

21 May 2018

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Via Email Only: familylaw@alrc.gov.au

Dear Panel Members,

Submission to the Review of the Family Law System

Hume Riverina Community Legal Service (HRCLS) welcomes the opportunity to make a submission on the Review of the Family Law System.

About HRCLS

HRCLS is uniquely positioned as a cross border community legal centre. Based in Albury-Wodonga on the Victorian–New South Wales border, the centre receives Commonwealth, Victorian and NSW funding to provide generalist legal services to a vast catchment area of 17 Local Government Areas in North East Victoria and the Southern Riverina of New South Wales. HRCLS is classed as a regional, rural and remote community legal centre.

Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues.

HRCLS assists those who are vulnerable and disadvantaged, and in particular, people who are not eligible for legal aid, but cannot afford a private lawyer.

We value a society where all people in our communities enjoy equality of opportunity and have equal access to the law.

General Comments

HRCLS endorses the submissions made by the following organisations:

1. Joint submission by Community Legal Centres NSW (CLCNSW) & the Community Legal Centres NSW Regional, Rural and Remote (RRR) network; and


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Upper Murray Family Care

2. Women's Legal Services Australia.

Furthermore, HRCLS participated in the following sessions in response to the Issues paper:

- workshop in Katoomba at the RRR roadshow to discuss the review submissions made by the Women's Legal Services Australia; and
- conversation with representatives from the Australian Law Reform Commission at HRCLS.

In support of the submissions, we provide the following:

Lack of sittings at the Albury Registry of the Federal Circuit Court causing clients to travel

When matters are listed in Registries, other than the Albury Registry, telephone leave is not always provided and judicial officers often expect clients to attend Court in person. Often, clients will need to travel on a few occasions – for Court events and also to attend upon Family Consultants. In some cases our clients are paying to travel to Court events, whether by car or public transport, and are having to pay for accommodation the night before, given that Court events usually start early in the morning.

A large amount of our clients also do not have knowledge of public transport in Melbourne, and have no idea how to get around. This leads to clients often attending on Court events, Family Consultants or Experts being tired, exhausted and stressed and in all likelihood placing them at a disadvantage.

By way of example, clients from our region have travelled to Melbourne, Parramatta, Wollongong, Canberra, Wagga Wagga and Shepparton to attend Court events. This does not include clients who are travelling to other States such as Tasmania, South Australia and Queensland.

Case studies:

- *Client attends at HRCLS following the father withholding the child from her. HRCLS files urgent recovery proceedings in the Albury registry, however, due to there being only 5 sittings during the year in Albury, the matter is sent to the Melbourne Registry to be listed due to the urgency. The matter is listed within a week, however the client is required to travel to Melbourne, some 320km each way, for the listing at the client's cost, so that she can appear at Court with a barrister. The recovery application was successful.*
- *A client sought advice from HRCLS after the mother withheld the two children of the relationship, in contravention of Final Orders which provided that the*

children live with our client. HRCLS applied to Legal Aid for a grant to file a recovery application, however, before this occurred, the mother filed in the Melbourne Registry of the Federal Circuit Court seeking that the final orders be varied to provide for the children to live with her.

HRCLS filed a recovery application by way of response and sought that the matter be listed urgently, noting that the children were not attending school while they were in the mother's care. The court listed the matter four weeks later, stating that the matter could not be listed any sooner.

HRCLS briefed Counsel to appear at the listing and the client travelled to Melbourne from Wodonga to appear at Court. An order was made for the parties to attend on a section 11F conference with a Family Consultant at the Melbourne registry a few days later and listed before the Court that same afternoon. Following the Family Consultant giving evidence orally, the Court dismissed all applications and the Final Orders remained in place.

The client was disadvantaged by the delays and having to attend a metropolitan Court on numerous occasions.

Small property pools and issues with obtaining financial disclosure

Many of HRCLS clients have small property pools that require disclosure before advice can be given. It is often difficult to get all parties to make financial disclosure. This is especially the case where there is domestic violence, and one party continues to withhold information often as a form of control.

Case study:

- *A victim of significant domestic violence attended HRCLS seeking advice about obtaining a divorce and a property settlement. The parties separated approximately nine years ago after a 20 year marriage, but had not yet divorced. The only asset of the relationship was the husband's superannuation, however, the client had no clue as to which fund held the superannuation or the value of the superannuation.*

HRCLS wrote a letter to the husband seeking financial disclosure, however, there was no response by the husband. HRCLS then organised mediation through Legal Aid, however, to date there has been no response from the husband. In all likelihood, the client will need to commence proceedings, which is traumatic for the client, simply to obtain the husband's disclosure so that a decision can be made whether a property settlement is appropriate.

On many occasions, HRCLS clients have decided not to pursue a property settlement as it is often too distressing or difficult for them. This is especially the case for victims of domestic violence.

Clients in such situations often find it difficult to engage a lawyer when legal aid may not be available and they have limited resources to privately fund. The system is often too complicated for many clients to navigate personally.

Lack of funding and resources causes delay

In addition to limited Court sittings in the Region, there are limited resources available such as court report writers, counsellors, psychological and psychiatric experts. As a result, clients are required to travel and are subject to long waiting periods, particularly where many experts will not undertake legal aid work.

Case study:

- *HRCLS client with children's proceedings in the Federal Circuit Court has had to wait over 8 months for a psychiatric report to be prepared. The client will need to travel to Melbourne for the assessment as there is a lack of experts in the regional area. This means the client will need to pay to travel to Melbourne and possibly for accommodation in Melbourne depending on the time of the assessment. In the meantime the matter is unable to progress.*

Victim faces perpetrator of domestic violence at Federal Circuit Court

At the Albury Registry of the Federal Circuit Court there is only one entry and exit to both the Registry and the Court. Whilst there is a small safety room available at the Court, clients need to walk into the Registry to gain access. Often the client will need to walk past the perpetrator. The client may then need to enter the Court and face the perpetrator.

Case study:

- *HRCLS client, who is the victim of significant domestic violence at the hands of her former partner, attends Court in relation to children's matters with a HRCLS lawyer. She is frightened to enter the Court. She knows that she may come face to face with the perpetrator. This is an additional concern to her in an already unfamiliar Court environment.*

Client forced to self-represent at Interim hearing

Many clients are disadvantaged by not being able to obtain a grant of legal aid and having to self-represent in Court. The effect of this is magnified when clients are forced to travel great distances to other Court locations when they are not able to

appear in their closest Court, or consent is not provided for them to appear by telephone.

Case study:

- *HRCLS client had Legal Aid NSW funding for children's proceedings. The matter was listed for Interim hearing in the Federal Circuit Court at Canberra, over three and a half hours from Wodonga by car. HRCLS applied to the Court to appear by telephone on the listing, however, this was refused. In addition, Legal Aid NSW refused to grant funds for HRCLS to brief an Agent and accordingly, the client was forced to travel to Canberra and represent herself.*

These case studies illustrate only some of the challenges faced by HRCLS clients in the family law system. The system itself can be complicated and difficult to navigate. We find that the additional constraints of poor regional resources such as Court sittings, experts, travel and costs only serve to further disadvantage our clients.

We thank you for considering our submission. Should you require any further information please do not hesitate to contact us on (02) 6055 8090 or via email at cls@umfc.com.au.

Yours faithfully,



Alison Maher
Senior Family Lawyer