

Family Law Review Submission

ac.care

Mount Gambier Family Relationship Centre

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Principles guiding any redevelopment of the family law system:

- Focus on the rights of children and parental responsibilities, rather than on parents' rights.
Too often parents are focused on their rights – they tell us that they have the right to 50% care of the children or things like this. We need to educate parents and support them to shift their focus onto what is best for their children and what their children deserve and need from their parents and carer's.
There is a need to clarify the difference between 'assumption of shared parental responsibility and shared care' in a more understandable way for parents, as many parents we see think that they are the same thing.
- Be child centred and trauma informed.
- Safety for all.
- Supporting families to provide the best care possible for children.
 - A Family Centre
The Mount Gambier Family Relationship Centre is run by ac.care, and ac.care services and programs that support families are co-located at the Family Relationship Centre. This means that there is one entry point for clients to access not only Family Dispute Resolution, but multiple services that are needed to support the family, including counselling, family support, Parenting After Separation support, Children's Contact Service, as well as a variety of group programs for parents and children (all ac.care programs).
This is a model that could be adopted across Family Relationship Centres in Australia – providing a range of family services at one site.
It would be beneficial to have a crèche service available at these sites to help clients to be able to attend appointments (parents struggle to find suitable child care options to attend appointments) and to protect the children from hearing things and being exposed to things that they shouldn't.
 - Supports for children (examples)
 - Blast Off program
ac.care runs a supportive group program for children aged 6-12 years who have experienced parental separation. This is based on the 'Banana Splitz' program developed by Anglicare and is a very popular program (with a consistently significant waiting list). In addition to the group itself, we provide individual follow up support to children to further explore issues or needs raised and reinforce strategies learnt in the group. As a part of this program feedback is provided to parents to help them to better support their children. Feedback

from the children who do it and from their parents is that the program is incredibly positive and helpful for families. This is a program that we'd like to see all children accessing whose parents are undertaking Family Dispute Resolution – this could potentially be mandatory for everyone at the point of Family Dispute Resolution referral; however, to do this there would need to be at least two full time staff members dedicated to this.

- Supports for Parents (examples)
 - Circle of Security program and other parenting programs
ac.care runs this program regularly. The facilitator of this program has worked collaboratively with the Children's Contact Service to run specific groups for non-resident parents (often fathers) that are using or about to commence using the service. The clients who attend get support from one another and often results in stronger and more positive relationships with ac.care staff. This also leads to stronger relationships with their children as they apply what they are learning within the visits. Many of these clients have also self referred to other services such as counselling as a result of attending COS.
- Supports for Families
 - Services to support the rebuilding/repairing the parent-child relationship – working with both parents and the children towards this, as well as areas such as transitioning to different care arrangements; moving from Children's Contact Services to negotiated arrangements; or a parent starting to see their child after period of no contact.
 - A program has been developed by Bill Eddy, LCSW, Esq. and President of the High Conflict Institute in the United States of America. The program, "New Ways for Families is a structured parenting skills method intended to reduce the impact of conflict on the children in potentially high-conflict divorce and separation cases. It can be used whenever a parent or court believes one parent needs restricted parenting time (supervised, no contact, limited time), at the start of a case or any time a parent requests it-including after the divorce. It is intended to teach parents the skills necessary to put their children first by improving their co-parenting skills and jointly making their parenting decisions out-of-court." (from the New Ways for Families website: <https://www.newways4families.com/about-us>).
- A less adversarial system – with more emphasis on co-operative parenting relationships in the best interests of children.

Accessibility of the system:

- Have one national family law system and court.
- Have more circuits in regional areas. The Federal Circuit Court of Australia has a circuit in Mount Gambier four times a year. It would be beneficial if this were to be increased to improve waiting times and hopefully enable matters before the court to be resolved more swiftly.
- Increase the capacity for and the use of secure technology – i.e. skype, video conferencing – particularly for remote/regional/rural areas for court hearings and Family Dispute Resolution sessions etc.

- Use the Family Law Kiosk model currently used at the Adelaide Family Court (run by the SA Family Law Pathways Network) throughout Australia. This kiosk provides information and referral services to help people navigate through the family law system and access support services, as well as providing court support.
- An issue that arises fairly commonly is one party being unable to access legal advice and/or representation locally because the other party has approached all of the lawyers in town, creating a conflict of interest. This is particularly an issue for people from rural/regional/remote areas.
- A 'gap' in the system that we have recently identified is the situation of separated parents with an adult child who has an intellectual or other disability where the child's developmental age is under 18 years. Because the child is an adult, family court is not an option, but there is nowhere else to help this family, where one of the parents is refusing the other parent access to the child and there are high levels of domestic and family violence. This is something that needs to be addressed. Family Dispute Resolution could be a possibility, however the issue then arises if the parent withholding access refuses to participate, or if the matter is deemed inappropriate for Family Dispute Resolution and the matter needs to be addressed by a court.
- Establish clear and open lines of communication throughout the family law and relationship sector and to and from the family court to assist in collaborative practices and the ease of access for families into appropriate supports and programs.

Misuse of the system:

- Limit appeals or how often a matter can be brought before the court in a certain period of time – for example, consider the case where final orders are made, however one parent isn't happy with the outcome (i.e. it wasn't what they wanted), and continues to take the matter back to court. This is a financial issue for someone who has limited money or relies on legal aid, as they can't afford to continually be in court, so they therefore 'give in' to what the other parent wants – even if it's not in the best interests of the children or if it impacts on their safety or well-being. This also has an emotional impact on the parent and on the children who continue to be 'stuck' in high conflict and a state of uncertainty in regards to their present and future. No-one is really able to move forward with their lives.
- Introduce a regulation or rule that orders made by court are not able to be changed for a period of time (i.e. 12 months), whether it be via mediation or court, unless there is a significant safety risk. There needs to be a period of time for everyone to be able to adjust to the orders and changes resulting from them.

Family Dispute Resolution (FDR):

- Make Family Dispute Resolution compulsory for children's matters and for property matters.
- Make child inclusive mediation the practice model used in FDR across Australia and fund centres appropriately to deliver on this
- When Family Dispute Resolution is not successful, or if parties are able to reach a partial agreement but not full agreement, as a step prior to court, families could be directed to participate in a Family Care Meeting – a family-inclusive decision making process where agreements can be reached and arbitrated. These meetings could involve parents, an advocate for the child, relevant extended family members or others potentially involved in caring for the

child, lawyers for each parent and anyone else relevant; and would be chaired by a neutral facilitator – possibly an experienced Family Dispute Resolution Practitioner. Any agreements reached in these meetings could be drawn up into a legally binding and enforceable agreement document. The Department for Child Protection in South Australia uses these in their practice.

Children's voices/involvement in the system:

- Develop clear information and guidelines re: when children's voices are given weight in court proceedings in easy to understand language for clients and children. Clients often tell us that children can choose where they want to live from age 10. They don't understand that there are multiple considerations in regards to when children can have their views more widely considered by the court.
- Make child inclusive mediation the practice model used in Family Dispute Resolution services throughout Australia.
- There needs to be more interaction between the Independent Children's Lawyer and the children whose interests they are representing. This includes talking to the children and feeding their views into court; and explaining the court process and supporting them through it. This role could also potentially be undertaken by an appropriately qualified children's advocate.

Safety:

- Ensure that the definitions of domestic and family violence are consistent across federal and state legislation, and include all elements of domestic violence (physical, emotional or psychological, verbal, sexual, financial, spiritual abuse).
- Establish a national child protection system.
- Address the issue of the intersection of family law and state based intervention or restraining orders. Often these are incompatible, where intervention orders have strict conditions to ensure the safety of the protected person, however a family court order overrides these conditions, allowing contact, and the possible continuation or escalation of risk, abuse or safety issues. This is particularly an issue where children are protected persons on intervention orders and there is no contact allowed on this order, but the family court order allows for contact. To address this, federal courts and state courts (children's, youth, and magistrates) need access to a national database of all intervention and family court orders that can be cross-checked before orders are made in any court in order to ensure consistency and safety.
- In regards to intervention orders, include a condition in orders to allow for Family Dispute Resolution to occur with an accredited Family Dispute Resolution Practitioner. In the last 6-12 months we have had a significant number of people wanting to access Family Dispute Resolution, but have an intervention order, a lot of times with conditions that don't permit FDR to occur, which means that they have to return to police and/or court to seek a variation to the order. Having a condition included that permits Family Dispute Resolution doesn't mean that it will happen, as mediators/practitioners are required to, and do, undertake comprehensive risk and safety assessments with clients. In addition to this, being able to participate in Family Dispute Resolution is often an empowering process for those who have experienced domestic and family violence – where appropriate safety strategies are put into place.
- In cases where child abuse and/or family violence is alleged in applications or affidavits it could be made compulsory for a report to be completed for the court by the relevant child protection

authority or police department, which details the information that has been reported to them (their history of the family). This could help inform decision making.

- Have a national family and child protection system – one system, one court, which will reduce the need for families to engage with more than one court to address safety concerns.
- Ensuring safety of victims of domestic and family violence is prioritized over parents “rights”. For example – when a mother wants to relocate for the safety and wellbeing of her and her children and the father says “I won’t let you because I am not going to give up my time with the children”. Is this really what is best for the family in this situation?
- A Family Safety Framework model (like the framework used in South Australia) could be adopted for the family law/relationships sector, with national information sharing guidelines developed to support this.
- Children’s Contact Service (CCS)

This is an essential service for families in high conflict or where there are safety concerns.

- Qualification of Staff

The staff that provide this service should have a specific qualification as a requirement of their role – we suggest bringing back the Certificate 4 or Diploma in Children’s Contact Services (preferably the diploma).

- Regulation

There needs to be regulation of all Children’s Contact Services throughout Australia, whether they are government funded or private.

Summary

We would like to see a family law system that is child centred; safe; accessible; and that supports families to provide the best possible care for children using a holistic approach by ensuring that the family has access to the supports that they need to help them.

We’d like the court to have strong collaborative links with service providers in the family and relationships sector, and with the child protection and domestic and family violence sectors. We would like to see the system made easier to navigate and understand for families, and to have a national system.

We’d like to see consistency across federal and state legislation, particularly in regards to (domestic and family violence) intervention or restraining orders and family court orders. We would also like to see a national child protection system established.

We would like to ensure that children are supported throughout the system and that their voices are heard. We suggest making child inclusive mediation the practice model for all Family Dispute Resolution services, and that the role of independent children’s lawyers expands to provide more support to children whose interests they are representing.

We would like to see Family Dispute Resolution remain a compulsory first step in the legal system, and suggest that mediation for property and financial matters also be made compulsory before an application can be made to the court.

We’d like the system to be less adversarial, and more focused on supporting families to work co-operatively together to ensure that the best interests of the children and their needs are achieved.