

Interrelate

Submitted on Monday, May 7, 2018 - 13:04

Submitted by user: mattstubbs

Submitted values are:

Please treat this submission as\* Public

This submission is on behalf of an organisation

Name of organisation Interrelate

Would you like to ... Use this form to answer questions

Question 1

- To create an uncomplicated process whereby parents and others wish to separate and divorce can do so in a dignified manner, maintaining personal wellbeing and minimising conflict;
- To provide separating parents and others with a comprehensive range of complementary services, programs and resources that provide safety and the timely resolution of any disputes and address emotional and any other issues which may arise as a result of family separation;
- To provide couples experiencing relational difficulties with high levels of support to address underlying issues so as to strengthen relationships and families;
- To accommodate the diversity of family and parenting relationships and the possible complexity of those relationships associated with separation and through other factors, so that the needs of separating parents and others are most effectively addressed;
- Decisions and arrangements for the care and welfare of children are demonstrably in the best interests of children.

Question 2

To recognise the vital role in our society to raise, healthy, well-adjusted children by protecting all children from harm or potential harm;

- The need to facilitate and support separating parents and others in their efforts to address and resolve issues brought about by family separation and divorce;
- The need to have in place information and reference resources to educate and provide guidance and understanding to those who need to engage with the family law system;
- The need to apply flexibility and recognise the diverse and sometimes complex circumstances of parents and others who wish to access the family law system;
- The need for affordable, timely and ethically-based services and programs;
- The need for child protection and welfare as the paramount consideration;
- The need to work collaboratively to reduce family violence in the community and to ensure protection from family violence.

Question 3

- While how to go about getting married is common knowledge, this is not the case when couples separate. Despite the 2006 FLA Amendments being in place for 12 years, the first inclination for many separated couples is to approach a solicitor. It is our experience that this often starts couples down a path that can exacerbate the conflict.
- We believe that services need to be actively marketed and advertised as “SEPARATION SUPPORT SERVICES”. We believe that these services need to have a greater case management focus to help support individuals with information and emotional support as they are considering separating or have just separated. Linked with this idea is our answer to Q4.

Question 4

- At present, there is a splintering of services, i.e., various family law services in one location are delivered by 3 or more separate agencies not necessarily located close to one another. This means additional travel for clients, duplication of processes and information gathering and so on. Initially it was the view of funders that services could not be co-located, say, in a

Family Relationship Centre, however that view has been relaxed, which we believe is a good thing and benefits the client. However the splintering of services remains. We would advocate for a consideration of bringing services in under the one umbrella. Alternatively, or in addition to this, at the first presentation of an individual to a separation support service a case manager / guide would be allocated. This would be an appropriately trained individual with social science background with a good working knowledge of the FL sector and services. They would 'journey' with the client throughout the separation process providing support and referral as the need arises. These guides would also continue to support individuals when they enter into FL services and even post orders (where appropriate). • Separating parents wanting to formalise parenting arrangements are required to attempt mediation, which may or may not be successful. If mediation is not successful a s60I certificate is issued. Interrelate's research with the ANU and Canberra University on the experience of clients receiving a 60i certificate found that many clients were unsure what to do post-receipt of this certificate. We suggest that information be made available through dispute resolution services to clients receiving s60I certificates that articulates their options and how to take those next steps. \*

[https://www.interrelate.org.au/www\\_interrelate/media/Pdfs/Research%20Pdfs/CSRM-60ICERT-UNABRIDGED.PDF](https://www.interrelate.org.au/www_interrelate/media/Pdfs/Research%20Pdfs/CSRM-60ICERT-UNABRIDGED.PDF)

#### Question 5

• Organisations such as Interrelate have developed their own initiatives, in rural and regional areas in particular, to encourage and support ATSI families to access our services. Examples of Interrelate's initiatives follow:

- o Even if not provided in funding, Interrelate has at least one ATSI worker in each of its regions with the specific responsibility to work with local ATSI communities to inform and support those communities to avail themselves of services offered;
- o Interrelate has developed an Aboriginal Employment Strategy which proactively encourages the recruitment and advancement of Aboriginal staff. This has resulted in Interrelate supporting Aboriginal staff to take up trainee FDR and related roles (e.g. Community Development and counselling). The Interrelate Board also has a yearly scholarship that it provides to Interrelate staff to advance in the sector by accessing higher education. Last year this scholarship was open to Aboriginal staff and we now have two Aboriginal staff undertaking FDR studies;
- o Further, Interrelate has an internal reference group called Kutanya. This is composed of ATSI workers and managers and executives who provide advice regarding service delivery and review service and program initiatives. This group was asked to comment on the ALRC Issues Paper and their response to this question was as follows:

- ♣ There is a need for on the ground workers to advise and walk beside individuals and families throughout the whole process; to explain, advocate and reassure individuals and families as the Family Law space is very frightening for these clients. Often the set-up and culture of the system will trigger clients due to their experience of transgenerational trauma. As such, all staff in FL need to undertake trauma-informed training, and systems and processes need to be assessed with a trauma-informed lens. The same point was made regarding cultural training for staff in the FL system;
- ♣ Offer more community engagement and information events like the "Did Ya Know Day" (Lismore) or the Aboriginal Family Law Conference (Sydney) for community members and workers;
- ♣ We support the move to have specific list days for Aboriginal clients at the local circuit court and the introduction of Aboriginal Court Support workers;
- o Reconciliation Action Plan (RAP) – Interrelate has a RAP that is registered with Reconciliation Australia that helps guide our work. We believe that if other organisations committed likewise, the experience of ATSI clients would be markedly different.

#### Question 6

• An encounter with the family law system can be daunting even for those with no major language and cultural barriers. When people from CALD communities come into contact with the court/system, language is only the first and most obvious source of potential difficulties. It behoves the court to reach out and address the range of barriers, repeatedly articulated in research findings, experienced by individuals and communities in need of family law services. Attitudes towards institutions and agents of authority learned in their country of origin affect their interactions across the system, as they can be navigating a system that their experiences have taught them to view with fear and suspicion. Combined with a clash of cultures and poor literacy, sometimes even in their own language, the family law environment is ripe for misunderstandings and for advantage to be taken of those with poorer language and less knowledge. • In regions where Interrelate runs groups and programs with and for CALD communities, Interrelate practitioners are able to identify, connect with, and offer support to men and women who may need, or are already in contact with, broader family law services. They can also informally educate participants about managing family and cultural issues, allowing them to take action that can set the family on a path to support and resolution rather than one which would result in formal engagement with the family law system. • As well as reaching out to CALD individuals and communities, changes are needed within the family law system. For example, allowing additional time to enable people to learn about and understand the system and its processes, using multiple channels to convey information to communities (and isolated individuals in those communities), providing sufficient space for extended family and support people to attend, and adequate, automatic provision of easy-to-access family law-trained professional translators. Further, court officers routinely trained to understand the cultural rules and values of specific cultural groups and recognise which support services may be required would contribute to making the system easier for CALD individuals to navigate. • Further to this, family relationship service providers could be more widely and consistently co-located or embedded in court buildings, staffed by practitioners who are able to accommodate culture-specific needs and help advocate for and obtain appropriate and dedicated support, not just on court-related issues but also those that are at play in the broader family environment. Equally, family relationships services could offer services out of existing premises that CALD clients are comfortable attending e.g. migrant resource centres.

#### Question 7

Whatever form their disability takes, many of the barriers to the participation of people with disabilities in the family law system reside not with them but with society – misconceptions about their capacities that lead to discrimination, poor communication, and lack of supports, and physical environments that make just getting in the building difficult. Other issues emerge where there is limited capacity to comprehend the meaning and implications of court directions or to understand the language used in documents and in the operation of legal proceedings. Some people with disabilities will agree with court directions even though they do not fully understand them. The physical space and formalities of the courtroom can also be very intimidating. Presumptions about, rather than assessment of, capacity are often experienced by parents with disabilities; consideration of ensuring appropriate support systems are put in place should be the court's first response. Greater flexibility in court systems is needed to adapt to the needs of people with disabilities – simple language in documents, added rest breaks, provision or accommodation of carers/support persons to accompany the person with a disability and explain proceedings, and to speak for them when needed. Interrelate notes that a common thread running through the research and practice literature related to how people with disabilities can access the family law system – and indeed, all justice-related systems – is improving the awareness of court officers and legal personnel of the challenges faced by people with a disability in their daily lives. Training in

working with people across the spectrum of disabilities is needed to prevent the family law system becoming another agent of discrimination and abuse/violence to which people with disabilities are susceptible. \*Corker, M. & Shakespeare, T (Eds.) (2002).

Disability/Postmodernity Embodying Disability Theory. London: Bloomsbury. \*Messer, A. (2017). Family law and disability: Parents with a disability. Disability Rights Center.

<http://www.drcnh.org/familylaw.html>

#### Question 8

• Despite growing acceptance and the recent legal recognition of same-sex relationships, the complex issues impacting on the lives of same-sex couples and families remain less well understood by the broader community. A growing research literature points to the challenges faced by the LGBTIQ community. The lack of resolution of some legal issues regarding the recognition of certain family forms and the complex pathways through which they come into being, means that accessing services and engaging with institutions can be fraught with uncertainty for LGBTIQ individuals. While an obvious response would be to resolve those issues, their complexity means that concrete resolution is unlikely to happen in the near future. • So what can be done now to support LGBTIQ individuals, same-sex partners and their families as they navigate the family law system, whether as an intact family seeking guardianship or as ex-partners seeking a legal solution to their parenting arrangements? As with other vulnerable groups, the human face of the system must be compassionate and respectful, thus (further, ongoing) training is required for court officers (including legal professionals) in understanding the issues and challenges facing this group to facilitate their already stressful engagement with the system. Such training would need to be educative with respect to issues relating to LGBTIQ identity, assisted reproduction, domestic violence, and the effects of social stigma on individuals, families and their children. • The physical environment can also contribute to the experience of those who come into contact with the system, so signage and information leaflets/brochures need to be designed to be clearly inclusive. • To promote inclusiveness in our programs, our program materials are being re-designed with inclusive language and images and our program facilitators use non-gendered language where appropriate, for example ‘parents’ instead of ‘Mum and Dad’. • For people in vulnerable groups engaging with the family law system, much time and effort can go into identifying and accessing the range of services needed. Co-location or embedding within the court of family relationship service providers trained in the support of members of the LGBTIQ community would provide immediate access to short term information and sources of support that would help to reduce their stress. • As noted in the ALRC Issues Paper, there has been little attention given to how well the family law system meets the needs of the LGBTIQ community. Perhaps this review will prompt efforts to gather the data needed to redress this gap and, in so doing, identify other pertinent issues.

#### Question 9

• A large proportion of services were established 12 or more years ago. Demographic and social changes since then would suggest that the current location and spread of family law services requires review, so as to ensure that services are located in accordance with community need. • Due to the spread of population in rural, remote and regional areas, services need to be resourced with an acceptable “loading” to recognise the challenges in these areas due to distance, communication links, emerging social issues, and so on. • As with other vulnerable groups, the information provided to communities in rural, regional and remote areas must be relevant to their members rather than conveying generic system-level advice. • Further, to facilitate access to services, providers must be encouraged and financially supported to deliver services utilising convenient technologies which do not require clients to visit physical locations where services are based. The digitisation of services/programs is still new for some in our sector and will require a change of mindset and

appropriate resourcing. Funding for innovation will be needed. • One impediment that we as an organisation have faced in providing services in rural and remote communities is attracting and retaining quality staff. In order to do this Interrelate offers inducements/incentives for staff who stay in roles for periods of time. There is obviously a financial cost to this.

However, we believe that our efforts in maintaining consistent personnel in our outreach services helps clients build trust and provides a solid foundation from which they can better engage with the FL system. If appropriate services are going to be offered in these communities then there needs to be some level of subsidy to facilitate providers' capacity to deliver those services. • As examples of the ways in which our staff try to support clients' access to FL services, Interrelate managers forge strong relationships with other key service providers in their communities to facilitate referrals so that the range of client needs can be covered. Especially in our regional service locations, the use of Skype for at least the initial stages of FDR is encouraged to minimise client – and practitioner – travel (which can often be in excess of 100kms). To further support clients, our offices provide flexible and regular after-hours appointments and remote clients are prioritised for weekend CCS appointments.

Question 10 -

Question 11 -

Question 12 -

Question 13 -

Question 14 -

Question 15 -

Question 16 -

Question 17 -

Question 18 -

Question 19 -

Question 20 -

Question 21

• As litigation can be very lengthy and expensive, the opportunity should always exist for clients to move away from litigation to other processes which are likely to provide a more timely outcome and with far less cost. It is often the case that one party is better financially resourced than the other party, immediately establishing inequity and a power imbalance if resolution is sought through costly litigation. • Generally, it has been acknowledged that it is preferable that disputes involving parenting and children be resolved through non-adversarial processes. As the ALR Commission will be aware, this principle drove the inception of the FRCs. • In the cases where clients attend at the courts with a Failure to Attend S60I certificate, it is our experience that clients are at times referred back to mediation by Judges. But that doesn't always happen. There have been instances where Judges will decide that "the case is now in front of me, so I may as well hear it". We would advocate that in instances where clients attend with a Failure to Attend certificate that they be immediately referred back to mediation to attempt to resolve their dispute. Additionally, as proposed by Judge Harman in a recent article (If you want a picture of the future, imagine mandated pre-action procedures, registrar case management and information sharing), we fully support the suggestion that Judges consider referring parties back to family dispute resolution throughout the proceedings when opportunities arise. • Given that a considerable percentage of 60i certificates that Interrelate issues are for clients who fail to participate in FDR we would advocate that Judges actually impose the monetary penalties that are indicated within literature that we are required to give to clients.

Question 22

• Present guidelines are that FRCs may only provide property mediation to clients who present at the FRC for parenting issues as well. This guideline could be relaxed so that parties

without parenting issues for resolution and only minor property matters could receive property mediation at the FRC, applying the standard FRC fee schedule or a modified schedule based on income or net assets. In order for this to occur FDRPs will require training in dealing with property matters as our experience is that most FDRPs do not routinely have property mediation training in their background. We would advocate that training in property mediation becomes a compulsory part of the graduate diploma. FRCs will need to adapt their model of dispute resolution for this to occur. • Many services operate a model whereby parenting issues and property issues are dealt within separate mediations. Research (or the dissemination of research) on which models of mixed property and parenting mediation have shown the greatest efficacy would be beneficial support for the sector to take on this change. • A further modification could be the introduction of a net asset cap for couples to receive the service as proposed, and a different scale of fees for parties above the cap.

#### Question 23

• First and foremost, it is suggested that judicial officers and other court officers attend appropriate family violence training and subsequently are regularly informed with up-to-date information related to family violence. As any allegations relating to family violence or abuse are likely to be contested in court, it is very important that the dynamics and manifestations of family violence both before and after separation are very familiar to judicial officers so that a determination may be made based on the evidence presented. • Once it is determined that a party in court has experienced family violence or abuse, appropriate measures can be put in place to support the victim, drawing on the court-based support services suggested above. Therefore the validity or otherwise of allegations of family violence would be required to be established at an early point in a court hearing. Judicial officers could be given the power to alter or amend court proceedings (within specified parameters) to facilitate and support those who have been assessed as having experienced family violence or abuse. • To support a victim of family violence or abuse, clear restrictions need to be applied to any potential interactions between the victim and the perpetrator. Perhaps, for instance, victims do not need to appear in court if violence or abuse is established, and any evidence they provide can be done by video with the victim located in another part of the court building. Additionally, under appropriate guidelines, others could provide evidence on behalf of the victim and a support person could attend with the victim. • It is also suggested that S60I certificates could be amended to include, as appropriate, a ‘flag’ that, during the FDR process which resulted in the certificate issuance, the FDRP was made aware of safety issues for one of the parties, that being a determinant for issuing the certificate.

#### Question 24

• At present there is a scarcity of resources for legally-assisted FDR (LA FDR), although it is provided through Community Legal Centres, Legal Aid and some private legal practitioners. In general terms, our experience indicates that private legal practitioners remain somewhat reluctant to participate in legally-assisted FDR in FRCs. • Where there has been a history of family violence or abuse, it is generally recognised that the client who has been the victim requires some level of support to participate in FDR. Legal support can be very valuable in these instances. • The piloted Coordinated FDR model implemented in 2012-13 demonstrated that in cases where there has been family violence, making such cases inappropriate for ‘ordinary’ FDR, the availability of legal and other support services to both clients meant that, in certain circumstances, parenting agreements were able to be reached through FDR. • Cases where there has been family violence which enter the court run the risk of re-traumatising the family violence victim, possibly by permitting the perpetrator to cross examine the victim, and can call into question the extent of the family violence due to the rules of evidence. In contrast, FDR proceeds on the basis of facts at face value, with appropriate safety measures in place, with no need to test evidence but with a focus on

reaching a workable child-focused agreement. Our experience is that LA FDR can assist in reaching this goal even in cases where there is FV; the issues we experience are the availability of resources to conduct LA FDR and, in some instances the reluctance of legal professionals to engage in this process.

#### Question 25

- As outlined in the information FDRPs give to clients, penalties can be imposed for clients who fail to participate in FDR or who abuse the FDR process. We would strongly advocate for these to be routinely imposed.
- Also, it could be argued, in some circumstances, that the practice and tactics of some legal practitioners amounts to abuse by use of threatening correspondence (on the direction of their clients?) and protracted negotiations/litigation where one party is better able to afford legal representation. Where, by independent assessment, a legal practitioner is assessed as having indulged in abusive behaviour, appropriate sanctions in the form of fines, withdrawal of practising rights could be applied.

#### Question 26

- At present, in conformity with the 2006 amendments to the Family Law Act, most separating couples are required to attempt FDR before potentially lodging an application at the court. Even so, up to 70% of cases who commence FDR in FRCs do not reach an agreed resolution and subsequently those cases either lodge an application at the court, find their own resolution or continue life without a resolution.
- In many FDR cases where agreement is not able to be reached on parenting matters, the points of difference between parents can be relatively minor, yet the parents are unable or unwilling to reach common ground leading to agreement. In such circumstances, FDRPs could be empowered to put in place an interim agreement to operate for a set period of time, after which the parents would return to FDR to ascertain whether it was possible for a longer-lasting agreement to be put in place. Very experienced FDRPs possess the ability to assess the circumstances of both parents and their children and to propose workable parenting arrangements that will be appropriate to the disagreeing parents' needs.
- Alternatively, as proposed in the Parenting Management Hearings, parenting arrangements for parents who had not been successful in FDR could be reached by a process of conciliation, perhaps made available after attempting FDR or possibly, as an alternative to FDR.
- A further consideration is for greater usage and appropriate support of collaborative FDR, which at present has limited application due to availability of suitably trained practitioners and the associated costs to employ a range of professionals. However, collaborative FDR is a cheaper and quicker option than litigation through the courts, and so it should be appropriately advertised and financially supported to provide greater accessibility for separated parents.

#### Question 27

- For some parents, the availability of a process of arbitration could be an attractive option for them to resolve their family disputes. Parents who are struggling to reach agreement on their arrangements for their children will often ask the FDRPs: "What do you think? What should we do here?" As expressed above, experienced FDRPs, in most circumstances, would be in a position to advise parents as to suitable arrangements for their children.
- Bearing in mind the emotional and other pressures associated with parental separation, we believe there is a proportion of separated parents who would be satisfied to enter into a process of arbitration, which would yield parenting arrangements they are legally bound to implement.
- In addition to the FDR pathway for separated parents, a further pathway could be to appear before a suitably qualified arbitrator who would assess the parents' circumstances and reach a decision as to the parenting arrangements to apply. Such a service could operate in conjunction with FDR in the already established FRCs, and would provide for parents who chose the service the opportunity to have an independent person set parenting arrangements (rather than guiding the parties to work out their own solution), providing stability and predictability at a

time when the parents are dealing with a number of other issues that possibly prevent a focused approach to determining child care arrangements

Question 28

• Clients seeking to resolve family law matters can be helped if they are offered options that enable them to more easily access dispute resolution processes. While face-to-face FDR will be the preference for many clients, other clients will find it difficult to attend sessions at an FRC due to work commitments, distance, and childcare responsibilities. As mentioned in Q9 above, where face-to-face FDR is not possible, Interrelate FDRPs use Skype and telephone methods to bring parties together. This also helps reduce our waiting lists as FDRPs from neighbouring regions can proceed with cases that would otherwise be delayed. • At this stage, online FDR processes are not well developed. However we believe the option to access online FDR is in accordance with community expectations regarding accessing services outside of traditional office hours. The development of online options needs to be supported by the sector and developers coming together to understand user experiences and user needs - a user-centred design approach will be important to ensuring the success of any new initiatives. • Impasses and other issues may present difficulties in online FDR and there will need to be an ability for the individuals to quickly transition to different modalities (e.g. from online to face-to-face). This will need to be built in to the design of the system. • As availability of online services increases it is likely that service providers will face challenges in responding to government contracts that stipulate service provision occur only in certain geographical catchment areas. Contracts will need to be flexible to allow for this.

Question 29 -

Question 30

• It would appear to be self-evident that family inclusive decision-making processes be incorporated into the family law system. These processes have been developed by cultural groups over a long period, and as such, they are respected and provide greater authority and validity than processes which may be seen as culturally inappropriate and not workable in particular family and community environments. • It would seem that family inclusive decision-making processes can only be applied outside of the court, as the court requires certain protocols and behaviours which would not be compatible to family inclusive decision-making. The obvious platform for family inclusive decision-making is FDR, where a degree of flexibility exists in terms of the process and where the skills of trained FDRPs can be applied to facilitate the involvement of family members other than the biological parents. • A standard FDR model can be utilised as the framework for family inclusive decision-making to determine the issues for resolution, to identify referral opportunities and other sources of support, and to work towards reaching agreements for the care and welfare of children based on a spirit of goodwill, the willingness to negotiate and a desire to reduce conflict and achieve outcomes in the best interests of children. At the end of the process, it could be expected that a product, i.e., a parenting agreement, would be produced identifying the roles and responsibilities that would be expected to extend beyond the biological parents. • As appropriate, further training and education will be necessary for FDRPs to understand the relevant family dynamics and the accepted steps to be taken towards reaching decisions. • Given that under this model it is likely that there will be a large number of people involved within the mediation process, services may need to offer more sessions and cater for more individuals and thus need to consider flexible service delivery including co-mediation. There are obviously additional human resource costs here. • In cases where there are family issues not necessarily related to separation but that may lead to the need for family court intervention, a process known as family group conferencing may be an appropriate alternate method of dispute resolution. Interrelate offers this service, through which family members are guided through discussions of their issues, sources of support are identified, and a plan is



developed by the family. The practitioner helps to ensure the plan is realistic and goals are achievable. As a more low-key approach to resolving family disputes, we suggest further attention be given to how the family law system can support this model.

Question 31

- Currently the Post Separation Cooperative Parenting (PSCP) service is intended to provide the bridge between services and to assist those clients in high conflict (often with multiple and complex issues) to traverse the difficult family law and related support services (e.g. counselling, group education, AOD, mental health etc). These services are drastically under-funded for them to effectively undertake this role. Across family relationship funded services the case management offered is minimal. As per Interrelate's answer to Q4, if clients were allocated a specialist case worker/manager to assist and direct clients from the beginning this would assist clients to be less likely to slip through the gaps between services. Equally it would provide an individual who could advocate for clients and report back to courts about services accessed and progress made.
- Family Law Pathways Networks (FLPN) have been established to promote links between legal professionals and family service providers. We would suggest that increasing funding to FLPN coordinators to allow more dissemination channels and a greater number of events to be offered would support a higher level of interaction between the two professions. The flow-on effects would hopefully lead to an improved culture of understanding within the FL system.

Question 32 -

Question 33 -

Question 34 -

Question 35 -

Question 36 -

Question 37

- The Family Law Act refers to the need for parents to make arrangements for the care of their children that are "in the best interests of the children". To provide reality to this phrase, FDR processes need to be structured appropriately so that there is every chance that arrangements will be agreed "in the best interests of children".
- At present, FDR practice varies both in terms of being child-focused or when child-inclusive processes are applied. This variability comes about due to the limitations of funding and the need for organisations to apply that funding in ways that achieve optimal outcomes for clients. Child inclusive processes, especially child consultation and parent feedback add significant cost to the conduct of FDR. Passing these costs across to our clients, in many cases, is not possible. We are thus unable to enact the level of child consultation that we would like due to the funding envelope and high demand for services.
- As FRCs are operated by a range of different organisations with varying policies, procedures, and models of FDR, it is unsurprising that practices vary across providers. Little evaluation of the various models of FDR being implemented has been undertaken, so what works best is undetermined. A degree of uniformity in FDR practices would mean a more consistent client experience and provide a more reliable benchmark for assessing outcomes. This could be brought about by, for example, regular clinical audits assessing key attributes for child-focussed practice, including policies and procedures, training and supervision of staff. Organisations would need to have staff that can demonstrate the appropriate skillset required to work in a child focussed way, being able to assess parental reflective capacity, appropriately engage and talk with children, and feed this back in a safe and constructive way.

Question 38

- While it has been shown that there is considerable benefit to including the children's perspective of their needs, apprehensions and feelings, it is very important that children remain safe and are not subject to any processes which could be detrimental to their

wellbeing. Depending upon the ages of children, it is accepted that their parents make decisions for their children that take into account the thoughts and ideas of their children. • Parents becoming better informed through processes that introduce the children's voice to FDR means that in most circumstances they can develop childcare and parenting plans which have a better chance of favourable and sustainable outcomes. Further, parents who increase their knowledge of their children's feelings and fears can be influenced to review their own behaviours towards their children and the other parent. • For children, involvement in decision-making and dispute resolution processes may compound issues if their parents are not psychologically or emotionally ready to receive feedback. • As noted above, involving children in FDR needs to be undertaken with sensitivity and great care only by those appropriately qualified to do so. Each situation should be assessed on its merits and with full understanding of the parental relationship and the parents' ability to embrace input from their children. There is some indication that within the sector in some organisations child consultations are being carried out routinely before the parents' capacity to utilise the output from such consultation has been assessed. We would caution against such practice.

#### Question 39

• Interrelate is concerned that no questions included in the issues paper allows for discussion or feedback regarding the Children's Contact Services (CCSs). Interrelate currently operates six CCSs across NSW. This work is invaluable and is often the only place where some children have their interaction with one of their parents. Under our funding we are, wherever possible, to assist parents transition to self-managed arrangements. This work is highly complex, yet is totally un-regulated. The guidelines for this work that are set down by the AGD are considered good practice guidelines but alignment with them is considered optional. Any FL system that is wanting to protect children and ensure that everything is done in the children's interests must mandate the appropriate conduct and operation of CCSs – just as occurs for any childcare or family day care service. Given the long waiting times for Government-funded CCSs, brought about by the high demand and the understandable desperation of parents wanting to see their children, private providers have entered the market, often charging high fees and offering questionable service, where safety may not always be the prime consideration. This is a very concerning area that we believe the FL review must consider. • Consequently we believe that there is a requirement for greater funding to increase the availability of CCSs for parents and children, both in metropolitan and regional and rural areas. Additionally, to ensure greater accountability there needs to be the establishment of a quality assurance framework which includes mandatory accreditation. • There is a dearth of research in this area around what works in CCSs when engaging and assisting a family with great complexity as service providers attempt to balance the child safety and best interests, whilst ensuring ongoing relationship with their parent(s). We would request that funding be made available to undertake key research in this area.

#### Question 40 -

#### Question 41

• Numerous competencies could be seen as core for professionals working in the family law system. A selection follows: – Able to accurately assess a client's circumstances and needs; – Respect for the client, and service delivery that is client-focused; – To act, at all times, to cause no harm and wherever possible to keep clients and their children safe and protected; – To deliver services in a timely and professional manner; – To act in accordance with accepted ethical principles; – Skills appropriate to the service being delivered; – To maintain impartiality and confidentiality as appropriate to the service being delivered; – To adhere to accepted models, policies and procedures relating to the service delivered; • The above competencies should, of course, rest on appropriate entry level qualifications, such as, for FDRPs a law or social science degree or the Graduate Diploma in FDR, or Certificate IV in

CCSs for CCS workers. The lack of availability of the Cert IV in CCS likely contributes to the lack of experience and expertise in this part of the sector. • Additionally, organisations that employ professionals need to have in place induction and initial training based on the acquisition of appropriate competencies. • Also, it is imperative that organisations that employ professionals have in place effective clinical supervision, professional development and performance management processes and systems to ensure that competencies are developed and maintained. Further oversight is provided by internal and external governance processes and compliance with standards set by service funders. • The processes used by organisations to recruit candidates and to assist them in maintaining and improving their practice through professional development and supervision, need to be audited by a relevant agency. Evidence of quality assurance systems should be supplemented by regular practice audits to ensure that practitioners are delivering services that meet acceptable standards. Interrelate has developed a quality staffing framework and supervision systems to enable this. Achievement against these processes are part of manager's KPIs.

Question 42 -

Question 43

• In the family law system, a fundamental aim is to eliminate or to minimise conflict, due, primarily, to the adverse impact on children and the need for parents to be able to implement workable arrangements for the care and welfare of their children. • At Interrelate, we believe that, in general terms, non-legal processes such as mediation and counselling have a specific focus to reduce conflict, to seek areas of common ground, to engender cooperation and collaboration and to encourage respect for the other parent and the role that parent has in the upbringing of children. • On the other hand, due to the fact that legal processes are adversarial, even before entering the court, there are practices which exacerbate conflict. For example, our FDRPs could give examples of cases where there is legal correspondence in which unreasonable demands are required of one parent, and others where it seems that the advice given could be intended to antagonise the other parent. These practices seem to be based on "a win at all cost" approach which it is admitted may be on the orders of a parent and not instigated by a legal practitioner. However, in family law matters, it could become the prescribed practice that family lawyers or other lawyers acting on family law matters are not permitted to engage in practices which have the potential to exacerbate conflict. This would give them the imprimatur to act against client instruction in these instances. • In the court system, the practice of lawyers representing parents is to submit affidavits from each parent which tend to be critical of the other parent to demonstrate that parent's unsuitability for the arrangements being sought. This practice, naturally, is not conducive to reducing conflict and most probably has the opposite effect; despite this, once a judgement is obtained or orders by other means parents are expected to harmoniously work together to implement the ordered arrangements. It is suggested that the court processes be amended so that the production of evidence is for the purpose of demonstrating what arrangements would be in the best interests of children without including evidence designed to denigrate and devalue the character and capability of a parent by descriptions of past family interactions. If a parent has a genuine incapacity to care for children this would need to be demonstrated and supported by appropriate certification and professional assessments.

Question 44 -

Question 45 -

Question 46 -

Question 47 -

Other comments?

• When the Family Law Act was brought into place in 1975, one of the primary purposes at that time was to significantly overhaul the grounds and processes for couples to divorce. Prior

to the introduction of the Family Law Act, the Matrimonial Causes Act was in place that set out the need to demonstrate one of fourteen specified causes to be granted a divorce. It was very widely recognised that this legislation had become inappropriate on a number of levels and hence, the introduction of 'no fault' divorce. To demonstrate the magnitude and effectiveness of this change to divorce, in the next twelve months, it is understood the divorce rate quadrupled and has, by and large, remains static since that time. • Forty-three years later, we believe another fundamental re-thinking of family law is required, as society and our community has undergone further change, and research has been expanded so that everyone has become better informed about separation and its impacts particularly upon children. • While it seemed obvious in 1975 that the court system was the most appropriate venue for disputes about the care of children after separation to be resolved, a strong body of research now indicates that adversarial processes to resolve parenting matters are not in the best interests of children. However, the best interests of children is articulated as of paramount importance in the Family Law Act. • The 2006 amendments to the FLA brought about greater availability and usage of non-court processes for the resolution of parenting matters, and these amendments were a significant step in the right direction and there has been the very successful establishment of 65 FRCs. • We would advocate that as part of the ALRC Review, very serious consideration be given to how the trend in 2006 can be enhanced and expanded so that, in the fullness of time, no parenting matters after separation are resolved through adversarial processes. As set out in our responses above, it has been explained how it is incongruous to expect parents will be pitted against one another in court one day and the next they will act cooperatively and collaboratively to care for their children. Self-determination processes such as FDR which can take a number of forms and which encourage the reduction or elimination of conflict, the development of improved communication between parents and model good will and cooperation are better equipped vehicles to embrace working in the best interests of children and to facilitate workable arrangements for parents to care for their children.

File

The results of this submission may be viewed at:

<https://www.alrc.gov.au/node/8362/submission/7845>