**Centacare Family and Relationship Services (CFRS) Submission –**

**Review of the Family Law System**

Centacare Family and Relationship Services (CFRS) is part of Centacare in the Archdiocese of Brisbane. We provide professional, community-based services that enhance the lives, relationships and wellbeing of our clients in all their diversity.

Our clients are supported through a range of programs and services including counselling; specialist domestic and family violence (DFV); family and relationship education; mediation (family dispute resolution) and group and community education and development services.

The role and objectives of the family law system

Question 1 - What should be the role and objectives of the modern family law system?

The concept of family has transformed profoundly in recent decades. The family law system must therefore be robust enough to support a diverse range of family formations and vulnerabilities. Problems such as violence and abuse, substance misuse, problems with health, including mental health and wellbeing, cultural or religious differences, and child health and wellbeing are important considerations in the support of families in the family law system. Many of the clients who use our services have one or more risk factors, and in many cases enter services at times of crisis. Family law matters are often highly emotional and involve significant financial, interpersonal and psychological stress for all family members. As such, **the modern family law system must acknowledge and seek to reduce these stressors for families**. The modern family law system must recognise that emotional, relationship and interpersonal problems are often the underlying causes of conflict after separation. Many families who use our services have experienced a range of different traumatic events during the relationship and after separation. The impact of domestic and family violence, neglect or abuse, mental illness, substance misuse, along with the number of significant changes in relationships and resources can overwhelm both the parents and children; having a major impact on their ability to cope. Parental trauma can also have a debilitating effect on children. For example, reduced parental capacity can significantly impact children’s wellbeing. Additionally, cultural trauma such as that experienced by the ‘Stolen Generation’ is felt years later for Aboriginal and Torres Strait Islander children.

Many families in the family law system are impacted by trauma to some degree. Families we work with often exhibit signs of complex trauma resulting from sustained prolonged or repeated traumatic events, that have a cumulative effect. For these families the impacts of trauma are more serious and long lasting. The current family law system does not recognise or respond to the complex and cumulative effects of this trauma for families. In most cases, the adversarial process is not suitable for addressing the problems experienced by many adults and children in the family law system and often further compounds these problems.

Real legislative change is necessary to address the divide between state legislation (domestic and family violence and child protection) and its intersection with federal family law. Families who are most vulnerable are significantly impacted by the duplication and differences in the state and federal legal systems. The modern family law system must address all issues which impact families; e.g. parenting and property, domestic and family violence and child protection matters; with one court and one legislative framework to meet the complex needs of Australian families.

Principles to guide the redevelopment of the family law system

Question 2 - What principles should guide any redevelopment of the family law system?

**Child Centered** – all entry points in the family law system must adopt processes that centre on positive outcomes for children, whether it be at an FRC, Legal Practitioners, or the Courts.

**Safe and Accessible** – the family law system must provide services and have processes that are safe, respectful, fair, affordable and timely.

**Integrated** - The modern family law system should address all of the needs of the family within one system and one court; e.g. DFV, Child Protection, Divorce & Family Separation.

**Prevention and Early Intervention** – programs and services for families must be designed to support safe, nurturing and healthy relationships to ensure that children reach their full potential. To achieve this, services for separated families need to address conflict and its underlying causes, which are most often relationship problems not legal ones.

**Working Together**- services for families who experience conflict after separation should be coordinated, with a multidisciplinary approach bringing together experts in working with families, alongside experts in law to support families holistically post separation.

**Promoting Resilience** – services and processes must focus on managing risk and promoting resilience for families, with case management by specialist family and relationships services available to empower families in a ‘step down approach’ to seeking support and be responsible for decision-making whenever possible.

Access and engagement

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

**Education** – this was a service component that was included in the original FRC funding and was critical to integration of FRCs into the community services sector. As the FRC funding changed, this function resulted in a reduced capacity for FRCs to have meaningful and sustainable connections with community groups. While initiatives like the Family Law Pathways Network aim to support practitioners to work collaboratively, maintain strong working relationships and develop appropriate referral mechanisms, the effectiveness of this initiative is highly dependent on the local pathway network. While some pathways networks regularly coordinate training and/or professional development events, develop and distribute resources for family law professionals, many networks offer nothing more than irregular networking events.

**Increased collaboration**- strong referral pathways for specialist legal professionals and specialist family and relationship professionals is necessary. Additionally, universal screening and assessment processes within the family and relationship sector that provide a trauma-informed approach to working with families is necessary, especially those who have experienced family violence and abuse. Increased collaboration between legal and family/relationship professionals is important to improving access to information about family law and family law related services. For example, timely, warm and supported referrals to specialist Domestic and Family Violence (DFV) services are possible when legal professionals and family/relationship professionals work collaboratively.

**Mechanisms for risk management** –formalised mechanisms for information sharing about risk will increase the transparency of risk for those who are most vulnerable and ensure families (especially victims of violence and abuse) are not required to recount the abuse multiple times to multiple professionals, thus further compounding the effect of trauma. However this must be undertaken in a highly skilled and coordinated manner.

**Integrated service responses** – As was the original aspiration of Family Relationships Centres, coordinated specialist responses are important for families involved in family law dispute. These families often need a range of services and supports; e.g. counselling, psychoeducation and skills training, mediation, parenting support, along with legal advice. Changes in FRC funding over time have stymied the original and broader goals of the FRCs to sustainably assist families that are experiencing difficulties and change, through information, community connections, education and specialised support services. The primary focus of FRCs in the current reconstruction of funding is the provision of family dispute resolution services leaving a significant gap for those families who have complex needs.

**Targeted support** – New funding in the form of complex case management is required to support families who access the FRCs, particularly those who have complex needs and/or high risk and need specialised and targeted support. Currently FRC funding does not meet the needs of these vulnerable families; new initiatives within the FRC could provide necessary safeguards and supports for these families who often have poorer outcomes and are disproportionately represented in those families who proceed to court.

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

**Promotion** – community education and public service announcements that promote families engaging with family relationship services, easily accessible information about alternatives to litigation, and clear and concise information about the family law system and cost and timeframes associated with litigation are essential.

**Access** – families who contact government agencies like Centrelink and/or the child support agency when they first separate should be supported to connect (warm referrals) with Family Relationship Services such as FRAL, FRCs and Community Legal Centres to provide support post separation.

**Early intervention** – research suggests early intervention services within the family and relationship service sectors have been shown to yield benefits in a range of areas. Of particular importance are the outcomes of early intervention for children, including children’s academic achievement, behaviour, educational progression and attainment, delinquency and crime, and labour market success, among other domains that offset the costs of such services.

Question 5 - How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

Nowhere is the dearth of culturally appropriate services for Aboriginal and Torres Strait Islander people more apparent than in the domain of family law (Ralph, 2010). Many families view the current family law system as hierarchical, adversarial, paternalistic and ill equipped to provide the culturally appropriate solutions necessary to meet the diverse and complex needs of Indigenous families.

Culturally inappropriate and insensitive processes and reporting requirements are forms of cultural bias, discrimination and abuse that further perpetuate the disadvantage experienced by Aboriginal and Torres Strait Islander families. The legacy of the Stolen Generation is testament to the intergenerational trauma experienced by Indigenous families when institutions and systems do not consider the importance of children’s rights to enjoy, learn about and be a part of their culture.

*Some possible ways to improve accessibility of the system for ATSI families:*

■ The modern family law system must recognise the cultural importance of the kinship systems for Indigenous families; Indigenous kinship relations reflect a complex and dynamic system that is not captured by existing non-Indigenous definitions of family (Lohoar, Butera and Kennedy, 2014). Additionally, the modern family law system must recognise that traditional cultural practices and reclaiming a sense of cultural identity is the key to alleviating disadvantage of Indigenous Australians.

■ Increased focus on programs and services that are culturally responsive and address the complex needs of ATSI families. For example, initiatives that support development of Indigenous practitioners; foster skills development for non-Indigenous practitioners to ensure they work effectively with Aboriginal and Torres Strait Islander clients; tailoring services and FDR processes to meet the needs of Indigenous families; education and awareness-raising within Indigenous communities of dispute resolution processes available; community engagement, and organisational partnering in the provision of services; and funding arrangements that allow for flexible and timely modes of service delivery (Ralph, 2010).

■ Cultural competency training for judicial officers, family lawyers and all professionals working within the family law system. Cultural competency requires that:

* professionals should be aware of cultural norms, values, beliefs and practices within a cultural group;
* they need to be able to respond sensitively to clients with an understanding of how cultural diversity expresses itself among individuals within a cultural group; and
* they should also be conscious of their own cultural norms and that of their professional practice (Sawrikar & Katz, 2008).

■ Targeted and culturally appropriate promotion, awareness and education about family law processes, legal rights and responsibilities and less adversarial pathways for Aboriginal and Torres Strait Islander families.

■ Greater emphasis on connection between the courts, local service providers and local Indigenous communities. Services need funding to provide outreach to Indigenous communities to:

* build trust and develop partnerships;
* improve understanding of family law processes;
* assist separating parents in the community; and
* offer training for community members and elders to support parallel community dispute resolution processes.

■ Re-introduction of Aboriginal and Torres Strait Islander family advisors in the family court system, and completion of cultural assessments, evaluation and/or reports.

■ Support for self-determination, responsibility, ownership and cultural pride in family law matters of ATSI families. This may include the establishment of an ATSI family law court system (like the Murri Court model), to manage complex family issues, including: parenting arrangements, grand parenting or kinship, child protection and safety, culture, identity, healing, and community connection.

Question 6 - How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?

The modern family law system must recognise the range of cultural norms and practices of culturally and linguistically diverse families in Australia. It is important that the modern family law system also clearly defines the limits of cultural accommodation, particularly when working with cultural dynamics of violence and gender.

We suggest accessibility of the family law system can be improved by engagement with communities; particularly their specialist service providers and community leaders. This engagement is often time consuming, challenging and slow. However, it is essential for building trust between service providers and communities, for encouraging mutual learning and for developing reciprocal referral pathways, which in the long term improve access (Armstrong, 2010). For example, there must be a continued emphasis on culturally responsive practice in all service settings, with services funded to provide outreach services in settings that are accessible to CALD communities. Additionally, funding for cultural liaison positions and mechanisms for increased consultation with community leaders are needed.

‘Cultural competency’ must be a requirement for all professionals working in the family law system, and should be a focus of ongoing professional development. In our work with families we foster cultural awareness, cultural humility, and acknowledge cultural complexity; this approach is necessary for all professionals working with CALD people in the family law system.

Question 7 - How can the accessibility of the family law system be improved for people with disability?

Disability is an impairment that may be cognitive, developmental, intellectual, mental, physical, sensory, or entail some combination of these. We work with many families where one or more of the family members has a disability.

The modern family law system must provide parents and children with disabilities with an equal opportunity to participate in programs, services and activities. To facilitate this, the courts and service providers must make reasonable modifications in policies, practices or procedures to accommodate the inclusion of parents and children who have disabilities. Additionally, family law services must ensure that people of differing abilities are considered in service design. For example, mechanisms for working with individuals with a disability may include collaboration with support persons and specialist services.

To address the pervasive discrimination encountered by families and children who have disabilities in the family law system, professionals must have an understanding of the diverse and complex needs of parents with a disability along with the importance of the parent-child relationship throughout a child’s formative years, and beyond. For example, when considering whether a parent can meet the physical, social, and emotional needs of the child, it is not just the parent’s capacity that must be considered but also the impact for the child in having to cope with arrangements which can sometimes create additional stress for them. Additionally, when we work with families where the victim’s experience of violence and abuse has resulted in temporary or permanent impaired functioning; e.g. mental illness, the victim is often further disadvantaged and in some cases experiences further abuse within the family law system that exacerbates problems they are experiencing and affects their recovery.

Question 8 - How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

The introduction of marriage equality is an important first step in improving accessibility of the family law system for LGBTIQ families. However, these families require increased clarity about their legal rights, entitlements and obligations.

A significant barrier to accessing family law services for LGBTIQ people is actual or perceived discrimination. The modern family law system must recognise and respond sensitively to both understand and address the needs to LGBTIQ people. The introduction of the LGBTI legal service is a promising initiative that may help to address some of the barriers to access experienced by LGBTIQ families. However, broader programs of public awareness and professional training and education is necessary to improve accessibility of the family law system for LGBTIQ people.

Question 9 - How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

Although CFRS does not currently offer family law services in these communities, our experience in providing family and relationships services in these areas indicates that access to the family law system and family law services if often difficult and unaffordable for people in rural and remote areas. For those who have access to phone and online technology – increased use of phone and online service delivery may assist to improve access.

Question 10 - What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

we propose that a stepped down approach to the modern family law system is necessary to reduce the significant financial, personal and relationship costs of involvement in family law proceedings for families and the community. This approach, which has been adopted in a range of settings, such as health and child protection, is necessary to ensure the majority of families engage in less intrusive and adversarial processes, reducing the number of families who proceed to court.

We propose that FRCs are in many ways an underutilised initiative. They offer an established infrastructure to meet a range of needs for families but they are currently funded primarily for dispute resolution. Expansion of these existing family law services is necessary to assist parents in addressing the conflict they are experiencing, and its underlying causes.

Introduction of **primary services** such as counselling, parent education, and the continued support of free legal advice for all families are important and effective early interventions for all families who access the Family Relationship Centres.

Family Dispute Resolution in parenting and property matters is a **secondary service,** which offers targeted intervention for families who are currently experiencing conflict.

Finally, for those families who are at high risk or entering or re-entering the family court system, we propose the introduction of **tertiary services** such as intensive case management by specialist family professionals. This approach would function in the evidenced based practice of ‘parenting coordination’ currently widely used within the United State of America (APA, 2012).

*For example, for those families who need support in implementing parenting agreements either reached in FDR or ordered by the court, the introduction of intensive case management in FRCs would provide the level of coordination of supports and services needed for parents who are at risk of entry or re-entry in the family court system. This service would assist these parents to address the challenges of co-parenting and making parenting arrangements work; thereby reducing the harm associated with ongoing conflict for children.*

FRCs have developed strong partnerships with community legal services who provide necessary legal advice and encourage resolution of dispute without the need for litigation. For example, in some circumstances both parents may receive legal advice from one of the community legal centres who offer services to our families – these services also offer a collaborative legal approach to assisting families; e.g. to prepare consent orders based on mediated agreements. We suggest that additional funding for community legal centres to offer collaborative family law services in conjunction with FRCs who assist families to resolve dispute about parenting and property would reduce the number of families who need to access the Court.

Stepped Down Universal Approach to Family Law Services

Question 11 - What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?

Many of the families we work with do not have the financial means to be represented in Court and/or risk putting themselves into significant financial stress to obtain legal representation. We propose that free legal advice at community legal centres and within the FRCs is an essential service for families.

Changes to court procedures that may improve accessibility for parties who do not have legal representation may include court conferencing with a Registrar and Family Consultant who could triage the matter before it comes before the Judge. Introducing this first step as an additional requirement in the court process may eliminate the need for many matters to proceed to the first mention and would provide the Judge with independent advice and future directions before hearing the matter in the first instance.

Additionally, it would assist families to have duty lawyers available to offer advice on all duty days.

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

Many of the families we work with report that gross power imbalances exist within the court process when one party does not have legal representation. This situation does not afford access to justice for all families, and often results in the most vulnerable being further disadvantaged.

Initiatives such as the appointment of Independent Children Lawyers in all matters involving children and free legal representation for those who agree to engage in collaborative law processes may reduce the number of family law matters that require adjudication.

Question 13 - What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

Safety planning in the courts safeguards families at risk. Many of our clients report that they are provided with a safety plan when attending court. However, some clients report that they were not advised that safety planning was available to them. It is important that, in all cases where a risk is reported in the ‘notice of risk’, that families are asked whether they need a safety plan.

In some cases, those families who did not have a safety plan have been legally represented. It is therefore also important that legal practitioners undertake continuing professional development to assist them to better understand domestic and family violence and abuse and how it can affect adults and children.

Legal principles in relation to parenting and property

Question 14 - What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?

Safety must be the paramount consideration in all matters; with children’s rights to have meaningful relationships with both parents being a secondary issue. In some cases, victims of family violence and abuse who we have worked with feel their physical and emotional safety and wellbeing and/or the physical and emotional safety and wellbeing of the children is compromised by orders that focus on ensuring an ongoing relationship between the perpetrator and the children. Many victims also report they feel pressured or coerced into consent orders (in some cases by their own legal representative), which are unsafe (physically and emotionally) for themselves or their children; e.g. as they cannot evidence the violence and abuse they have experienced, as it does not fit within the current legal definition. Changes to the definition of family violence to include psychological or emotional abuse, system and process abuses, and recognition of the cumulative effect of trauma for victims of family violence and abuse is necessary.

Children’s rights to be included in decision-making processes whenever this is safe and developmentally appropriate must be further embedded in the Family Law Act, Family Courts, and Family Law Services. In the FRCs, Child-Inclusive FDR provide a meaningful opportunity for children to have a voice in the decisions that affect them and provides them with an opportunity to receive professional support. This is important for children who often experience grief and loss, stress and distress due to the parents’ behaviours after separation and often have limited avenues for seeking help.

Recognition that the majority of families in the family law system have relationship problems, and not necessarily legal ones, is an important first step. Therapeutic jurisprudence in family matters is essential to ensure that the process does not further harm or disadvantage families, and especially children. The therapeutic jurisprudence approach argues that any anti-therapeutic consequence of a legal decision should be avoided and where possible, instead a holistic solution should be found that addresses the behavioural, emotional, psychological, or situational issues of the family (Wexler, 2001). For example, to reduce the harm experienced by children involved in family law matters, consideration must be given to what complimentary services and processes may best assist the family to resolve conflict and best support the child’s ongoing needs. This process could sit parallel to the legal process and may assist to resolve many of the underlying causes of the conflict, thus reducing the need for adjudication.

Finally, language such as equal, substantial and significant time and shared parental responsibility are confusing for parents. When we work with families, we encourage parents to consider their responsibilities as co-parents along with a range of definitions of parental time that reflect the unique nature of the child’s individual developmental needs, the parents’ capacity and the family’s circumstances.

Question 15 - What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?

The family law system needs to ensure that a greater weight in decision-making is placed on the significant impact of all forms of violence and abuse, and particularly psychological harm for children. Definitions of family violence must take into account both the current impacts along with the long-term risks for the child.

One of the significant challenges families who experience family violence and abuse are faced with, is the lack of understanding of family violence and abuse within the legal sector. For example, victims often struggle in court settings to provide evidence of the violence and abuse (particularly psychological abuse) they have experienced as they have often worked to hide the violence or abuse they have experienced for many years in order to survive. Victims are often accused of making false allegations by the perpetrator; this is another form of power and control that has no consequence for the perpetrator in the current legal system. Additionally, victims of violence and abuse are frequently required to re-experience traumatic events on multiple occasions with no consideration for the impact this may have on their health, wellbeing and parenting capacity. Differences between state legislation and federal legislation often mean the process of proving violence and abuse is duplicated. This again is another form of system abuse which affects the victim but which had no consequences for the perpetrator.

There need to be greater awareness of the dynamics of power and control that occur in relationships where there is violence and abuse. We find for some clients the Courts and FDR are often used as opportunities for further perpetration of abuse and control of victims. For example, in some cases victims who try to establish boundaries and resist control of the perpetrator may be considered uncooperative or seen as obstructing the children’s relationship with the perpetrator. We often see a dichotomy in considering violence in intimate partner relationships as separate or in no way related to the role of parent and children’s rights to have meaningful relationships with both parents. A more sophisticated understanding of violence and abuse is necessary to ensure all professionals working with separated families have a highly developed understanding of the complexity and interrelationship of these issues for families.

In cases where family violence and abuse has or is occurring, equal shared parental responsibility and equal time are not just contraindicated, they are inappropriate and abusive; this should be clearly articulated in the Family Law Act.

In many cases, when there is family violence and abuse the standard FDR process is not safe or appropriate. Instead, the introduction of FDR processes that are better suited to the needs of families who have experienced and/or are continuing to experience family violence are required. For example, when there is a current protection order, families should be able to bypass standard FDR processes and divert to specialist FDR services.

Information sharing practices are important to ensuring an integrated service response to family violence; e.g., a system that enables child counsellors and behaviour change programs to communicate with FDR services and vice versa around risk for families may reduce the risk for families currently engaged in the family law system. This may require a legislative change that limits confidentiality and mandates information sharing whether there is a risk identified.

Overall, an ongoing focus on family violence education at all levels of the family law system is essential to a cultural shift.

Question 16 - What changes could be made to Part VII of the Family Law Act to enable it to apply consistently to all children irrespective of their family structure?

As a largely individualistic society within increasing diversity, it is not appropriate to have a ‘one size fits all approach’ to family structures or arrangements for children after separation. The concept of functional or psychological parents may include biological parents, grandparent caregivers, stepparents, non-biological parents, adoptive parents, kinship carers, and a range of adults who are important to the child. As previously discussed (Q 5-9), greater emphasis must be given to increasing professional competence and inclusion and collaboration with different groups within the community.

Question 17 -What changes could be made to the provisions in the Family Law Act governing property division to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

In so many family law matters, property is a significant underlying cause of the ongoing conflict in parenting matters. Many families who use our services report spending significant amounts of the joint asset pool on legal advice with either no outcome or outcomes which they believe are unfair. Often times they are advised against mediation for property matters, as it is not compulsory. Many families do not understand the real time and costs of litigation in property matters, particularly legal fees. This is often an issue that causes ongoing resentment between parents who just want a fair settlement to enable them to move on with their lives. We consider the introduction of compulsory FDR in property matters as a necessary first step to divert the majority property matters from litigation. Again a stepped down approach could be considered for families that require additional assistance; e.g. FDR, Legally Assisted Mediation, Collaborative Law, Court Conferencing being attempted prior to Adjudication.

Many families we work with report that the family law system currently fails to provide any real regulation of ethical practice and accountability for legal services; e.g. clients who report legal fees are greater in some cases than the property pool. This is contrary to the best interest of children and in some cases a further form of abuse and therefore must be a consideration in changes to these provisions of the Family Law Act.

Increased awareness and education is essential for vulnerable families. Options such as the development of online calculators, which allow families to list assets and liabilities and consider legal fees as costs in property division may assist to reduce the amount of litigation in this space. Such tools are often used in FDR to assist parents to understand the real time and cost of continued conflict.

Additionally, some clients we work with are disadvantaged through a failure to adequately consider the complexity of property division in cases where there is family violence and abuse and parenting arrangements that will change with time.

Question 18 - What changes could be made to the provisions in the Family Law Act governing spousal maintenance to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

Enable information around spousal maintenance to be provided to parties as statements of facts to reduce misunderstanding and uncertainty. The lack of transparency and the provision of this information about spousal maintenance and property division often sees parties locked in protracted arguments. Rather than avoiding references to spousal maintenance or property division within family mediation, there should be standardised information for practitioners and clients to enable a more transparent conversation.

Question 19 - What changes could be made to the provisions in the Family Law Act governing binding financial agreements to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

These arrangements can often be used as leverage in parenting matters. Parenting is everyone’s responsibility, and circumstances change regularly and unexpectedly, often leading to hardship after separation. While parties enter into such agreements to ensure certainty in the event of the end of the relationship, these agreements often fail to fully reflect the changing dynamics and financial responsibility of parenting after separation.

Resolution and adjudication processes

Question 20 - What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

We see that there needs to be a greater emphasis on Court as a last resort in all matters.

Initially FRCs were funded to provide parents with 3 x 3hr sessions of dispute resolution over two years. Changes to funding have seen the FRC model move to a contribution model, where some families are required to pay for services. Family Relationship Centres are now funded to provide one hour of FDR free to every family. Clients earning $50,000 or more gross annual income are required to pay $30 per hour for the second and third hours. This can be a barrier to access for some families, and so many FRC service providers waive fees. This is an important consideration as evaluation studies have demonstrated that many families require multiple session of mediation to assist them to resolve issues in dispute (Moloney et al, 2013). Additionally, many parents report the current wait times in FRC’s are excessive, as such additional funding for increased staffing would assist to ensure timely and cost effective resolution of family law disputes within the FRC’s.

Some families report to us that s 60I Certificates are issued by private Family Dispute Resolution Practitioners when they cannot afford private fees and therefore refuse to engage in these Family Dispute Resolution services. A review of the certificate issuing system is required to ensure parents are not bypassing the FDR system.

Additionally, FRCs were not originally intended for the type of interdisciplinary collaboration that is necessary to best support families in the family law system. Although strong partnerships have developed with community legal centres, there is ongoing divide between private legal services and FDR services. A cultural shift in the legal sector (which operates for profit) is necessary to ensure the success of dispute resolution and non-adversarial and cost effective resolution of family law matters.

As discussed previously, standard FDR is not safe or appropriate for all families. However, government investment in different types or streams of mediation which meet the diverse and complex needs of families is certainly a more cost effective and timely investment than expanding court services.

Diversions from the Court should occur at every opportunity. For those who proceed to Court, the reintroduction of court conferencing (dispute resolution) in all matters should be compulsory prior to proceeding to adjudication.

Additionally, for those families who experience ongoing and often entrenched conflict; services such as ‘Parenting Coordination’, which may be ordered under *s 65L* of the Family Law Act 1975 to supervise or assist compliance with parenting order by a Family Consultant, should be introduced more broadly in community settings to assist parents in implementing orders and/or parenting plans for children, without the need for ongoing intervention from the Court.

Question 21 - Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

Families who proceed to Court should also be required to participate in services that can address the emotional and relationship problems that are often the underlying causes of conflict prior to litigation. Supports such as counselling, parenting education, FDR and a range of other services could be case managed in community service settings parallel to the court process.

As previously discussed, greater investment needs to occur in services for families who are not appropriate for standard FDR. As described previously, specialist models of dispute resolution that target the complexity of DFV, mental health, substance abuse experienced by some families is essential (e.g. therapeutic FDR, legally assisted FDR, conciliation, parenting coordination)

Question 22 - How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?

As property mediation is not currently compulsory, this is not the primary focus on the work in FRC’s. This often causes further conflict for parents as property and children matters are often seen by parents to be linked, and therefore both need to be addressed often before the matter can be finally resolved. Further training would initially be required to best equip the current workforce of FDRPs to provide FDR in property matters. However, this initial investment of time and resources would deliver a workforce of professionals who could assist in diverting many property matters from the Court.

Mediation prior to making an application in property matters is an important step in diverting the majority of families from the Courts, and is particularly important in the resolution of small or less complex property matters. At present, those who can least afford it often end up spending a significant portion of their property settlement on legal fees. Some of the families we work with are required to borrow money from family members and in some cases, due to legal fees incurred; they end up with no actual settlement but instead with a debt. A simpler system, with clearer guidelines for how property is divided after separation, would help these families whose finite assets are very important in assisting them to provide for their children after separation.

Question 23 - How can parties who have experienced family violence or abuse be better supported at court?

As previously discussed, there needs to be a sector wide focus on education for professionals working in the family law sector to improve understanding of family violence and abuse. This education would assist in the development of a multidisciplinary approach to family law, which would enable domestic and family violence specialists, family and relationship specialists and the family law sector, in working together to assist families after separation.

Again, the introduction of universal trauma-informed practice in screening and assessment of risk would not only enhance family law services but also improve the process of triaging of these matters in Court. Information sharing is important in risk management and therefore professionals need to have access to information; e.g. police, child safety, family law services to reduce the need to victims to repeat their story to numerous professionals. Additionally, practice in this area needs to target the needs of vulnerable groups, particularly Aboriginal and Torres Strait Islanders, Culturally and Linguistically Diverse (CALD) clients, and those clients who have a disability.

Furthermore, there needs to be a reduction in waiting times by prioritising parties that have experienced domestic and family violence. In all likelihood, the abuse is continuing while the parties wait for adjudication. Additionally, it would assist victims of violence and abuse to have support staff available in Court for the purpose of information and support.

Question 24 - Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

Again, improved understanding of family violence and abuse is required in the legal sector before legally-assisted FDR can truly be effective. A shift in the legal approach adopted in family law matters from adversarial to collaborative or inquisitorial is required to improve outcomes for all clients. However, in matters where there are allegations of family violence, legally assisted FDR alone may not be enough to overcome the power imbalance of the process experienced by victims of abuse who often agree to arrangements which are unsafe and/or not in their or the children’s best interest in order to resolve conflict. We propose that FDR. which occurs with collaborative legal professions and integrated social support such as those considered in the pilot of the coordinated FDR project (Field & Lynch, 2014) may best meets the needs of families who have or are experiencing family violence and abuse.

Question 25 - How should the family law system address misuse of process as a form of abuse in family law matters?

The misuse of process is a significant problem in all areas of the family law system but particularly in cases where there are risk factors such as family violence and abuse, mental health, and disability. Changes in the family law system to ensure safeguards for vulnerable parties to prevent abuse of process are necessary. For example, trauma-informed practice that reduces unnecessary duplication of processes (such as providing information about violence and abuse on numerous occasions), may reduce the harm associated with misuse of process for victims and vulnerable people. Additionally, timely and appropriate responses to parties who cause harm to the children, and/or children’s relationships with their other parent, through the misuse of process should be included in reform of the family law system.

Question 26 - In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?

As detailed previously, we propose a stepped down model of interdisciplinary integrated family law services with less intrusive and voluntary processes freely available, with increasing formality for those who need additional support, and Court as a last resort. This approach acknowledges that often longer-term counselling, ongoing mediation, and services like intensive case management may be necessary to support some families to resolve conflict and rebuild relationships after separation. We propose that a greater investment from Government in free or low cost services that are non-adversarial, timely and cost effective would have the greatest impact in diverting families from litigation.

Question 27 - Is there scope to increase the use of arbitration in family disputes? How could this be done?

While arbitration has been introduced in some property matters, arbitration in family law matters involving children would require subject matter experts with both legal and social science knowledge and expertise, due to the nature and complexity of the issues experienced by families as discussed in this submission. Currently few professionals in the field have this particular combined skill set. Within the Court, Registrars & Family Consultants working together may be best able to address this gap.

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?

Online dispute resolution processes can support those parents who are unable to attend at an FRC and are useful for families when there are safety concerns. However, not all families have access to the technology necessary for participating in online dispute resolution and not all parents are comfortable with using online services. We suggest a range of service modalities should be available to meet the complex and diverse needs of the families in Australia.

Question 29 - Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?

As previously outlined, for families with complex needs, including when there is family violence and abuse, serious mental illness, substance abuse, and ongoing safety concerns or involvement with child safety; the adversarial process is not only inappropriate but also increases the risk of further harm. A therapeutic jurisprudence approach is necessary to reduce the harm associated with involvement in legal processes. Problem solving or intensive case management approaches used within services such as ‘parenting coordination’ would provide the intensive professional support needed by these vulnerable families to address the ongoing risks and complex needs of both the children and parents.

Innovations like the less adversarial trial approach cannot fully address the complexity, behaviours, and relationship problems that result in ongoing and entrenched conflict for these families. Instead, by providing intensive case management in community settings, families would be able to access the ongoing support and intervention necessary to address both the conflict and the underlying issues or risk and dysfunction that prevent these families from making changes that result in improved outcomes.

Question 30 - Should family inclusive decision-making processes be incorporated into the family law system? How could this be done?

Family inclusive decision-making is often used in child safety matters involving Aboriginal and Torres Strait Islander people. This approach is culturally responsive in that it recognises the kinship structure of Indigenous families and that involvement of extended family in decision making is an accepted practice for many Indigenous people.

This approach, however, would not be appropriate for all communities. In some communities, particularly those that may have different cultural values and beliefs, it may not be suitable to use this approach. It therefore should only be incorporated where it is safe and appropriate to do so.

Integration and collaboration

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

The modern family law system needs to provide multiple entry points for families and opportunities to step down into less formal processes at each point, with Court seen as the last resort. FRCs offer an existing infrastructure that could easily be further developed to provide case management for a host of integrated services that would best meet the complex needs of families after separation.

*For example: Ruth & George have two children – Sarah 8 and Zane 6. They have been separated for 12 months and are in conflict about property division and arrangements for the children. A case management approach to service delivery would ensure the FRC provided an initial holistic assessment for this family – by identifying risk and systemic problems the FRC could coordinate a range of services that are necessary to assist this family to address not only the conflict but also its underlying causes. Services such as trauma-informed counselling, parenting programs, financial counselling, legal advice, child counselling, drug and alcohol counselling to name a few, could be available on site or through warm-referrals. This coordinated approach would ensure support for the family, with dispute resolution occurring when the family was no longer in crisis and had the information and support necessary to make good decisions about the future.*

Currently for families who enter the court system in crisis, the adversarial system is often punitive and may result in escalation of risk. The Court system is not the appropriate forum to support families to address the complex problems they are experiencing. The Court system is not equipped to offer the services these families need; oftentimes, the court process further compounds the difficulties these families experience.

Question 32 - What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

Information sharing between Courts (Magistrates, Children and Family) and agencies such as Police, Child Safety, Mental Health and Family Law Services is essential to shifting the burden of safety concerns from victims and those who are most vulnerable to those who have the responsibility to protect.

As previously discussed, initiatives such as universal risk screening and assessment with family and relationship professionals would assist families. Having consistent approaches to understanding, assessing and responding to safety concerns, which is consistent with practice within the family violence and child protection sectors, will improve safeguards for children and encourage greater integration of service responses. Confidentiality cannot apply to issues which relate to risk of harm for children and families in the family law system. If this ideal was embedded into legislation, there would be less duplication within the system and a greater focus on information sharing and collaboration in the management of risk for children and families.

Question 33 - How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

Recommendations 90 to 103 of the Not Now Not Ever Report relate to an enhanced law and justice framework for domestic and family violence, such as:

* family law children’s matters (by consent) and child protection proceedings to be dealt with by the same court.
* Domestic and Family Violence Protection Act be amended so that the court must consider a family law order when making a Domestic Violence Order.
* Ensuring that judicial officers receive intensive and regular professional development on domestic and family violence issues, including its impact on adult victims and children, from domestic and family violence practitioners who have expertise in working with adult victims, children and perpetrators.
* Ensuring that continuing professional development programs are developed and made compulsory for all legal professionals who engage in domestic and family violence law and family law to ensure ethical conduct for managing the intersection of domestic and family violence and family law.

There are a number of countries that currently have great success with an integrated legal system which oversees family law, domestic and family violence, and child protection matters within the same jurisdiction and same court. The current divide between state and federal law means those who are most vulnerable are often re-traumatised by the unnecessary duplication and differences in these legal systems. Real legislative change for families is needed. A modern family law system that acknowledges family violence and child protection issues do not occur in isolation of parenting matters and therefore enables these issues to be dealt with in one court and one legal system is needed.

Children’s experiences and perspectives

Question 34 - How can children’s experiences of participation in court processes be improved?

Much like their participation in family law services outside of the Court, children who engage in any process with a professional must be treated with respect and clearly understand the process is not confidential. CFRS provide a number of services to children and families, while ensuring a constant focus on the child’s best interest and what parents can do to meet their child/ren’s needs.

As previously discussed, children’s experience of court processes could be improved by the introduction of an Independent Children’s Lawyer in all matters involving children. Additionally, for those children who are required to participate in a number of reports or conferences, there should be increased focus on ensuring the same professional is involved on each occasion as this would assist the child to build rapport and ensure they are not required to repeat their story to multiple professionals on numerous occasions.

Question 35 - What changes are needed to ensure children are informed about the outcome of court processes that affect them?

In most cases, children are advised of changes to arrangements by their parents. When it is safe and appropriate to do so, we would encourage both parents to explain orders to ensure children are provided with consistent messages about arrangements which affect them. However, in cases where a judge has made a decision, especially cases when one or both parents do not support the decision, it is important that the children have the outcomes explained to them in a timely fashion by a family consultant, independent children’s lawyer, or counsellor. It is also important that this explanation involves discussion of safety and support for children who themselves may be distressed or unhappy with the outcomes.

Question 36 - What mechanisms are best adapted to ensure children’s views are heard in court proceedings?

In all matters that proceed to court, children have a right to be involved in, obtain information about, and have a say in decisions that will affect them; this right is enshrined in the UN conventions of the Rights of the Child and outlined in the Family Law Act. Although children are not required to express a view and in some cases it may not be safe or appropriate for them to do so. The views of the child are usually obtained through inclusion of children in family reports and child inclusive conferences or via orders for non-confidential counselling and/or subpoena of counselling records.

It is important to consider the impact for the child who may have already had a number of interactions with a range of different professionals. In such cases, professionals should use the least intrusive approach to obtaining this information about the child’s views to prevent unnecessary duplication of process.

The appointment of an Independent Children’s Lawyer is another safeguard for the best interest of the child. This is an important mechanism for the rights of children, and one that could benefit all children involved in court proceedings.

Question 37 - How can children be supported to participate in family dispute resolution processes?

Child Inclusive FDR occurs in FRC settings but is not appropriate for all families. At present FRCs do not have the funding necessary to enable all children to be included in the FDR process. Significant change in the funding and the legislative framework would be necessary to shift this practice. Child Consultants who work in FRCs are skilled in working with children but are underutilised. In many cases they spend much of their time in assessing parents’ capacity to consider the views of their child.

Should there be a shift in the focus of family law services to providing coordinated responses for families, the child consultants’ role could be expanded to include services that increase parental capacity and provide support for children who need strategies to cope with the problems they are experiencing. This type of approach would offer the safeguard needed to ensure more matters were appropriate for child inclusive FDR processes.

Question 38 - Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?

Yes absolutely. That is why FRCs take a cautious approach when screening families for appropriateness for child inclusive mediation and when giving feedback to parents in FDR. Children may experience their parents being angry or upset with them for sharing information. This may result in emotional abuse, threats and intimidation (and in some cases violence) by a parent who is unable to effectively regulate their own emotions and not open to hearing information that is different or challenges their own point of view.

However, this risk must be counterbalanced with a child’s right to have a voice in decision making that affects them and the ability to connect with a professional for support and strategies to assist in managing difficulties they experience after separation. This should be the paramount consideration in involving children in FDR and Court processes.

Question 39 - What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?

The family law system has a responsibility to introduce changes that ensure all children who want to participate in the process and in decision-making that affects them are supported to do so. As previously discussed, increased awareness and responsiveness to issues such as family violence, abuse, mental health and substance misuse, cultural and religious issues are necessary to ensure the system safeguards children who are involved in family law matters.

Coordinated responses to families are needed to ensure safety for children in the family law system, for families legal solutions alone are much akin to putting a ‘band aid on a bullet hole’. They in no way address the complex and serious problems these families are experiencing, leaving children vulnerable and in many cases are a form of system’s abuse.

Question 40 - How can efforts to improve children’s experiences in the family law system best learn from children and young people who have experience of its processes?

In CFRS we have a culture of open practice, governance, research, quality assurance and continuous improvement which ensures the design and implementation of services which improve outcomes for families. However, in many other areas of the family law system there is a culture of closed practice and a lack of engagement with stakeholders, including children, and no research and innovation in practice to meet the changing needs of families.

A program of research and evaluation is necessary to better understand and address the needs of children involved in the family law system. This needs to occur at all levels of the system, from the courts to community services.

Professional skills and wellbeing

Question 41 - What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

All professionals who work with families should have initial training and education, including:

* Specialist DFV training and education for all professionals who work directly with families impacted by violence and abuse.
* An understanding of contemporary research on the impact of trauma (including emotional and physical abuse or neglect and exposure to family violence) on childhood development and on a child’s overall presentation and the impact of victims who have to repeatedly re-experience the trauma due to the adversarial nature and duplication in the current legal system.
* Targeted training around the developmental needs of children after separation.

*Additionally, specialist family and relationship professionals who work with separated families should have a minimum level of competency in trauma-informed, culturally responsive and safe practice, which centres on risks for children, families and vulnerable groups/communities. This practice would ideally sit within a universal and consistent risk assessment framework used by all family and relationship professionals who work with families within the family law system.*

In order to maintain these competencies the following should be put in place:

* mandatory professional development in core areas of knowledge.
* ongoing professional development opportunities including:
  + Increased dissemination of research articles and seminars which address trends that are relevant to the family law sector;
  + Introduction of Position Statements and Guidelines of Practice; e.g. information that is suitable for distribution to clients and has the endorsement of the family law sector (to avoid clients and professionals shopping for data and information that suit their needs or support their objective opinion).

Question 42 - What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

A modern family law system requires expertise in law and social science for judicial officers working in the family law jurisdiction, due to the nature and complexity of the problems that families who participate in the family courts experience. The current adversarial system does not and cannot address the diverse and complex needs of families. However, initial training for judges in the family law jurisdiction and ongoing professional development is essential; e.g. understanding how victims of violence and abuse present in stressful situations such as court processes may reduce the misconception that the individual is being uncooperative or erratic, and ensure that such behaviour is conceptualised within a framework of normal responses to trauma.

Question 43 - How should concerns about professional practices that exacerbate conflict be addressed?

Many families report that involvement in the family law system results in increased conflict, excessive costs and time delays. Particularly costs associated with legal advice and processes that are often misunderstood and fail to meet the parents’ expectations. Many families report that they have never received any formal written advice and therefore have limited recourse when the outcomes of litigation are not aligned with the verbal advice they received. Professional practice which is ethical and aligned with the legislation; e.g. in the best of children, is seemingly incompatible with the current adversarial nature of family law.

Question 44 - What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?

Professional supervision is a requirement within CFRS. Additionally, service providers offer assistance programs for staff (e.g. EAP). However, additional funding is necessary to support ongoing vicarious trauma and burnout for workforces who operate in this space.

Although professional supervision is not an established practice for legal professionals, this is an evidenced based practice that has been used for years in industries that help families. This practice ensures that professionals receive a regular and formal opportunity to focus on areas relating to their roles, including but not exclusive of: self-care; practice skills and knowledge; decision making in practice; self-evaluation; professional support and debriefing; risk management; case coordination and complex cases; monitoring and quality control of work responsibilities, practice and performance. It may assist legal professionals and judicial officers working in the family law system to be introduced to professional supervision as a formal professional requirement.

Governance and accountability

Question 45 - Should s121 of the Family Law Act be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?

The current system provides necessary safeguards for families and children’s privacy, especially for those who are vulnerable and may be further impacted by unrestrained publication of personal information. However, in some cases, the protection of those who are vulnerable also results in protection for perpetrators who are not required to be accountable for their actions and behaviours due to the anonymity in the current system of publication of judgements.

For victims of violence and abuse this protection of the perpetrator comes at the cost of their freedom to speak openly about their experience and is a form of system abuse.

Question 46 - What other changes should be made to enhance the transparency of the family law system?

One of the fundamental gaps in the current family law system is the lack of independent research and evaluation of family court populations and family law outcomes. Further research is necessary to understand what impact the family law system and processes have on children and families who are involved in the system.

Additionally, greater regulation of ethical practice requirements for all professionals within the family law system is required to enhance the transparency and accountability of professionals within this sector.

Question 47 - What changes should be made to the family law system’s governance and regulatory processes to improve public confidence in the family law system?

The public’s lack of confidence in the family law system largely stems from the cost, delays and issues around access for those who are vulnerable and have complex issues. While increased efficiency in governance and regulatory process may assist in improving the family law system, fundamentally there needs to be a shift from adversarial processes and a focus on collaborative problem solving processes that address the needs of the family holistically; e.g. not just conflict but the underlying causes of conflict. Families deserve a family law system that helps and does not harm.