

Responses to ALRC review into the Family Law

This submission represents the family law services (and the many complementary and supplementary services) of the four participating agencies of CatholicCare Victoria Tasmania (CCVT): Centacare Ballarat (including Mildura and Warrnambool); CatholicCare Melbourne (including Geelong and Gippsland); CatholicCare Sandhurst (including Bendigo and Shepparton); and CatholicCare Tasmania (including Burnie, Devonport, Hobart and Launceston).

From July 2016 to June 2017, CCVT provided Counselling and Family Relationship services to over 13,537 individual clients, including the specific Family Law services of:

- Family Dispute Resolution
- Family Law Counselling
- Family Law Pathways Network
- Family Relationship Centre
- Parenting and Post Orders Program
- Property Dispute Resolution
- Specialist Family Violence

The number of clients supported by CCVT's Counselling and Family Relationships programs is on track to exceed 14,000 in the 2017-2018 financial year.

- Complementary and supplementary services provided by CCVT include:
 - Children, Youth & Family Services
 - Communities for Children
 - Community Programs & Advocacy Services
 - Mental Health Services
 - Employment Services
 - Homelessness Support Services
 - Victims Assistance
 - Housing Services
 - National Disability Insurance Scheme
 - Refugee and Settlement Services
 - Pastoral Services
 - School and Education Support

The role and objectives of the modern family law system must be underpinned by not only the best interests of children, but also a clear commitment in practice to maintaining their safety, cultural identity and strong connections to family and community. More comprehensive collaboration between the different parts of the family law system and also their interactions with other systems and services such as child protection is a vital part of achieving this objective.

Client Feedback

The following statements are based on feedback from families who have accessed Family Law services from CCVT:

- Access to post-separation services/groups is most useful earlier rather than later in their involvement with the family law system. A frequent comment from parents is, “I wish I had attended this sooner”;
- Of the information provided to families, information about the impact of conflict on children was identified as the most powerful—particularly that delivered via multimedia resources such as DVDs and the clips shown in our child-focused information sessions;
- Women who have experienced family violence often “plead” with our Family Dispute Resolution (FDR) and Family Relationship Centre services to provide FDR as they feel this may be the best way for them to feel safe and empowered enough to put forward their views about the best interests of their children. Often these women do not have the resources to proceed down a legal path; and
- Most clients indicate that the FDR process is positive even in situations where agreement is not reached on all matters.

Access and Engagement

All clients need earlier intervention, education and information about Family Law services. This could occur in places and spaces where families naturally meet i.e. schools, early learning settings. CCVT has a strong focus on working with disadvantaged/vulnerable families.

Suggestions for improvements to access and engagement include:

- Aboriginal & Torres Strait Islander people: co-working with Indigenous support workers, cultural competency training, translation of brochures and family law information into other languages;
- Increased funding for accessible interpreters and supports for cultural groups, including for the employment of bi-cultural workers. For example there are still no Translating and Interpreting Service (TIS)-employed Vietnamese interpreters in the Geelong region despite a strong Vietnamese community in the North of Geelong;
- For people living in rural and remote areas: outreach locations that are accessible and have the provision for FDR including shuttle, and better access to technology for service provision;
- People who identify as LGBTIQ: changes to traditional language regarding families, Rainbow accreditation for branches and offices, increase in resource material which is inclusive for LGBTIQ families;
- People on low income: financial support, particularly for transport and access to legal advice;

- There is an emerging tier system of family law emerging. Many Family Law services are subsidised significantly by Government, such as the FDR and Post-Separation programs provided by Family Relationship Centres. Our experience is that many clients ring our services to inquiry about services including eligibility and cost. If the wait time to access a service is beyond four to six weeks they will naturally seek out private options. A high proportion of these clients then come back to our services after determining these services are too costly and then are then prepared to wait for a service. There could be stronger eligibility requirements for individuals to access subsidised Family law Services and cost is a strong determining factor;
- Culturally appropriate language around processes such as FDR and the Parenting Orders Program could be enhanced;
- Wraparound service and co-location of multiple services such as FDR, the Parenting Orders Program and counselling;
- Stronger referral pathways with Children's Contact Services and increased financial resources for Children's Contact Services to improve wait times and reduce reliance on unregulated and costly private providers;
- More service capacity is required in high-need growth corridors in the outer metropolitan area given the growing demographic of families that need and would utilise family law services. However in these areas service capacity is limited to outreach, or there is no funded local service capacity at all;
- All Family Law Services should provide information, education sessions and preparation for FDR which are critical to achieving good outcomes. These types of interventions are not generally not provided in private FDR;
- Courts to have designated staff with the responsibility to provide greater procedural assistance to self-acting litigants;

In August 2017 the Attorney General updated the Protocol for the provision of legal assistance in Family Relationship Centres to enable private lawyers to provide legally-assisted FDR to clients in Family Relationship Centres, and represent them in subsequent litigation. This does not currently extend to other FDR occurring outside the FRC network.

Overall there is high demand for services provided by FRCs, Parenting Orders Programs and other family law services. Without further financial resources, waiting times will only keep increasing.

Legal Principles in relation to parenting and property

Catholic Care Victoria Tasmania is of the view that the broad philosophy of the best interests of children is very sound and must underpin all interventions within the family law system.

However, the way equal time is referred to in 65DAA should be clarified. It is open to interpretation as to whether equal time being the first listed option means that it should be the assumed/default option, unless another option (substantial and significant time is the second listed) is specifically chosen. We suggest that it should not be the assumed/default option.

Part VII (the chapter on children in the Act) is unnecessarily repetitive. For example, there are significant parallels between sections 63DA and 65DAA, and between sections 60CC(2) and 60D(1).

The two main sections on factors to be taken into account re property matters, 75 and 79(2), effectively mean that a court should look for a fair outcome. This is appropriate. However the word “fairness” is not used. We submit that it should be. It would be a more user-friendly term for a layperson than terms like “just and equitable” in s79(2), or “as the court considers appropriate” in s79(1), or “the justice of the case” in s75(2)(o).

There is a concern from practitioners in the field of FDR and Family Relationship Centres regarding the lack of clarity around whether or not the intake session in FDR is admissible or not. (*Rastall V Ball* [2010] FMCA fam 1290). The Act is open to differing interpretation and should be clear.

If a decision is made that it will not be inadmissible, the profession needs this to be clearly spelt out, so that we can know with certainty and thus advise clients accurately.

Similarly, there is a lack of clarity around whether or not the inadmissibility rule for family counsellors and FDRPs only applies in family law courts, or extends to other courts as per the *Baden Clay* case in Queensland.

Specifically in relation to family reports, we suggest that section 121 be amended to authorise the provision of these to any of a specified group of professionals who have a professional involvement with parties or their children. There is some current uncertainty. Some family law judicial officers are of the opinion that they would never have a problem with this happening. Others see it differently. Parties and professionals need clarity around this. Making such reports automatically readily available to the professional would enhance the ability of professionals to collaborate, as previously discussed.

There is a lack of clarity in language re: post-separation services. Court Orders use a variety of terms, and sometimes practitioners have to infer or guess what is meant by the direction in the Order. It would be useful to have a specified group of services. Each service provider would be required to state which service they are providing, and the legislation around that service would then clearly apply. Courts would have to use the specific language from the legislation when making referrals. Orders should not refer people to “reportable family dispute resolution” which we suggest is a nonsensical term when the current Act says that what happens in FDR is (mostly) inadmissible.

The current system is quite hit and miss in terms of information to be provided to parties. FDRPs and Family Counsellors each have extensive and complicated obligations, starting with sections 60D and 63DA respectively. These then cross-reference multiple other sections. Although the AGD provides a pro forma which seems to comply with 63DA (without saying that it aims to do this), there is no pro forma in relation to the obligations which start with 60D. Various agencies and individuals presumably spend many hours coming up with their own version of material that both complies with the legislation, and is also user friendly. If it is deemed to be important enough to legislate that certain complicated information is to be provided, then the risk of professionals failing to properly do this could be largely removed in this manner.

Our suggestion is that the new Legislation have Schedules containing relevant pro forma information, and that the Act authorise the Attorney General to update these from time to time.

Other pro forma information, which would add weight and consistency to messages habitually given by professionals, could include:

- The impact of family violence on children
- Court processes
- Disadvantages of court
- What the law says about grandparents and other family members

Inadmissibility

This currently applies to family counsellors and FDRPs (subject to the child abuse exception), and not to other categories of professionals that work in the post-separation field.

The FDR and Family Counselling world has long lived with the inadmissibility protection, and are not used to operating outside of this context. That does not mean that it could not learn to do so.

Arguments for the current protection to continue include that clients may feel a greater freedom to be fully frank in what they disclose, which may well facilitate better therapeutic work being done. It also means that, in the FDR context, parties may have a greater confidence in the neutrality of the FDRP if the FDRP has not and will not give evidence about their matter.

The opposing arguments include that continuing the inadmissibility provisions would be very problematic if the recommendation above (about greater collaboration between professionals) was to be adopted. Another important argument is that the inadmissibility provisions mean that judicial officers are sometimes required to make critically important decisions about children when potentially important information is not available to them.

Whatever decision is made about inadmissibility, it is essential that there be clarity for both practitioners and parties. At present the Rastall and Ball decision means that there is not clarity around whether or not a FDR intake session is admissible. The Baden Clay decision means that there is uncertainty about whether or not the inadmissibility provisions apply to courts or tribunals outside the Family Law arena.

Equal Shared Parental Responsibility

Unlike some advocates, we do not suggest the removal of the presumption of equal shared parental responsibility. However we do suggest that it be defined, at the least by reference to some of the matters the concept includes. The current section 61B definition effectively says that it is what the law says it is, which is of minimal assistance to parents who are in dispute.

We suggest that the definition specifically state that the term includes decision making about health care, education and religious upbringing. We suggest that it be a requirement that orders specify which aspects of parental responsibility are to be shared, and which will be within the province of one party.

As part of an enhanced definition of equal shared parental responsibility, we suggest that there be specific reference to the rights or otherwise of a parent acting alone to arrange for a child to be seen by a counsellor. Following separation we usually require the consent of both parents, before providing counselling services to a child.

Resolution and adjudication processes

601 Certificates

Although it appears to be the case that the type of certificate issued makes minimal, if any, difference once the court process commences, the question of when to issue a Certificate and which of the five options to choose currently causes considerable grief to FDRPs and their clients. Indeed we receive the most formal complaints in our services in relation to Certificates. Sometimes each client demands a certificate saying that the other party did not make a genuine effort. How can a practitioner assess genuine effort?

Sometimes FDRPs are confused about the extent of their discretion to issue a "not appropriate" certificate when the problem might relate to the waiting time for that FDR provider, the unavailability of one of the parties for a period, the inability of a party to be able to afford the usual fees, the inability of parties to even agree on threshold questions such as where and when a joint session is to take place etc.

A different set of options could be:

1. Party 1 attended. Party 2 did not attend
2. Both parties attended separately, but a joint session did not take place
3. At least one joint session took place
4. A court ordered joint session may be / is unlikely to be beneficial

As a part of such a change we recommend that the current reference to possible costs implications of one certificate compared to another be removed.

Property

Family Relationship Centres and FDR processes have a philosophical view that children's best interests must be the priority, and therefore all arrangements concerning children should be managed first in the process. However there is increasing recognition that there are a number of factors that impact on the settlement of these arrangements, including whether parents are separated or living under the same roof. Increasingly financial vulnerability is another complicating factor forcing parents to separate but remain under the one roof. In areas such as Geelong the impact of the shutdown of major manufacturing has impacted on families in this regard.

Property and financial matters also may impact on parents' capacity to provide care for the children and without these matters being resolved anxiety and uncertainty increases.

It is a complex relationship and a flexible approach must be taken about whether property and children's matters are combined or are exclusive. In practice we focus on children, and in property matters we focus on fairness

There is a need for more resources at the court in terms of property matters. If there is a hold-up in court regarding property then children's final arrangements are also delayed and are harder to settle.

We suggest a more streamlined process for Parenting Plans to be made into consent orders. Access to that process should be made easier and financially accessible. More resources and staffing at court to manage this would alleviate this issue.

There needs to be more accountability regarding financial statements being provided by both parties for FDR and for court and at an earlier point in deliberations.

We question whether it should be mandatory to attempt FDR before attending court for property matters (as it is currently for children's matters).

Changes to Court Processes

Sometimes matters settle literally at the door of the court after the judicial officer has given an indication of which way he/she is leaning. Currently parties and/or their legal representatives negotiate at court while the matter is stood down. The existing practice could be enhanced by it being a formalised FDR process, with the assistance of the independent FDRP. Once judicial officers are in a position to state their leaning, orders could be made that people attend FDR with the parties and the FDRP being made aware of the stated leaning of the judicial officer. Such FDR may be best undertaken at court on the same day, with a shortened intake and assessment process. Shuttle and/or Legally Assisted Family Dispute Resolution (LAFDR) processes could be available FDR options.

We also suggest that there be an extra piece of compulsory information provided to people who attend FDR, explaining the court process and the disadvantages of that process. This could be a pro forma, and, if something akin to 60I certificates continue, the FDRP could be required to state on the certificate that the pro forma information has been provided.

Systemic Abuse

Our family law services recognise that systemic abuse can occur and actively work to address this issue at the stage of referral by extra screening for those cases/families where there seems to be repeated referrals/requests for the same issues to be addressed and where it appears that parties have engaged in services to address these issues over a number of years. In the case of the Parenting Orders Programme (POP), this can occur when a reintroduction to the non-resident parent has occurred (with its associated intensive family counselling process) and is referred to a contact centre for on-going management with a view to the family becoming self-managing. If this is not successful and another court application is made because the contact ceases, this can result in a referral back to POP for more family counselling. In some situations, this would not seem to be in the best interests of the child to once again have to engage in POP if the family is not able to sustain and support the on-going

contact without intensive outside intervention. We suggest a greater use of vexatious litigant and costs orders would be of some assistance where there is continued abuse of process.

It is stressful for both parents and particularly children to be involved in the family law system over a numbers of years because of repeated applications around essentially the same issues and therefore good use needs to be made of those current provisions in the Act around vexatious litigants and ensuring that circumstances have changed sufficiently to warrant another application. Similarly court referrals/court orders to post-separation services need to be considered in light of whether, and how, the family has made use of those services in the past.

Family Violence

We submit that the definition of family violence should be consistent across all jurisdictions.

It is our view that the reference to “coercive and controlling” behaviour is useful, particularly in the context that the definition also includes the alternative “or causes the family member to be fearful”.

The 2017 Parliamentary Inquiry into a better family law system identified 33 recommendations to support and protect those affected by family violence. CCVT would like to highlight a number of recommendations and points of consideration arising from the Inquiry, including:

- Requirement of a comprehensive intake and assessment process to support families’ needs that aligns with current best practice emerging in this area;
- Ensuring prompt response to families (within challenges of demand on service);
- Considering the impact of Family Violence on parental capacity, including parents involved with statutory child protection services that have separated as a result of Family Violence;
- Questions around this in assessment forms, better links with Specialist family violence services, increase visibility of perpetrators particularly fathers—since FDR, FRC and POP processes are in the unique position of often assessing and working with both survivor and perpetrator;
- The reconnection/reintroduction process within POP is in a unique position to address what has happened in the past to impact the parent/child relationship (frequently this involves family violence), gain a commitment to change and rebuild trust. This is essential before a reintroduction can occur;
- Specialist counselling for survivors of family violence and children and more effective referral pathways into these services;
- Therapeutic interventions that not only focus on a parents individual experience but the relationship with their children and the impact on their parental capacity;
- Ensuring better accountability for Perpetrators with links to state-based men’s behaviour change programs;
- Greater availability of LAFDR, providing that there is appropriate funding for this and clear expectations including a statement of good faith with solicitors. In many cases this would be a better FDR process for survivors of family violence. However some

victims may feel able to participate in conventional FDR. Indeed after appropriate screening and support some survivors of family violence have felt empowered by the FDR process;

- Provision of flexible and creative FDR processes including shuttle FDR and/or Co-Mediation and Therapy (CoMeT);
- As mentioned in the opening statement, subscribing to a “screening in” rather than screening out philosophy because we have better knowledge of FV and safety and because the alternative i.e. court is so much more difficult. Positive aspiration of attempting to support/assist where possible, although there still must be an option of being able to assess it as not appropriate;
- Revisiting FDR after internal or external referrals for further support e.g. groups, counselling, POP;
- Co-operative working relationships with Children’s Contact Centre Services in relevant catchment areas and liaison around shared reconnection/reintroduction cases to ensure a smooth transition when supervised contact has been ordered (in cases of FV);
- Inadmissibility provisions in relation to Family Violence need to be reconsidered in the context of safety and protection of children and families;
- There is significant state-wide reform and resourcing and emerging best practice in Victoria in relation to Family Violence. There needs to be greater connection between State and Federal jurisdictions on this issue.

Integration and Collaboration

Post Order Support

Support for families after they receive their family court orders is of course vital to ensure they can make their orders work for them. To this end our service was involved in a Post Order Support pilot programme funded by AGD which looked at addressing the issue of families not returning to court with contravention applications, and supporting families to adhere to their orders and develop positive post separation communication. Whilst the program had some good content outcomes with pre- and post-measure follow-up, it was clearly evident that greater referral pathways and connection between the Court and service system are required. As part of this pilot no referrals from either the administrative or judicial arms of the Court in relation to contravention applications were received. The evaluation report due to be released by the Attorney General’s department will shed light on this area.

The presenting needs of clients accessing FDR, FRC, POP and family law services are complex and there is recognition that straightforward assessment then joint FDR is unlikely to be sufficient for some of these families. Understanding that simply arriving at an agreement regarding children’s matters is unlikely for parents where there is entrenched conflict, family violence and safety issues, mental health, drug and alcohol issues and parental capacity vulnerabilities is a key principle of practice.

The CCVT experience has been that access to a suite of services has significant impact on clients/families outcomes where there are multiple and complex needs. Providing and

utilising a creative and flexible approach to FDR is incredibly important to the “screening in” rather than “screening out” philosophy that an FRC in particular subscribes to. This may include a continuum of services from pre-FDR, FDR (with Child Inclusive Practice), family counselling, children’s counselling, post-separation parenting groups, parenting orders program (POP) plus access to FDR again at this point with support of co-mediation and therapy/family counselling (CoMeT) & Child Inclusive Practice (CIP) where appropriate. Our practice experience is that families are more likely to make use of these interventions and services if they are co-located with direct and warm referral pathways. This of course requires further resources including financial resourcing for programs such as POP and CIP.

The intersection of the family law system, family violence response system and child protection system is clearly very problematic. In Victoria the same factual matters can be addressed by a family law court, a Magistrates court and a Children’s court. In regional centres this could conceivably be before three different judicial officers in the same court room.

An integration of court processes along with enhanced collaboration between professionals would make the whole process quicker, smoother, and better informed and more user friendly. Where there are concurrent issues of child protection and family law the matter should be dealt with expeditiously and concurrently as the matters are inextricably linked.

Strong working relationships with professionals working in this area such as Independent Children’s Lawyers (ICLs), family counsellors, child protection, specialist family violence workers which enable co-ordination and feedback about families would assist with this issue. More routine use of “case planning meetings” where service providers can share information would be useful as well. The investigation of funding for “parenting co-ordinators” as used in North America may be helpful to determine if this sort of role could augment the services and assist the professionals already available in the post separation field in Australia.

Children’s Experiences and perspectives

There is a need for more resources for the programs where children are seen including Parenting Orders Program and Child Inclusive Practice (CIP) that supports family dispute resolution. Where there are reconnection/reintroduction cases in POP, often family counsellors need to co-work especially in sessions where children are seeing their parents for the first time – and these are very resource intensive interventions.

Regarding the potential risks of children being involved in an FDR process, CCVT supports and implements rigorous assessment around children’s participation in the CIP process. This includes assessing impact on children of proceeding, the risk of children feeling that they have responsibility for decision making, and parents’ reflective capacity to hear feedback from their children.

There must also be adequate screening of family violence, including children’s experiences and impact on parental capacity as fundamental parts of the FDR and CIP assessment process.

One challenge in work with children in the areas of FDR/CIP and POP is the issue of parental consent particularly when parents are separated and in high conflict. There may be one parent that is willing to consent and one that is not. Where this occurs we work with the

parents to explain and provide information and find a neutral space for this to happen. Another challenge is there may be lack of clarity around purpose of children participating, especially when a court ordered family report is being completed simultaneously, careful consideration needs to be given before introducing children to more services/professionals.

There should also be an increase in access to ICL's for children particularly where parents have very strong divergent needs about what is best for the children. Assessment and Impact of Family Violence on children should also regularly be provided.

Professional skills and wellbeing

Lawyers have minimum hours of professional development (PD) within a year across different areas of knowledge/competencies. FDRPs should also have this requirement. While they have minimum hours of PD it does not specify that it must be in different areas. Core competency areas include family violence, and cultural awareness—including cultural competencies in working with Aboriginal and Torres Strait islander families and LGBTI families

There is a need for more training tailored to specific roles (available via Family Law Pathways for example). There is also a need for clearer information about the obligations of family counsellors. The AGD gives organisations authorisation to appoint staff as Family Counsellors but do not specify minimum standards that should be embedded in the process.

Supervision, reflective practice and regular professional development should be available both internally and externally for all professionals working in the family law system.

Compiled by a working group from CCVT

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