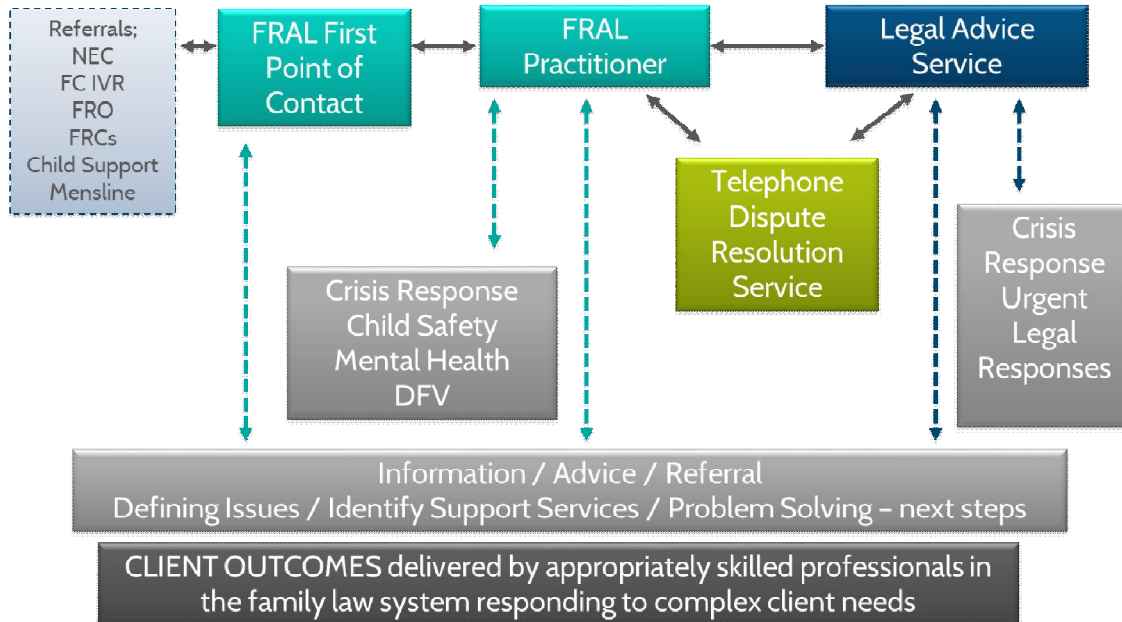
Question 3 – In what ways could access to information about family law and family law related service, including family violence services be improved?

Question 4 – How might people with family law related needs be assisted to navigate the family law system

There has been consistently high demand for the services offered by the FRAL since it was established. In the 2017 calendar year, FRAL responded to 63,022 calls seeking information and referral support, with 33,162 clients receiving intensive support from a Family Relationship Advisor. Across the same period, the LAS supported 11,956 clients with legal advice, covering the following presenting legal needs.

Child related (general)
Mediation
Parenting Plans and Orders/Consent and otherwise
General Separation and Divorce Information.
Property Division
Parentage
Child Support
Relocation
Location orders
Child recovery
Child abduction/ Airport Lists
Immigration/passport issues
Withholding access/contact
Child safety concerns
Family Violence Orders
Grandparents and Children
Wills
Changing names/birth certificates
Guardianship/Adoption
Information about self representation
Spousal maintenance
Family violence (general)
Validity of marriage
Court Orders
Legal Aid
Financial Agreements

Supporting over 63,000 clients each year, the FRAL provides a unique and accessible service option for clients seeking support in navigating the family law system.



Effective communication between key referral stakeholders that supports multiple referrals pathways and effective referrals is a key element of the effectiveness of the service. Our key referral partners include the National Enquiry Centre of the Family Court of Australia, the Family Court’s recorded messages (all Family Law Courts FCA FCC and FCWA), Family Relationships Online, Family Relationship Centres, Child Support and Mensline.

Both the accessibility offered by the modality of telephony services and the extended hours of operation of the FRAL, TDRS and LAS ensure that clients are able to access this service at times suitable to both parties, including the capacity to accommodate time differences required when one party is living overseas.

Effective client engagement with other services is a focal point for the work carried out by the FRAL, LAS and TDRS.

Increasingly there is a demand on the FRAL and TDRS to provide crisis assessment, response and support for clients with presenting needs relating to child safety, mental health, domestic and family violence - including contact with emergency services and warm referrals to other high risk supports.

The LAS specifically has been required to develop processes for responding to urgent and priority referrals regarding immediate safety issues – including relocation matters and child abductions– as well as utilising direct access to the Family Court in high risk matters, such as those concerning Family Law Watchlist Orders.

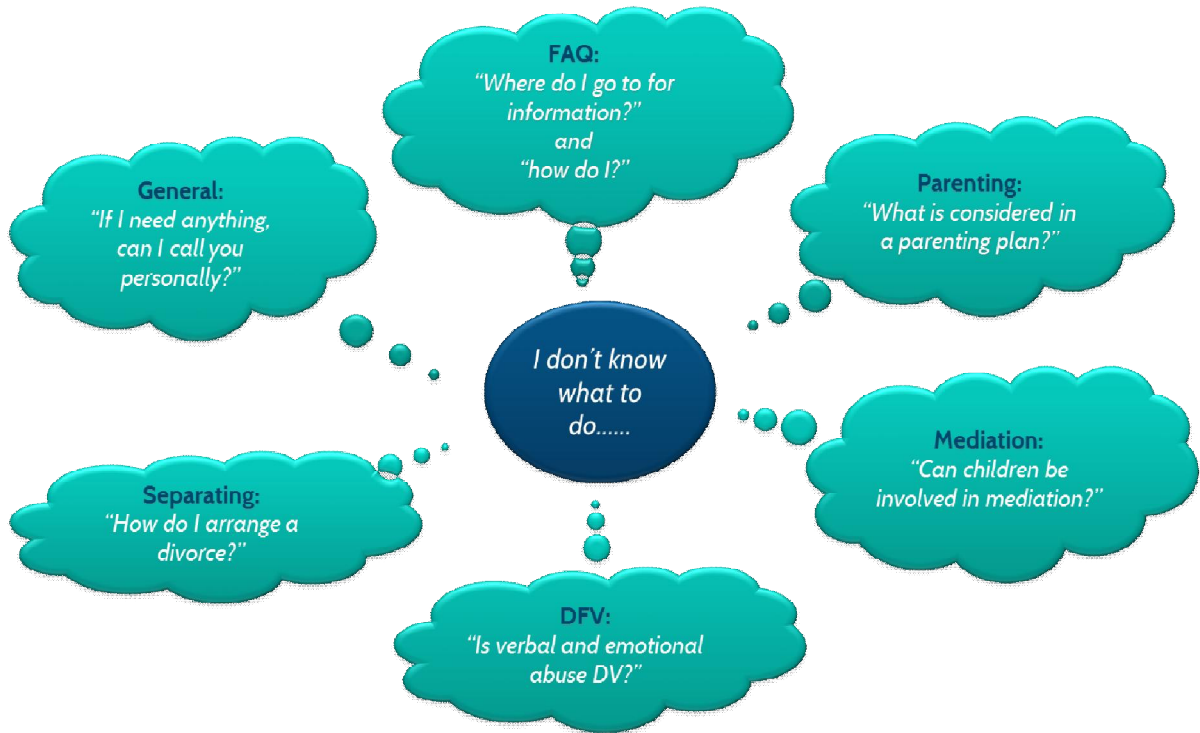
The requirement of a client to engage with and coordinate multiple service providers, overcome cultural, linguist and economic barriers and navigate their way through a complex family law system - from the first point of contact through to a point of resolution – clearly demonstrates the need for continued and enhanced funding for the existing FRAL and LAS services.

Recommendation Number 1

Funding should be maintained and enhanced for existing telephony and online access services including FRAL, TDRS and LAS.

Question 12 – What other changes are needed to support people who not have legal representation to resolve their family law problems?

Challenges and concerns faced by parties accessing the family law system, and particularly those who are self-represented litigants, can be best captured in a phrase that is oft heard by FRAL and LAS.... simply put, the clients are saying “I don’t know what to do??”.



FRAL regularly supports clients confronted with barriers to accessing justice. FRAL provides a key point of contact for clients by providing referral information through a modality that is flexible and that clients can re-engage with in an ongoing way, at any point, for further support and information.

Both FRAL and LAS regularly engage with clients requiring the use of interpreters from third party providers as well clients who are incarcerated. These clients are often subject the constraints of other service providers (such as the availability of interpreters skilled in a certain dialect or restrictions on telephone use imposed by correctional facilities). This has resulted in FRAL developing processes that ensure that priority is given to these clients, for advice, information and referrals.

The LAS is a component of the FRAL operated by CML, who work in collaboration with RAQ to provide a high quality legal advice service at no cost to clients. A high proportion of clients accessing this service are contemplating, or in the midst of, legal proceedings and the majority are self-represented, or no longer have legal counsel.

The call flow process from FRAL to the LAS is:

1. FRAL has forewarned the Client who requires legal assistance that the LAS Client Liaison Officer (“CLO”) will be contacting them within one business day to arrange an appointment with a Legal Advisor (unless the matter is designated as urgent or priority);
2. The client is contacted by the LAS CLO, who confirms to the client that their role is to arrange a telephone appointment with a Legal Advisor (and that they are not able to provide any legal advice or direction when they are performing that function but do provide legal information as required in the same context as that provided by the FRAL staff);
3. As one would expect, many of the FRAL clients are involved in FDR and Court events and the timing of the appointed callback is coordinated to ensure the assistance is *timely* in the context of those events. The appointment is made at the client’s convenience;
4. The client is assured that the Legal Advisor has already been provided with a description of the client’s presenting needs;
5. After the appointment is made, a text message is then generated (subject to confirmation from the client that it is safe to do so) and sent to the client’s mobile confirming the appointment time and date and client is asked to confirm and acknowledge receipt of text and time for the appointment; and
6. As far as it is practicable, the Legal Advisor who is allocated to that client continues to provide assistance to that client for required follow up work.

Attached to this Submission are:

1. Appropriately redacted examples of the case notes sent from the FRAL to the LAS; and
2. A redacted monthly Tally Sheet from a Legal Advisor, confirming client’s place of residence, nature of call (Urgent - immediate call back; Priority – call back within 4 hours and Normal – callback within 1 business day) and the identification of the legal presenting needs.

Whilst each service holds distinctly differing parameters as to support they can provide to clients, both organisations has identified that there has been an increase in times where unique client circumstances have required accessibility to service provision that results in ‘stretching the boundaries’.

The role of the LAS is to guide clients to a resolution. Approximately 12,000 clients per year are helped through this service. Consequently, LAS has also experienced an increase in clients experiencing barriers to accessing legal assistance or guidance. These clients may have been ‘conflicted out’ of other community based legal services or may not meet the eligibility requirements for Legal Aid. A key complement of the LAS, is the capacity of CML to provide immediate and ongoing support to clients, where conflicts of interest have been identified.

CASE SAMPLE 1

One example of how this operates relates to a Priority call that was referred to the LAS in circumstances whereby the client was in the midst a Court Hearing in the Family Court of Western Australia, which has been stood down by the Judicial Officer to allow the client to consider options and if possible “seek legal advice”. As is often the case, Legal Aid services were not available as a result of “conflict”.

It was apparent that the client was completely confused as to the proceedings and had little understanding of the Court’s expectations.

The LA was able to guide the client through the required legal process for that day and the matters that the client needed to address with the Judicial Officer. This was confirmed with a follow-up call by the LA at the conclusion of the hearing to the extent that the client confirmed that the Judicial Officer was “less grumpy” with the client after the advice as provided.

The client continued to utilise the LAS in the following months as their matter tracked through the various processes that ultimately ended up in mediation and resolution.

An obvious and natural extension of the legal service offered by the LAS as a component of FRAL is providing this legal assistance to self-represented litigants outside the Courtroom and potentially during the hearing, with the recognition by both the client and Judicial Officer that there are limitations borne from the inability of the LA to “see” filed material and the LA was appearing as a “friend of the Court”.

CASE EXAMPLE 2

A further example of the ability of the FRAL / LAS model concerns a client who contacted FRAL on a Saturday when unable to seek advice from her instructed lawyer.

The client was involved in proceedings in the Federal Circuit Court where allegations of sexual abuse had been made and a supervised contact regime had been ordered, with the mother of the alleged perpetrator appointed the supervisor.

Circumstances had arisen that day where it was alleged that during the previous weeks supervised contact the Aunt had isolated the child and attempted to have the child recant the allegations of abuse.

Supervised contact was due to take place the next day (Sunday) and the legal advisor was able to take the client through the pro and cons of refusing contact the following day.

An enhancement to the service provided by LAS would be utilised for further support of self-represented clients with information regarding Court processes, identifying priorities, guidance through Court pathways and explaining Court systems. This is a unique response that is offered to clients, based on low cost and high productivity models, which can be used to actively promote and support problem solving for self-represented litigants, while reducing the reliance on Court resources.

Question 28 – Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?

In 2017, the FRAL responded to over 63,000 calls for support and assistance. These services are in demand by clients within metro regions and by clients that are in rural and remote areas, or where parties are separated by distance. Our learnings from the operation of these programs is that accessibility can be improved through technology options that are readily accessible to clients such as telephony based responses. These are an essential enhancement to services available face to face.

In 2011, RAQ published its final report, commissioned by AGD, on the *Development and Evaluation of Online Family Dispute Resolution Capabilities*.³ Following its publication, the Telephone Dispute Resolution Service, operated by Relationships Australia Queensland as a component of the Family Relationship Advice Line, has offered an online service delivery platform to clients. That platform includes the capacity for document sharing, video conferencing and the capacity to host individual and joint sessions with FDRPs.

The service offered is case-managed and directed by the FDRP to ensure client confidentiality and safety. There has been high demand for individual intake sessions on this platform. However, despite significant research (including client consultation and user testing), there has been limited uptake of this service for joint FDR sessions.

We offer the following observations on our experience:

- process design must incorporate client choice and self-determination
- providers must offer multiple platforms and different modalities of access to cater for client accessibility and choice throughout the process
- as noted throughout this submission, case management is vital on any platform (online or otherwise), to ensure that all family members are supported to engage safely and effectively with available support services. There is a role for self-directed support, but only within a case-managed framework.

The opportunity exists for FRAL / LAS to provide assistance for self-represented litigants in Court hearings by telephone. Lawyers appearing by telephone is on the increase particularly in circumstances where geographical location means it is not practical for there to be an in person appearance.

The modality of telephony services delivered by FRAL and LAS is consistently in high demand. The technology platforms utilised provide the services the ability to reach specific and targeted client groups – those who are culturally and linguistically diverse, incarcerated, internationally based, mobility restricted, rural and remote and shift workers. Those who have little or no access to the internet, are separated by distance, have language and literacy barriers and those in family and domestic violence situations – where communication by phone is the safest/ preferred option.

³ Available at <https://www.ag.gov.au/Publications/Pages/OnlineFamilyDisputeResolutionEvaluation.aspx>.

Given the diversity of the abovementioned client groups, and the steps already undertaken in the area of family law, to move towards the development and implementation of further online resources⁴, improvements to accessibility and service provision are vital. However; these improvements should concentrate on a client focussed framework that is support by a variety of appropriately accessible modalities.

Recommendation Number 2

Expanding technology options should be encompassed within further funding to improve accessibility and service provision within a client focussed framework.

⁴ As noted in the IP at paragraphs 206 to 209.

Question 31- How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

In 2016 RAQ published research findings which highlighted family outcomes for clients engaged with the TDRS⁵.

Whilst not all families presenting to Family Dispute Resolution (FDR) report elevated psycho-social distress, but a significant proportion do. For example: in Randomised Controlled Trials we identified that just under 30% of initiating parents reported elevated psychological distress, parenting problems and child adjustment difficulties, and 40-60% reported some history of inter-partner violence and elevated acrimony with the other party.

Mediation alone, and the addition of brief or self-paced interventions, may not be sufficient to improve psycho-social outcomes for distressed families.

The research found that the addition of a brief co-parenting program was not effective in enhancing separated family outcomes possibly because it was a predominantly self-paced program of just four hours in duration, and only completed by the initiating party rather than both parents. A significant proportion of parents who commence but do not complete mediation report ongoing psych-social distress.

These findings support the need for collaborative and integrated services, in the FDR space, which help to support families with complex needs to remain engaged in the mediation process.

The nature of TDRS enables RAQ to undertake research into and evaluation of therapeutic interventions, the results of which are vital for developing and delivering evidence based quality outcomes for families.

Recommendation Number 3

Further funding for enhancement and incorporation of therapeutic interventions in TDRS.

Recommendation Number 4

Enhanced options for client-led support services, where only one party engages in the dispute resolution process.

⁵ Morris, M., Halford, W.K., Petch, J. & Hardwick, D. (2016). Predictors of Not Completing Family Mediation and the Outcomes for Separated Parents and Children, *Family Process*, doi: 10.1111/famp.12270.

COLLABORATIVE SERVICE PROVISION – Defining true collaboration between social scientists and lawyers in the context of FRAL and LAS

From the inception of the FRAL and LAS services, it became apparent to both RAQ and CML that neither service would be able to operate effectively as a siloed program, without transparency, open communication and continued service improvement.

The collaboration between our two services has resulted in a case managed/ navigator approach to service delivery being developed that effectively delivers the funding intention for the services. Within the FRAL and LAS, clients are supported through a well-designed, case managed approach that enables them to access multi-disciplinary services operating collaboratively. The effective, seamless engagement of clients across counsellors, family dispute resolution practitioners and legal practitioners represents an example of how the gold standard can be utilised to support clients.

The FRAL, by virtue of its technological platform provides clients with access to information, advice and referrals, including the 'referral-in only' pathway for entry into both the LAS and TDRS.

Trained FRAL practitioners speak to clients in order to define the presenting issues, identify suitable support services and work through real life problem solving strategies, ultimately responding to the client's complex needs in a safe and appropriate way.

Many Family Law Reviews have noted the difficulties faced by clients in navigating the family law system. The FRAL connects clients seamlessly with information, advice, referral, dispute resolution services, crisis response and legal advice and information. Clients access all of these services through one single phone call and delivers services that respond effectively to the needs of highly complex cases including for example clients who are incarcerated.

The service model offered by FRAL represents the effective commencement of navigation support for clients accessing the family law system. RAQ and CML hold the view that this service, or similar service models could be expanded to provide accessible, immediate navigation support and information that connects clients with both simple and complex presenting needs to services that can provide immediate response. In addition, potential connections between the FRAL and Courts to support enhanced client access and system navigation are explored in our responses to Questions 11 and 12.

The FRAL and LAS case management approach may also be utilised in as an adjunct or link support to other case management processes, such as the proposed Parenting Management Hearings (PMH). We support the intention of the PMH which we understand to be focused on providing access for vulnerable families to multidisciplinary teams.

FRAL can provide as role as a conduit between the Court and families, providing enhanced access and navigation to vulnerable families before, during and after engagement with services such as the PMH.

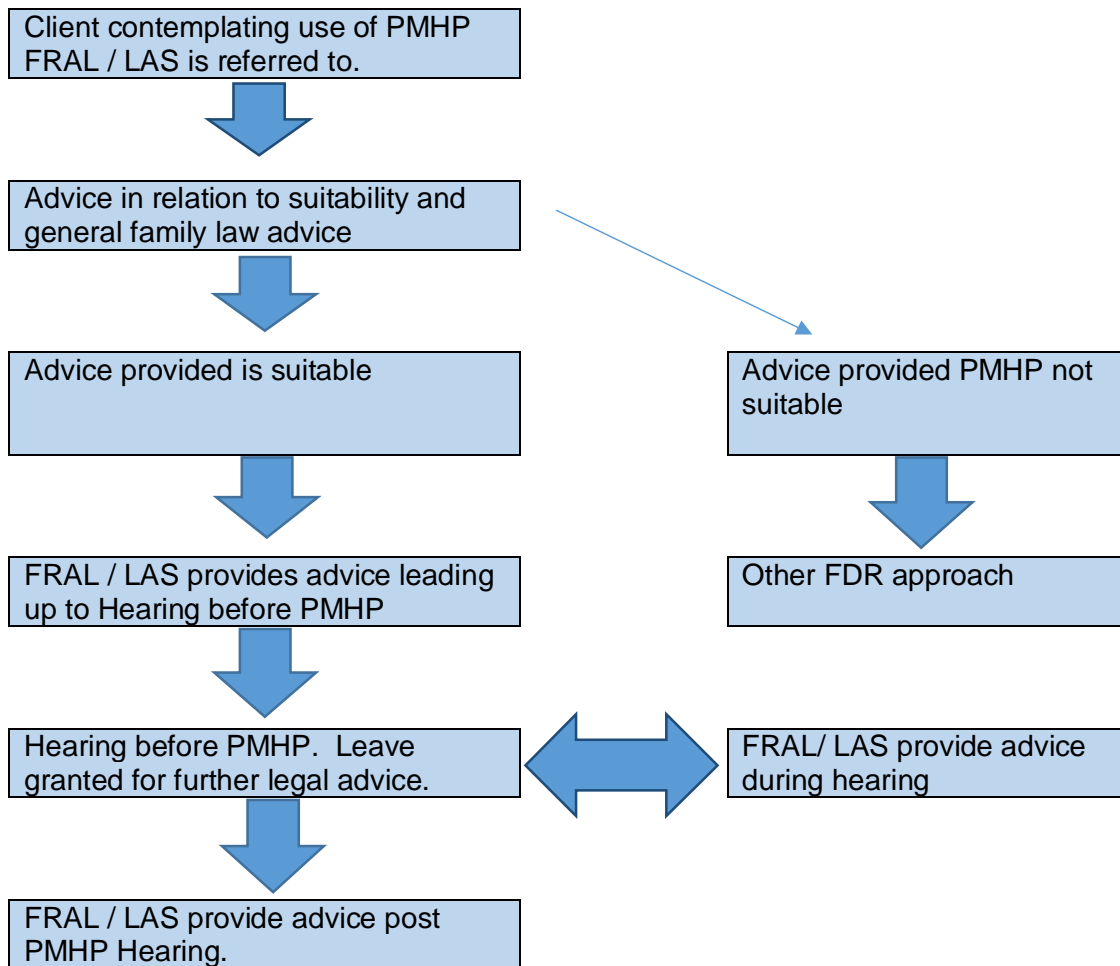
The Family Law (Parenting Management Hearings) Bill 2017 provides for the establishment of a new forum – the Parenting Management Hearings Panel (PMHP) being a new statutory authority designed to offer self-represented litigants a more flexible and inquisitorial alternative to the court process.

Whilst legal representation during the Hearing is only allowed with the leave of the panel and subject to the directions of the Panel, it is explicitly noted in the second reading speech that

parties are not precluded from seeking legal advice in relation to their family law matter and about the suitability of the PMHP in their individual circumstances

Whilst the processes of the PMHP have not as yet been defined, it is envisaged that the FRAL and LAS are well placed to provide legal advice to those litigants who are considering utilising the PMHP to resolve their family law matter, both prior to appearing before the PMHP, during a hearing (assuming leave is given), between hearings and after the hearing is completed

This supports our key recommendations for the expansion of FRAL and LAS as the model of multidisciplinary practice offered can be extended to other key stakeholder including the Court.



In the last 10 years both services have seen considerable growth in client numbers.

In 2017, the FRAL answered 60,022 calls and the LAS provided advice to a total of 11,956 clients.

The demands on each service have meant that significant operational changes have been undertaken since the initial design, including:

- Establishment of agreed protocols to exchange information- this has included the classification of LAS referrals based on priority and urgency of identified legal issues, through constantly monitored email inboxes.
- Ensuring 'Chinese Walls' principles are clear and real and potential or perceived conflicts of interest are immediately identified and addresses.
- Availability of FRAL Senior Practitioners to provide follow up assistance to clients after receiving legal advice from LAS. This has been an integral part of the wrap round support provided by the FRAL, as clients who are vulnerable or at risk can be adequately supported.
- Implementation of management meetings between the LAS and FRAL. These have included:
 - regular virtual meetings between the LAS Coordinator and the FRAL Senior Manager and Practice Managers to discuss any day to day service delivery issues and exchange client feedback; and
 - regular virtual and in person meetings between the LAS Directors and RAQ Senior and Executive management.

These consultations are pivotal to the continuous service improvement for both LAS and FRAL as they provide opportunity to discuss any upcoming changes in the community services and legal sectors, which may impact service delivery.

Further they serve as an easily accessible platform for both organisations to identify process or service delivery challenges and potential solutions as well as monitoring that funding agreement requirements are being met.

Recommendation Number 5

Funding should be enhanced funding for LAS to assist in actively reducing the wastage of Court resources by supporting and guiding problem solving for self-represented litigants.

Conclusion

Both organisations acknowledge the FRAL/LAS model is one of genuine collaboration which has been developed not only through client need and necessity but through a shared vision to provide the best service to those in our communities who may otherwise have 'fallen through the cracks'.

It serves as an essential entry point, support and navigation tool for clients within the family law system. The unique and effective partnership between RAQ and CML provide a platform for further innovative service responses to clients.

