



Response to
The Review of the
FAMILY LAW
SYSTEM
Issues Paper
2018

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ABOUT FMC

FMC Mediation and Counselling is a not for profit agency in Australia that has been providing family dispute resolution support, relationship support, psychological services and financial counselling for over thirty years.

During this time, we have evolved into one of the most successful providers of relationship services in Victoria. From 21 locations, FMC supports over 9000 Victorians every year, many of whom are experiencing family, relationship, financial issues and other related challenges.

FMC enjoys a strong relationship with organisations in the community, in the not-for-profit sector and maintains excellent Government ties. During this time we have developed a reputation as a high performing and trusted partner providing services. Creative and innovative thinking is instilled in our culture; with a core focus on quality, performance and consumer-centric service delivery.

Our doors are open to a wide range of people from all walks of life. Our family and relationship services range from alternate dispute resolution and counselling services to support and conflict resolution services for older people. This includes a suite of school and parent group programs offering in-school programs from professional development for staff to individual psychological services for students.

FMC & FAMILY LAW CONTEXT

Family Dispute Resolution: FMC’s role in its evolution

In 1983 the cost of legal aid in family law matters and the fact that it formed the largest and fastest growing component of the legal aid budget was identified as a concern. The Federal Government announced funding for two pilot projects to provide services aimed at preventing and resolving family disputes to reduce the need for Family Court participation. The Victorian pilot was established at Noble Park and became known as the Family Mediation Centre. The centre opened to the public on February 4th 1985. Its objective was to be a first stop agency for families at risk of breakdown, an informal mediation service to avoid the costs and traumas of the court system and to create opportunities for separating couples to make arrangements which best meet the needs of their children and themselves. The Centre was exposed to an evaluation commissioned by the Federal Government. The evaluation confirmed that the Centre was meeting the ambitious objectives set for it. The other pilot project in NSW was closed down after six months.

FMC Mediation & Counselling over the last 33 years has significantly broadened its services. The suite of family support services are as below:



- FMC Assist service provides an intake service that assesses risk, reviews needs and books clients straight into appointments. It also provides warm referrals and pathway referral advice.
- All FMC practitioners are Common Risk Assessment Framework (CRAF) trained for responding to the risk of family violence, and to assess for safety risks throughout the delivery of their practice.

In 2018 FMC will be providing services to over 9000 clients. The demographic of our clients has the following profile.

Gender



Highest Level of Education



Tertiary, University or Institutes	47.6%
Secondary Year 12	21.4%
Secondary Year 10	21.6%
Primary	9.1%
Never Attended School	0.2%

Current Income



\$0 – \$25,000	48.4%
\$25,001 – \$50,000	24.9%
\$50,001 – \$100,000	21.1%
\$100,001 – \$150,000	4.8%
Over \$150,000	0.8%

Centrelink Payments

49% of responded clients receive centrelink benefits.

Employment Status



Employed	58.1%
Unemployed – Seeking Employment	10.9%
Not in the labour force	24.6%
Retired	1.1%
N/A (Person aged under 15 years)	5.4%

Marital Status



INTRODUCTION

FMC welcomes the opportunity to provide a response to the Review of the Family Law System Issues paper.

FMC has also contributed through its participation in the working group of the Family Relationship Services of Australia (FRSA) response to the issues paper. In this paper FMC articulates its own response based on 33 years' experience of participation in the Family Law System. We have drawn upon staff reflections across our 21 locations across Victoria.

Our comments in this response reflect the need for a review across the whole of the system. Fragmentation between services and systems and disjoints in the client experience pose many issues that we articulate in this response. These stressors and disjoints pose risks for clients where conflict is elevated and violent and more generally for children for whom exposure to elevated parental conflict can have detrimental effect upon their long-term development. We believe there is a general need for review and mapping of the key stress points in the system. Legal remedies can protect however they cannot solve the fractures. Consideration of the journey of family members across the wide traverse of State and Federal systems experiences is required.

Principles

The FMC response is based on what we consider to be the key principles of an ideal future system to cater for separating families, and the attributes of such an ideal system. Acknowledging the complex nature of families can appropriately shape a service system that is holistic, integrated, flexible and responsive.

- Acknowledging that family law matters can no longer be resolved in isolation from other key services to address issues around substance abuse; mental health; family violence; financial insecurity
- Delivering decisions and arrangements that are in the best interest of the wellbeing and safety of children, including by ensuring and maintaining their participation in parent's decision-making processes
- Integrating and sharing information between services (without compromising principles of confidentiality and privacy) in a way that ensures families are clearly guided through a streamlined system in which conflict is minimised and wellbeing is maximised;
- A stronger focus on prevention and early intervention in the delivery of services and education of families
- Better recognising and responding to the effects of family violence
- Better accommodation of the diversity and complexity of family and parenting relationships
- Ensuring Family Law Services are appropriately and adequately funded to meet the needs of families and;
- Ensuring and maintaining the wellbeing and competency of all practitioners working in the Family Law System.

FMC has structured its response into six sections that reflect the key areas of concern.

SECTION 1 Children's Experiences & Perspectives of Parental Separation

i. Support & Barriers

We think the key barrier to a better experience for children is non-child friendly systems. This results in children not being clients/participants in their own right. This child element in the process of Family Dispute Resolution (FDR) is not clearly funded. Depending upon the location and services available the cost can also be a barrier for children participating in counselling, parent/child mediation/family therapy and Child Informed Mediation (CIM). We consider that more attention needs to be paid to a systematic approach to define and fund a broader more "family eco-system" approach.

In the delivery of an alternative dispute resolution pathway to the family court the practice of CIM is essential in ensuring that separating couples feel compelled to move their focus away from their interpersonal issues and onto the wellbeing of the child. We consider that the likelihood and quality of resolution is enhanced through the voice of the child coming into the mediation. Children are significantly affected by these decisions and therefore deserve a voice. Continual monitoring and safety planning by the practitioner ensures safety is maintained.

ii. Supporting children in situations of parental conflict

In the conduct of FDR where CIM is used, agencies place a high priority on ensuring that children are not placed in a position of telling their stories to different professionals. CIM is only provided where it is assessed as being appropriate. CIM is conducted through providing to separating families several children focussed sessions, where children can talk about how they are managing and what is important to them. (At no time, however, is a child put in the position of having to make decisions.) This session is not counselling and is integral to CIM. The context of this is clear for the whole family: that parents are coming to mediation to decide on the best ways to care for their children together and they really wish to include their children's thoughts and feelings in their decision making. The Child Consultant's role is finding out what it is like to be the child at the moment. The child sends messages to the parents through the Child Consultant. Sometimes it is necessary to give these messages separately. This feedback often opens into a discussion as to what parenting arrangements would best suit the children's needs now. It provides insight into the children's thoughts and development needs which can be reflected in the final parenting plan. Feedback from the child consultant sometimes confirms parental concerns, and sometimes is new information, so it is always conveyed with sensitivity and care. This helps parents make more appropriate decisions affecting children and for many parents, is a turning point in resolving their dispute.

FMC raises the issue that the beneficial service of CIM is voluntary and dependent upon the availability of child consultants. Agreement to this service is needed from both parents, and mediators assess suitability regarding a constructive engagement with the child's voice. FMC considers that consideration should be given to the prevalence of CIM utilisation and the means by which greater employment of this complementary service could be deployed.

Some agencies also provide a Parent Adolescent mediation – which helps young people and their families to resolve conflict, and to develop new styles of communication. It allows for equal input from both family members to decide how their conflict will be resolved. Mediation tends to be short term and focuses on resolving current issues. FMC has found it useful to diminish the risk of youth homelessness and through subsequent additional counselling, can assist particularly young men with relationship boundary setting and emotional regulation.

Additionally, where decisions are being made for infants and young children (0-4 years), a child consultant can be included in the Family Dispute Resolution/mediation process to help inform parents in planning for their care.

FMC is concerned that in question 37 point 264 of the issues paper and throughout the document there is a general absence of reference to a current child inclusive approach that supports the FDR practice. FMC provides a funded program called the 'Supporting Children after Separation'. (See below)

The Supporting Children After Separation Program

The Supporting Children after Separation Program (SCASP) is specifically for children whose parents are separating or divorcing. It is aimed at helping children understand and manage the changes in their family relationship after the separation of their parents. The outcomes achieved for children/young people are:

- An increased ability to better understand and manage their feelings
- Reduction of self-blame and feeling responsible for stopping their parents' conflict
- Decreased levels of distress and minimised challenging behaviours
- Improved communication and problem-solving capabilities
- An increased ability by them to trust and form healthy adult relationships.

The SCASP program also includes a range of services from preventative education to individual counselling. Individual counselling for children and young people gives them the opportunity to express their thoughts and feelings about their parents' separation in a safe environment. A range of therapies depending on the age and preference of the child/young person are used, including drawing, play, story-telling and drama, which has proven to be very successful in allowing children to express themselves.

This program is provided to 400 clients every year by FMC and has a very good outcome report of 78% of clients reporting positive outcomes.

iii. What needs improvement

FMC believes that a superior functioning Family Law System would have the attributes of accessibility and participation for all children. We think that consideration should be given to:

- Lowering the age where a child is listened to by the court;
- Where considered appropriate to make it standard practice for a child to be consulted;
- Having recommended mechanisms like Child Informed Mediation in place to ensure the voice of the child is being included in every system decision where appropriate;
- Reviewing funding to ensure children are better supported through their journey through the Family Law system. (i.e Broaden the SCASP program to more catchments)

Section 60B (2) of the Family Law Act¹ contains relevant principles, except when it is or would be contrary to a child's best interests. Regarding these principles, the section would be enhanced by the inclusion of a clause regarding children's rights to have a relationship with both of their parents without parental conflict between their parents. While both parents may express and genuinely feel positive connection with their children, an attack on the other parent in the presence of the child is often an attack on part of the identity of the child, who is made up of both parents. A safe relationship

¹ Family Law Act 1975 (Cth).

is both physical and emotional Parental conflict has a cumulative effect upon children. This clause would prompt consideration in how the parents are conducting themselves and to place the child first.

SECTION 2 Services to better address parenting and/or property disputes

i. Support & Barriers

- FMC supports the proposition that the best interest of the child is the paramount consideration but should also apply to adjustment of property:
- FDR should be mandatory for property to allow for the parents to be given information and support to understand the family law principles that underpin Property Division in Family Law
- Consideration of the complexity and value of property would determine the most appropriate service to resolve the dispute. High value, high complexity assets would not be appropriate.
- That a focus should be given to considering the children's needs financially, emotionally, and academically thereby allowing parents to allocate specific amounts to these issues separate to child support
- In FMC's experience this becomes particularly relevant when parents become entrenched in their positions but are only \$5,000-\$10,000 apart. This is a huge sum in their view but would quickly be spent in legal costs so they agree to put this money into a joint account to support the cost of raising children (e.g. camps fees etc)
- To allow parents to be creative in their solutions to property settlement and enable one parent to remain in the family home for the sake of stability of the children.

Additionally, it should be noted that in some cases parties are unable to consider or resolve children's matters without clarity on future living circumstances. For example, it may be difficult to agree on care arrangements for children in circumstances where the family home may need to be sold, and the parties do not know what level of money they will receive and therefore where they will be living. Geographic distance can impact on the care arrangements made. What if a parent had to move back with parents, or into a share house? These factors impact on what are the appropriate arrangements are for the care of the children. These situations illustrate the proposition that dealing with children's and property matters together will deliver better outcomes for the child.

ii. How FMC supports parenting and property dispute resolution

When property mediation is being conducted the practice is generally to first provide a children's session, followed by a property session. If both children and, where appropriate, property matters were mandatory, a more integrated approach could be considered where both matters are dealt. A review of the model with both approaches may be needed to be further investigated and subsequent recommendations on best practice. FMC's observation is that practice varies but Agencies would generally respond to the most important matter first. .

iii. What needs improvement

The Royal Commission into Family Violence noted the importance of obtaining a fair property split in assisting victims of family violence to regain stability following separation, yet victims of family violence are often put at disadvantage in family law property settlements.²

Obtaining legal advice and resolution of family law property disputes at a cost that is affordable and proportionate to the value of assets in dispute is a problem, particularly for low value (including net

² Royal Commission into Family Violence, Report and Recommendations (State of Victoria, 2016) Volume IV, 211.

debt) property disputes.³ Research by the Productivity Commission has shown that parties with asset pools under \$40,000 (low asset pool range) and between \$40,000 and \$139,000 (low-medium range) were less likely to use lawyers to help them to resolve their family law financial dispute than those with more assets, because of the high cost of legal representation.⁴ Parties in the low and low-to-medium asset pool range are much less likely to use Family Dispute Resolution or court services to resolve their dispute than those with more assets.⁵ This means it is much less likely that an agreement will be made to divide property and raises questions about the appropriateness of agreements or outcomes arrived at in these cases.⁶

FMC observes that Property Mediation is not widely offered and used by clients across the sector. This is most likely due to many reasons. Firstly, this is likely to be because there is currently no obligation to make property mediation mandatory as is the current situation for children. Secondly lawyers may not be encouraging of this as they would view this as their role. Lastly in a general sense there is generally lower level of proficiency in this area of FDR practice as it is not as commonly employed. This last reason may be a capacity building issue.

An improved approach would be to offer separating/ed couples a streamlined approach that unites the FDR property mediation process through to the Family Court incorporating a legal checkpoint to comply with Court requirements. This would be a low-cost option for resolving smaller to medium size property matters. In considering this approach the first requirement for clients is to have some knowledge of the FLA act principles. To this end FMC currently runs a Property in Focus session to facilitate this for clients prepared to engage in property settlement. After this individual session for an intake assessment is held. In the consultation, internet access is recommended so that clients can produce up to date details of their financial situation. FMC notes that there are tools available to assist clients (e.g. the Family Court Website's DIY kit). In the FDR sector Practitioners have also developed their own excel sheets to assist clients in their preparation. Some Family Lawyers use an online resource 'app' called 'Settify' that takes their client through a preparation process for negotiation. This app is a family lawyer tool for the benefit of their client not a two-party mediation process tool. It does however offer a superior client interactive experience compared to a downloadable kit or factsheets. To be binding the agreement will require independent legal advice. The agreement where desired may then be filed with the Family Court for consent orders. The Court load would benefit from having more agreements being filed rather than being contested. An additional inducement to have a property mediation agreement could be a lower filing fee. FMC notes that there are pilots in Victoria's Magistrate Court trialling the Court taking on some load from the Federal Circuit Court.

An option to help victims of family violence better obtain resolution of their family law financial disputes, would be to implement Recommendation⁷ of the Victorian Royal Commission into Family Violence which recommends Victorian Magistrates' Courts use their existing powers under the Family Law Act to resolve family law property disputes, at the same time as family violence intervention orders and parenting orders are made.

Currently Section 46(1) Family Law Act 1975 limits State and Territory magistrates' courts to determining contested family law property disputes where the total value of property is under \$20,000. This amount has been increased only once, from \$1,000 to \$20,000 in 1988.⁸ Royal Commission into Family Violence and the Family Law Council recommended that the Commonwealth Parliament

³ Productivity Commission, Access to Justice Arrangements Inquiry Report (Commonwealth of Australia, No 72, 2014) Volume 2, 870.

⁴ Ibid, 871-2.

⁵ Ibid, 872.

⁶ Ibid.

⁷ Royal Commission into Family Violence, Report and Recommendations (State of Victoria, 2016) Volume IV, 211-212.

⁸ Ibid, 212.

increase the jurisdictional limit on state and territory magistrates' level courts hearing family law property disputes.⁹

The proposed amendment to section 46(1) Family Law Act 1975¹⁰ contained in item 10 of the Exposure Draft of the Family Law Amendment (Family Violence and Other Measures) Bill 2017 is acceptable, providing that the amount set in the regulations mirrors the upper financial jurisdictional limit on civil dispute able to be heard by State and Territory magistrates' courts.

FMC is aware that there are considerations to amend section 46(1) Family Law Act 1975 to increase the \$20,000 limit on property disputes able to be heard by State and Territory magistrates' courts. The jurisdictional limit for hearing family law property disputes should mirror the upper limit on civil dispute able to be heard by State and Territory magistrates' courts.¹¹ FMC contends that an alternative and more cost-effective way to facilitate this would be to have a mandatory property mediation sit within the obligations of the FDR process. This could be supplemented by the court being able to refer to a recognised property mediation service for the appropriate property disputes.

This changes to the family law act as noted above are in response to capacity overload in the Family Court. FMC is suggesting that using the levers of obligation and client volume to 'fix' a systematic issue is a Band-Aid approach. Moving cases to another court is just another process for clients to encounter. A systematic issue requires a systematic response. Regarding property matters the 'system' needs mapping of various client's journey through the settlement process. Changing Laws will assist but it is a checkpoint approach rather than an integrated system approach. The need for an end to end unified model is evident. FMC's response to the issues paper is that in the property area there is no streamlined experience that a client can easily comprehend or experience. In response to this issue we think that Property is an ideal area of the Family Law to focus on a client journey approach to define the requirements for an integrated approach and to trial a pilot of a proposed model with many client journey variables. AIFS¹² shows that the Family Court handles the least numbers of disputes. Rather than fix' the problem at the bottleneck it would seem more prudent to work on the flow before the bottleneck. An outcome of this could be the initiation of pilots like the pilot of Parent Management hearings.

A last but key point is the unrecognised impact upon children from parents in an elevated conflict state due to property dispute. The longer it takes to resolve the dispute the deeper the impact upon children's psyche in witnessing high parental conflict. So a quicker response and process is required to reduce the detrimental effect of this conflict. This should be a prime consideration for resolving property disputes prior to a court process.

FMC recognises that incremental changes to a system are easier to initiate and carry less risk however a system review entails a system consideration. Taking a property stream approach and mapping the encounters of clients through this is vital to develop a new model to improve outcomes and reduce the system load. The grave issue of Family Violence is being responded to across Family Law systems across all areas. A future property model would require the screening and response to this risk. For those clients where there is not this risk a unified model would offer the advantages of less cost and quicker resolution.

⁹ Ibid.

¹⁰ Exposure Draft of the Family Law Amendment (Family Violence and Other Measures) Bill 2017 item 10.

¹¹ Currently \$100,000 in the State of Victoria: Magistrates Court Act 1989 s 3(1).

¹² Qu, Luxia (2016). 'Cohabiting and married parents who separate: Does this distinction have any relevance for service providers?' (Paper presented at Family & Relationship Services Australian National Conferences, 29 November-1 December, Canberra)

SECTION 3 Family Violence

i. Whole of family risk & support

The whole of family

FMC is concerned that after the issue of a 60i certificate the family is 'lost' to the family law system support. Given the long time it may take to appear before court and the risk of an elevation of conflict, FMC believes that consideration should be given to a specifically funded and obligatory therapeutic service for children whilst their parents' legal action waits to be heard. This would acknowledge the impact of psychological and emotional abuse upon children and enable continuity of support whilst the wait for a court happens.

Although there are existing services for victims, we think that children could be better supported through the family law system. This could be offered/ recommended/ mandated at the certificate issuing point. Currently FMC offers services such as Supporting Children after Separation or a Parenting program to parents. With some parents in a situation of elevated conflict there is reduced likelihood of co-operation in taking up on the service. (Any recommendation would be based on a safety assessment of the child.)

With regards to family violence consideration should also be given to acts committed by or against a family member by anyone. Additionally, consideration should also be given to exposure to evident violence by a family member against a pet even if the act is not observed

Certificate categories

The current 60i certificate have categories of issue. FMC observes that with the current categories parents are often focussed on endeavouring to tick the category box of "One party has not made a genuine effort". This focus on certificate type can work against a smooth process. Categories cause perceived judgment bias by the FDR practitioner. A review of certificates is in order, it may be that a yes or no category may be more appropriate.

Children

Children: FMC works closely with children who are affected by parents in high conflict situations. The impact of this witnessing can be long term and lifelong. The effect is cumulative. On this basis FMC believes that the service must respond to or take this into account.

Child/Parent relationship deterioration risk

FMC observes that there are significant waits for the use of child contact centres. This loss of child contact creates parent/child relationship issues for the non-caring parent. The 'system' does not have an adequate response to this situation. FMC believes that a model of ongoing relationship engagement is appropriate using a family therapist during this period. This model of service would entail having therapeutic – supervised sessions with the non-caring parent (the parent who currently does not have care of the child) and the child. The initial engagement would be with the caring parent at the counselling service location. This session would be focussed on establishing communication and child concerns. In the next session the non-caring parent would meet with the family therapist to be coached on how to engage with their child and parenting tips.

The following session would involve the caring parent dropping the child off early to meet the therapist. Then there would be a family therapist supervised session with the non-caring parent and the child. After the departure of the child would remain with the family therapist until the non-

caring parent arrives and the child has been picked up and transported away. This model enables relationship development and enhanced parenting of the child.

Victims

FMC is concerned that perpetrators can manipulate the legal system to coerce the victim. In the Family Law Court an unrepresented Perpetrator can cross examine and thereby coerce and endeavour to exert control over the victim. FMC notes that perpetrators continue a form of coercive and emotional abuse through using the court system to prolong and amplify court actions. There is no caution issued or barriers in place to reduce this behaviour. *Within the FDR pathway we have had a number of instances where the perpetrator goes to several FDR agencies to initiate the FDR process to harass the victim by having them receive multiple invitations to participate in mediation. A central accessible registry of certificates may reduce the potential for this to happen.*

Perpetrators

Through the FDR process many thousands of perpetrators are seen each year. They pose varying levels of risk. They may or not have IVO's or criminal proceedings against them. We have a concern that this cohort pose a risk of moving to a next relationship, risk conflict elevation or elevation in their mental health issues where this is present. Currently there is no defined men's support other than through group programs run on the group psycho educational model. There are some pilots such as the "Caring Dads" program that works with Fathers to improve their parenting in addition to a men's behavioural change element. The FDR services are ideally placed to make a deeper contribution to changing behaviours whilst maintaining the safety of the victim and children.

A literature review was commissioned in 2015¹³ however there remains a gap in Family Law services that needs to be scoped and response pathways mapped or more extensively trialled. The various State Magistrates jurisdiction can prescribe criminal punitive measures. The Family Law pathway may be able to propose inducements for change (i.e. a more stable and safe family where children can thrive not be deprived).

¹³ Urbis, 'Literature Review on Domestic Violence Perpetrators'. 2015.

ii. How FMC supports victims

Reports of Family Violence



64% of affected clients earn less than 50k



57%



Recognise, Respond & Respect

FMC's response to family violence happens from the first contact

FMC Services

Specialist Financial Counselling to victims of family violence

Financial counselling practitioners with specialised expertise in advocacy, access to resources, and referrals for complex cases

Specialist Victim Counselling

Providing victims of family violence with specialised counselling and support services

Supporting Children Program

Specialist support to help children adjust to the changes that arise from separation, identify and express emotion, and develop the skills needed to help them through the challenges in life

Integration of 'Reflect' – Men's Program

Helping men acknowledge responsibility, manage their anger and build positive changes and recognise relationship boundaries. For both adults and adolescents.

Managing Risk with Shuttle Mediation

- Different arrival and departure times
- Utilisation of separate entry/exits
- Use of separated interviewer rooms
- Phone or Skype sessions

STAR Learning Preventative Programs

Building the foundation of resilience and positive behaviour in the next generation of children

Reinforcing Positive Action through Program Responses

Teaching men to build relationship skills and social connections.

Ensuring that risk is managed in the Mediation process to ensure the safety of vulnerable parties with trained practitioners conducting continual assessment and strict processes.

Build foundation learnings for healthy relationships, emotional regulation, resilience to students. Targets vulnerable students and enables service referrals.

Providing help and support to victims vulnerable to financial exploitation and dependence to their perpetrators.

Specialist support that actively prioritises and identifies the needs of the victim, including additional support services and referrals.

Helps manage and enhance children's ability to cope with ongoing parental conflict

SECTION 4 Integration and collaboration

i. Support & Barriers

Our client work can be compromised by the variation in service provision by catchment. We can apply the boundaries somewhat loosely to give better service coherence, however there remains significant variation between our locations. This leads to confusion for referrers. This is particularly acute when we want to align State and Federal funded services. The consumer is faced with a confusing array of options and service acronyms. Another consequence of this is the additional complication of training and support issues across an organisations sites. Organisations face structural challenges endeavouring to organise their workforce with so much variation in service type and geography. An additional challenge to be considered is that potential clients will be provided with a different bundle of services and charged different prices depending upon what door they work through. For example, the Supporting Children after Separation program cannot be offered consistently to all clients because of the fragmentary nature of the grant. The benefits of the program are evident but it cannot be offered to families consistently.

ii. How FMC supports collaboration in the Family Law Sector

FMC participates in the Family Law Pathways Network funded by the Australian Government Attorney-General's Department. The Gippsland Network is useful in providing events and forums for coordinated networks of professionals working in the family law system. The network has been historically useful for provide networking and collaborative opportunities for practitioners working in the family law and support services sector, and fostering appropriate referral pathways for separating families caught in the system.

FMC considers that the Network should be a key agent for promoting and communicating the responses to the Law Reform Commission issues paper; a role that could to make the networks agents for innovation and change rather than just a communication and networking channel. In effect they could represent change and be funded to actively develop systematic alternatives and enhancement to the current system.

iii Improving client support and reducing the risk within lost cases

FMC observes that families could be better supported by FDR agencies if agencies had an ability to mandate participation (where appropriate) in an internal referral support service. In the FDR assessment of the parties to a mediation the practitioner is required to determine the suitability for FDR. The practitioner becomes aware of individual and family circumstances that could greatly benefit from a support service. If a case is deemed not suitable for FDR then it can potentially slip out of the Family Law system. The FDR is a key checkpoint and an ideal opportunity to intervene with an appropriate support service. In consideration of this opportunity FMC believes that discussion is required in regard to an Arbitration function to be introduced into FRCs. There is however, an issue with clients not choosing to reveal their situation if there is perceived 'risk' of a mandated service. The scope of this function would be strictly limited and focussed on mandating referrals for cases where there are issues of Drugs & alcohol and /or complex mental health issues.

To increase the focus on harm reduction for children consideration of a separate and complementary role of a Child Advocate within FRC's should be explored. This role would represent the interests of the child and facilitate better outcomes for children through the FDR process without the delays of

waiting for the Family Court process. This role would advocate for the best interests of the child to the Arbitrator.

The above suggestion would require a new lens across the practice of FDR and consequently require role definition, scope and training and mapping of appropriate processes.

SECTION 5 Professional skills and wellbeing

i. What are core competencies and deficits

FMC provides training on Mediation skill development and is in partnership with Chisholm Institute to deliver a Graduate Diploma in Family Dispute Resolution course.

For FMC there are four core competencies that enhance the provision of family law support services:

1. Family violence screening and assessment: capacity to identify family violence, support victims and avoid supporting perpetrators to use legal processes to abuse
2. Child safety screening and assessment
3. Child focus: strong understanding of children's needs in separation
4. Knowledge and understanding of complex family structures, including LGBTI families and cultural awareness

Additional competencies required by FDRP's and those managing cases

- Knowledge of family law pathways that are best suited to individual needs
- Conflict resolution/de-escalation skills, including: collaborative practice to reduce adversarial approaches for identification and management of high conflict behaviours
- Complying with the obligations of being an accredited FDRP.

The underutilisation of Property Mediation in the alternative dispute resolution pathway means that there is limited experience amongst practitioners. This is also reflected in the very low interest when we have offered Property Mediation skill training. We have had to cancel courses due to lack of interest. Should property mediation become a greater focus there will need to be a general skilling up in the capability area to provide the service.

ii. Greater support where there is greater demand

FMC considers that there is a disproportionate focus on streaming of clients to legal responses in the response to families experiencing conflict. Given that by far most situations are resolved before court, this is not necessarily reflected in awareness and understanding of pathways to resolution of family conflict. The core competency of sector professionals should be the understanding of a Family Law system that extends beyond that of the family court context. This would be consolidated by a whole of system support for cultural change (e.g. greater Judicial and legal professional support for alternative dispute resolution) and for this to be a considered integrated approach to reduce the lack of cohesion between State and Federally funded services. Cohesion would also be enhanced by specifying training requirements for vocational and university training course content to ensure all new graduates possess the relevant competencies. Supplementary to this the sector would benefit from a coordinated approach to the above through a clearing house (e.g. centralised database) of approachable literature, competency-based training courses and webinars. A Federal – State approach to cross service collaboration (e.g. networking days, collaborative case management) would also be a necessary part of this consolidation.

FMC notes that its staff encounter misunderstanding of the role and nature of FDR services amongst State funded services. FMC suggests that a COAG approach to system provision may better align and stream service provision to clients.

iii. Developing staff skills

Over the last two years FMC has been working together with staff to upskill with the necessary Family Violence risk assessment and safety planning skills to become a core staff competency. FMC noted that the AIFS Evaluation of the 2012 Family Violence Reforms found that parents who reported safety concerns did not necessarily feel that their concerns were managed effectively during FDR.¹⁴ The general availability of training through the Victorian Domestic Violence Resource centre has enabled the focus on managing client risk to become a core driver to improve competency, change practice and provide greater safety for clients.

For the training options using the Professional Development Initiatives (PDIs) in Family Law Services programs within Victoria there are a range of options:

- The most referred to development courses or training is from the DVRC. We view State based training as most important because we work with State based agencies frequently in our work. In Victoria the emerging development of safety planning hubs means that we need to be across and being consistent with our practice
- We may also draw upon opportunistic training through No to Violence or other visiting experts in the FV field. This could also be ANROWS seminars and the like.
- For FDR practitioners there are also professional opportunities through the peak body like the Mediation Institute. These would be more focused on mediating with high conflict clients, balancing power in mediation and similar
- Our own internal group and individual supervision will provide opportunities for training or referrals to external training for identified skill development
- Most staff have completed the Elder Abuse online course from the DHHS Victoria.

In the Family Violence prevention training resource area, we draw upon most heavily from the Domestic Violence Resource Centre Victoria training courses conducted online.¹⁵ All courses are of value. We have nominated the appropriate course against the FMC practitioner type as follows:

- CRAF Risk Assessment (RA) – (For all staff)
- CRAF Specialist (for Intake team)
- Provide support to children affected by domestic and family violence (For child counsellors and consultants)
- Identifying family violence and risk assessment (A new employee course)
- Recognising and responding appropriately to family violence (We may recommend this to a new worker. Most staff either through their FDR qualification or clinical training will have had professional training on this)
- Smart safe: digital safety, technology and risk assessment (More likely to be taken by our Financial Counselling workers)
- Adopting child-led practice (Used a refresher for child focused practitioners)
- Working with fathers (A specialty for FDR practitioners and our men's relationship counsellors and psychologists)

Internally we have further added to the CRAF training with our further developed assessment tool to suit the Family Law support work we do. We conduct internal training on this. We also have additionally trained on safety planning.

¹⁴ Rae Kaspiew, et al, Evaluation of the 2012 Family Violence Amendments: Synthesis Report (2015, Australian Institute of Family Studies, Commonwealth of Australia) 240-45.

¹⁵ Domestic Violence Resource Centre Victoria, *Our Courses*, < <https://training.dvrcv.org.au/our-courses/>>

Most of our FDR practitioners have also undertaken specialty training through their professional body.

Our Financial Counsellors have all had training through the FCV their state professional body. This is usually received at State conferences.

All staff receive a \$900 annual contribution to their own self-directed professional development. We emphasise how topical and relevant Family Violence is to their practice. They may choose to direct it that way as well.

SECTION 6 Better access & engagement with clients

The Productivity Commission has noted that obtaining access to justice in the family law system is most difficult for complex cases involving family violence.¹⁶ The constitutionally entrenched fragmentation of the Australian legal system for families is a key source of difficulty in family law disputes which involve allegations of family violence. Such disputes can't usually be neatly divided into public and private aspects.¹⁷ Parties who have experienced family violence must use multiple federal and state systems to obtain legal orders necessary for safety and dispute resolution (including the state family violence, criminal and child protection systems and the Federal Family Law system).

i. Improving access for clients

Clients where there is high conflict and violence present

Where there is high conflict and violence present clients can benefit by a service called Legally Assisted Family Dispute Resolution (LAFDR). This has been provided in a limited way for many years by FMC. The demand for the service cannot be met and the benefit for the threatened party in the dispute is evident. LAFDR provides opportunity for parents to be empowered in the decision making for their children while still receiving the support and advice of legal services. It also provides opportunity to provide dispute resolution options in cases that may have otherwise been deemed not suitable. This will assist in reducing the court load and provide quicker resolution for parties. This service should be supported as a low or no cost legal support in Family Relationship Centres and other FDR services. The service is delivered with the support of two Community Legal Centres. This support is generally charged for by the Centre. Our experience is that centres cannot be relied upon to be consistently able to offer the service to FDR agencies. Wait times can be significant.

CALD Clients

General community awareness and acceptance of Family Law and pathways to conflict resolution are lower amongst CALD groups. Awareness of the concept of FDR as an effective cost saving legal pathway option over suffering in silence is an issue. Trained culturally aware practitioners can guide this process with the sensitivity and an understanding of eth cultural factors at play. Greater support for people from CALD communities pursuing a career in FDR is recommended. Community awareness raising initiatives that are consistent and continuous would greatly assist in increasing the use of Family Law services.

Clients with a disability

In general there is a need for a whole of system support for cultural change (e.g. judicial and legal professional support for Alternative Dispute Resolution) / Training requirements for vocational and university training course content to ensure all new graduates possess the relevant competencies / Ready availability (e.g. centralised database) of approachable literature, competency-based training courses and webinars / Cross service collaboration (e.g. networking days, collaborative case management

¹⁶ Productivity Commission, Access to Justice Arrangements Inquiry Report (Commonwealth of Australia, No 72, 2014) Volume 2, 855.

¹⁷ Royal Commission into Family Violence, Report and Recommendations (State of Victoria, 2016) Volume IV, 190.

People who identify as LGBTIQ

For this cohort of clients there are some notable gaps in support. We would suggest that the following needs to be addressed:

- More readily available/centralised information on LGBTQI related legislation (e.g. parental responsibility for donor conceived children)
- Address legislation gap for gay fathers
- Removal of any remaining legal barriers to transgender marriage
- Data collection to consider LGBTIQ identities (e.g. client forms which allow for diverse expressions of gender in recording of gender and honorifics such as Ms, Mr, Mx)
- Improved family violence responses which account for the needs of LGBTIQ people, including: increased knowledge and recognition of LGBTIQ issues in family violence response and protection (e.g. police, magistrate's courts)
- Improved access to protection services (e.g. family violence shelters available to gay men and transgender individuals)
- Greater practitioner knowledge across the whole sector in supporting LGBTIQ clients in appropriate ways (e.g. knowledge of how to correctly use preferred pronouns, knowledge of LGBTI specific issues)

Low Income

Greater support to protect the interests of victims of financial abuse through family law system. In cases where the perpetrator has greater access to financial resources, the system can be used to further abuse or disadvantage the victim.

ii. Improving engagement

All clients

- *The nature of FDR is episodic and the process may then lead to the family court. This poses problems with longevity in maintaining safe arrangements for children. Families and children effectively disappear from the system*
- *The inability to provide a consistent case management model to support persons moving through the system- both non-adversarial and court. Services may have a family violence support approach however a more consistent and wider approach would assist clients right through their family law experience*

LGBTI clients

Engagement would be greatly enhanced by

- Offering LGBTI specific services with appropriately skilled and qualified practitioners and resources
- Improving general knowledge of LGBTI needs with all service providers, to improve the experience for those who do not access LGBTI specific services
- Being mindful of LGBTI families in documentation, visual representations (e.g. photos of families) and processes

- Address and resolve the question of data collection – under what circumstances and how should service providers collect information from clients about their sexual orientation to respectfully collect data for research and quality improvement purposes?
- Dedicated funding to improve services for LGBTIQ clients

iii. Barriers to access & engagement

Community awareness in general is an issue. A survey of 1000+ Victorians over the age of eighteen years by FMC showed that fewer than 4% of the population were aware and understood what mediation is. If the expectation that the FDR should be utilised more than awareness of its role and value is required.

Service providers work with referrers to develop referral pathways. They are not well placed to drive general community awareness campaigns. The role of the Family Relationship website should be to present to people online with higher frequency and placement in the family law service search process. As the entry point into the system the website may lack prominence and the promise of an engaging and helpful customer experience. From the site should be expected greater call volumes driven by the website promotion techniques.

CONCLUSIONS

In summary, FMC's response to the system issues falls under eight core areas aimed at addressing the need to consolidate the fragmentation between services to enable systematic improvements intended to create a better experience for families.

1 Children's experiences and perspectives

- The practice of CIM (Child Informed Mediation) we think is essential in ensuring that separating couples feel compelled to move their focus away from their interpersonal issues and onto the wellbeing of the child where appropriate. This practice and its prevalence should be investigated and its utilisation increased. Training modules are available to increase the capability of the FDR workforce.
- The Act would be enhanced by the inclusion of a clause regarding children's rights to have a relationship with both of their parents without parental conflict.
- FMC considers that the key barrier is non-child friendly systems. This results in children not being acknowledged as clients/participants in the system. The child journey through the FDR/Family Law process requires clearer funding integration and support to incorporate a broader 'family eco-system' approach.

2 Services to better address parenting and/or property disputes

- Property arrangements should be a mandatory component of FDR where the assets are not of a high value nor complex. Unresolved property issues can exacerbate conflict and impact the child. Valuable court time can be diverted by small property disputes.
- A greater focus should be given to considering the children's needs financially, emotionally, and academically thereby allowing parents to allocate specific amounts to these issues separate to child support in the FDR process.
- The detrimental impact upon a child's welfare of high parental conflict needs to be a driver for a quicker and earlier resolution of property disputes. FDR is best placed to respond to this not courts.
- A review of the variations in current property mediation models is recommended to determine what is best practice.
- Consideration of the complexity and value of property would determine the most appropriate service to resolve the dispute.
- The mapping of the Property Agreement pathways is required to better plan, streamline and integrate the available services from the clients' view
- Competency skill in Property mediation needs capacity building.

3 Limited arbitration powers for Family Relationship Centres

- Discussion is required in regard to an Arbitration function to be introduced into FRCs'. This would be limited to mandating referrals for:
 - Drugs & alcohol,
 - Complex mental health issues
 - Cases where CIM would be appropriate and better support children
 - Consideration of a separate and complementary role of a child advocate with FRC's that would represent the interests of the child and facilitate better outcomes for children through the FDR process without the delays of waiting for the Family Court process

- This conclusion requires further discussion in regards to consent and confidentiality constraints.

4. Family Violence

- FMC is concerned that after the issue of a certificate the family is 'lost' to family law support. Given the long time to appear before court and the risk of an elevation of conflict FMC believes that consideration should be given to a funded therapeutic service particularly for children whilst their parents' legal action waits to be heard
- A therapeutic service is required for the child and non-caring parent until a child contact centre service becomes available.
- A review of the categories of the Certificate 60i is required to avoid perceived bias and potential gaming of the system
- There is a need for a central Certificate register to prevent perpetrators hassling victims for multiple mediation invitations

5. Integration and collaboration

- FMC's Supporting Children after Separation program cannot be offered consistently to all clients because of the fragmentary nature of the grant. Despite the benefits of the program being evident it cannot be offered to families consistently across multiple locations.
- The SCASP program should be more broadly funded to enable families access to greater support.

6. Building Professional skills and wellbeing

- With the underutilisation of Property Mediation service there is limited experience amongst practitioners. This needs to be remedied if the Family Court wants property mediation to be extensively handled by the FDR process

7. Access and engagement

- Legally Assisted FDR is underfunded. The CLC's cannot meet the demand for representation from FDR agencies.
- The current disjoint in funding separate systems means that there is not a consistent case management model to support persons moving through the systems- both non-adversarial and court

8. Overall Community and system issues

- Clients come too late to have their relationship situation responded too. Conflict is heightened and the effects upon children are therefore greater. Normalising of seeking relationship help and a greater community awareness of the warning signs are required. This would require a commitment to community awareness raising
- Clients wait too long for services to have their matters attended by court. Services would be better provided as bundles and in a therapeutic manner prior to court. There is a lack of funding to support this service consideration.
- Different judicial systems create delay and misunderstandings when they overlap. This heightens tension and risk for victims of family violence and for children

- There is unequal power in Family Law the clients e.g. Adult, Victim & Child. The consequences of children witnessing conflict and violence between their parents has long term harm. Delays in systems responses and legal processes puts the child at risk of greater periods of exposure
- The adversarial response pathway can lead to delays, greater conflict and consequential retribution
- Men can disappear then reappear. Where there is conflict in one relationship the male can go on to perpetrate in a new relationship or at their parental home. They can be cut loose by the Family Law process and disappear. Greater focus and resourcing on responding to men's relationships, parenting and behaviour responses to men and their relationships is needed.

