



# **AUSTRALIAN LAW REFORM COMMISSION - REVIEW OF THE FAMILY LAW SYSTEM**

**ISSUES PAPER RELEASED 14 MARCH 2018**

## **Submission from RELATIONSHIPS AUSTRALIA**

### **PART A - The work of Relationships Australia**

This submission is written on behalf of Relationships Australia's eight member organisations. It complements submissions provided by Relationships Australia State and Territory organisations.

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of family support services to Australian families, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change their behaviour and how they relate to others.

Relationships Australia has been a provider of family relationships support services for 70 years. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the Family Relationships Advice Line and the Telephone Dispute Resolution Service.

The core of our work is relationships – through our programs we work with people to enhance and improve relationships in the family, whether or not the family is together, with friends and colleagues, and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable.

We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

Relationships Australia supports integrated cross sector, multi-disciplinary responses to family and domestic violence which focus foremost on the safety of the victim. Freedom from violence in the family is a human right and Relationships Australia supports a legal framework to respond to inequality, coercion and control, and the use of violence in families, including amendments to the *Family Law Act 1975* to better protect victims of family violence.

Relationships Australia is committed to:

- Working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with elders, men, women, young people and children. We recognise that often a complex suite of supports (for example, drug and alcohol services, family support programs, mental health services and public housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships and encouraging good and respectful communication.
- Ensuring that social and financial disadvantage is not a barrier to accessing services.
- Contributing its practice evidence and skills to research projects, to the development of public policy and to the provision of effective supports to families.

This submission draws upon:

- our direct service delivery experience across urban, regional, rural and remote locations
- our experience in delivering programs in a range of communities, including culturally and linguistically diverse and Indigenous communities
- evidence-based programs and research
- our leadership and policy development experience
- the voices of our practitioners, and
- the experiences and voices of the men, women and children with whom we work to bring to attention to a range of issues affecting the policy and community actions aimed at supporting strong relationships.

## **PART B- Response to the call for submissions in response to the Issues Paper**

### **B. 1 Introduction**

More people come into contact with the family law system, directly or through the experiences of their family and friends, than with any other part of the legal system in Australia. What is at issue in family disputes could hardly be more fundamental – the care and nurturing of children, the ongoing relationships within families (whether separated or intact), access to major family resources such as the family home and superannuation, and access to the social capital of the family.

For some time, Australians who use the system, and professionals who work in the system, have called for wide-ranging reform to meet modern needs. Further, the last four decades have been characterised by profound social changes, giving rise to questions about whether the policy aims underpinning the current system remain salient, and whether there are other aims now to be served.

Public awareness of the dynamics of family violence, and the long-term harm it wreaks on individuals, the family unit and the community at large, has prompted calls for reforms to better prioritise the safety of family members, and support behavioural changes in those who use violence as a response to conflict.

Against this background, Relationships Australia applauds the establishment of this review, and the breadth of the terms of reference, that allow for a full review that encompasses the complexity of contemporary families, the complexity of family conflict, and need for arrangements that can respond effectively to support families throughout the life course.

### **B. 2 Overview of submission**

This submission sets out:

- An overview of the context for the ALRC's review
- Responses to those of the questions, posed in the Issues Paper, on which Relationships Australia feels it can make a contribution
- Appendix A – the Family Axis approach
- Appendix B – identification of miscellaneous discrete reforms that could be pursued in the short to medium term
- Appendix C – a list of key abbreviations used in this submission
- Appendix D – Relationships Australia's submission to the recent Parliamentary inquiry into family violence (the SPLA inquiry)
- Appendix E - Relationships Australia's submission to the review, by KMPG, of the future focus of family law services, 2016
- Appendix F - Relationships Australia's evidence to the Senate Legal and Constitutional Affairs Legislative Committee inquiring into the Family Law Amendment (Parenting Management Hearings) Bill 2017
- Appendix G – restorative practice
- Appendix H – serving Aboriginal and Torres Strait Islander families
- Appendix I – Parenting Co-ordination models

## B.3 Context of the ALRC review

### B.3.1 Current challenges

Australian Commonwealth, State and Territory governments have overseen a multitude of other inquiries, advisory groups, evaluations, reviews, legislative reforms and pilots in the family law sector. Too often, however, views on proposed reforms are so polarised that actual reform runs aground, or is compromised even to the point of frustrating the intent of reform. This paralysis is exacerbated by perpetual funding shortages for the many components of the sector, whether they be family law services, family relationship services, community legal centres, or the courts, coupled with relatively short-term funding agreements, impeding investment in recruiting and retaining high quality staff and in capital assets. The community demands radical changes to the family law system. While proposed solutions are often the subject of bitter dispute, there is consensus that the system is now not fit for purpose. Concerns of particular note include (in no particular order):

- the growing view that family violence and child welfare are matters of public concern, rather than occurring in a context that was once viewed as entirely private, and that it is appropriate for disputes where these elements are present to be dealt with as matters of public concern
- the failure of the current system to properly protect and promote the well-being and healthy development of children
- the lack of opportunity afforded to children to have their voices heard
- the adversarial approach on which the family law system is premised, which contributes substantially – and innately – to delay, expense, and emotionally damaging processes and outcomes
- poor quality or incomplete evidence brought before the courts, exacerbated by the adversarial nature of proceedings, in which evidence is primarily brought before the courts by parties<sup>1</sup>
- personal cross-examination of and by self-represented litigants<sup>2</sup>
- severe fragmentation of relevant services, leading to limited integration, collaboration and co-ordination, to the detriment of families
- people having to retell their stories multiple times, as they traverse multiple legal systems, multiple bureaucratic entities and multiple service providers, reinforcing trauma, entrenching conflict and taking up time and other resources which might be better used to support families
- silos of information and practice between systems, jurisdictions and practitioners of different disciplines – an issue which has, in its own right, been the subject of extensive research, commentary and policy work over the past decade
- delays in final judicial determination of disputes
- unnecessary complexities in obtaining interim parenting orders
- lack of effective mechanisms by which to enforce orders, and the expense of doing so
- piecemeal legislative amendments contributing to an unnecessarily complex legislative scheme
- a paradigm of gender conflict framing the parameters of reform, too often at the expense of child-focussed reform, and
- high costs to families, services and governments.

<sup>1</sup> In an adversarial system, the court cannot make its own inquiries, and depends on the evidence brought by the parties. Particularly (although not only) when litigants are self-represented, and where trauma is involved, this is an unreasonable burden. Difficulties in identifying probative evidence mean that matters which proceed to judicial determination are protracted. The quality and timeliness of judicial decisions could be significantly enhanced by better evidence being led in a more timely and coherent manner.

<sup>2</sup> Whether as a matter of tactics or from financial necessity.

### B.3.2 Historical context of the family law system

When the *Family Law Act* came into operation on 5 January 1976, its effect on Australia's social and legal landscape was profound. Designed to reflect and respond to evolving social needs and attitudes, the Act gave Australians a nationally consistent legislative framework for separating couples to resolve their disputes privately, outside the public gaze, and – significantly – to 'move on', consistent with the 'clean break' principle. There was really no concept of 'co-parenting'. The Act enshrined 'no-fault' divorce, then a highly contentious innovation,<sup>3</sup> as is evident from reading the Parliamentary debates on the Bill, and press reports of the time. Opponents of the Bill argued vehemently that, far from reflecting community values, the new Bill would poison them, attacking marriage, the family, and the status and dignity of women. A letter to the *Sydney Morning Herald* from the Superintendent of the Central Methodist Mission opined that 'Only a morally sick society would contemplate a bill as morally flabby and irresponsible as the Family Law Bill that is being proposed.'<sup>4</sup> An Auxiliary Bishop to Sydney said that the Bill would lead to 'gross injustices and intolerable indignities, especially to women.'<sup>5</sup> A divorce lawyer said that it would legalise polygamy.<sup>6</sup> Opponents of the Bill feared that, if passed, it would lead to marriage becoming redundant.<sup>7</sup>

Nevertheless, despite public and political division on the matter, the provision of irretrievable breakdown of a marriage, based on a period of separation as the sole ground,<sup>8</sup> was unanimously supported by the Senate Committee considering the Bill.<sup>9</sup> The Committee concluded that the proposed reform would 'bring a degree of honesty and dignity to the administration of Australia's national divorce law', and that 'There should no longer be any encouragement to perjury, exaggeration, false attitudes or the need for discretion statements.'<sup>10</sup> It was hoped, too, that the removal of the requirement to prove fault would prevent, or at least significantly minimise, conflicts over children and property.<sup>11</sup> It was believed that these phenomena arose from the defects of the *Matrimonial Causes Act 1959*. There was a sense of tremendous optimism, which probably explains the eventual successful passage of the Bill into law. A media release by the Attorney-General's Department, issued in late 1975, went so far as to say that the Act would foster 'a new era of calmness and rationality.'<sup>12</sup> Even the *Sydney Morning Herald*, while reporting on criticisms of the Bill and expressing reservations, felt moved to tell its readers:

...the new Act raises some complex legal questions which may not be sorted out for two years,

which was itself an expression of not inconsiderable optimism.<sup>13</sup>

In his second reading speech in the House of Representatives, on 28 November 1974, then Prime Minister Whitlam noted that introduction of the Family Law Bill had been preceded by

<sup>3</sup> In 1966, the Archbishop of Canterbury appointed a panel, the findings of which were an early substantive challenge to fault-based divorce: 'Putting Asunder: A Divorce Law for Contemporary Society', SPCK, 1966. This was complemented by recommendations made by the Law Commission in the UK: 'Reform of the Grounds of Divorce: the Field of Choice', Cmnd 3123, cited in Evatt, E, 'The Administration of Family Law', Sir Robert Garran Oration, reported in (1979) XXXIII (1) *Australian Journal of Public Administration* 1, 3.

<sup>4</sup> *Sydney Morning Herald*, 10 February 1975.

<sup>5</sup> Reported in *The Canberra Times*, 3 February 1975.

<sup>6</sup> Reported in the *Sydney Morning Herald*, 24 June 1975.

<sup>7</sup> See, for example, the remarks of the then Liberal Member for Deakin, Mr Alan Jarman MP, House of Representatives, Second Reading Speech, 12 February 1975.

<sup>8</sup> The *Matrimonial Causes Act 1959*, which the *Family Law Act* replaced, set out 14 grounds for dissolution of marriage, generally requiring the establishment of fault on the part of one of the parties to the marriage. The major exception to the need for proof of fault was separation for five years or more. This exception was rarely relied upon: Lawrie Moloney, 'Lionel Murphy and the dignified divorce – Of dreams and data', 25 *Families, policy and the law*, 245, 245.

<sup>9</sup> A majority of four members of the Committee supported the 12 month separation period as proof of irretrievable breakdown of a marriage.

<sup>10</sup> *Report on the Law and Administration of Divorce and Related Matters and the Family Law Bill 1974*, (1974) Parl Pap No 133.

<sup>11</sup> See, for example, Moloney, 24; Evatt, 12.

<sup>12</sup> Cited in The Hon John Fogarty AM, 'Thirty years of Change', (2006) 18(4) *Australian Family Lawyer* 4, 4; Moloney, 25.

<sup>13</sup> *Sydney Morning Herald*, 24 June 1975.

...a detailed consideration of divorce, custody and family matters by the Senate Standing Committee on Constitutional and Legal Affairs, to which the topic was referred for consideration as long ago as December 1971.

The Prime Minister observed that

The great weight of evidence and submissions...indicated substantial dissatisfaction with the high costs, delays and indignities of the existing divorce law, and a desire for a no-fault ground of divorce based on a period of separation.

It seems inevitable that the Australian Law Reform Commission will also receive 'a great weight of evidence and submissions' expressing 'substantial dissatisfaction' on these same matters.

Writing on the background of the *Family Law Act*, the then Attorney-General, the Hon Kep Enderby QC MP, remarked on the volume of ministerial correspondence, a flurry of petitions and intense media interest in the Family Law Bill.<sup>14</sup> One of the ways in which media interest was manifested was in the conduct of several public polls<sup>15</sup> on the issue of no fault divorce, and on the length of any waiting period which should apply to the initiation of divorce proceedings. Mr Enderby remarked that both he and his predecessor, Senator the Hon Lionel Murphy QC, had paid attention to these polls because

...divorce is something that can affect every stratus of society and is a subject on which most persons are capable of having and are likely to have a decided view.<sup>16</sup>

The then Prime Minister also referred to these polls in his Second Reading Speech, saying that

I should like to emphasise the point that divorce is an area of the law in which the opinion of the community at large is more than usually relevant....the determination of how best to enable broken marriages to be dissolved is **very much a human, as distinct from a technical, legal problem**, and as such is readily understandable to most people. I mention this to underline the importance of the indications in public opinion polls conduct on divorce reform. These show that there is an overwhelming support for the kind of reform contained in the Bill. Indeed, the recently published Morgan Poll was conducted on the basis of the proposal in the Bill that there be a no-fault ground of divorce based on 1 year's separation. The findings showed that 60% of people favoured divorce based on this ground. [emphasis added]

### B.3.3 Major reviews

Relationships Australia acknowledges that the family law system, and associated frameworks, have been extensively reviewed over the period in which it has been in existence. Significant reviews include:

- *Family law in Australia*, Report of the Joint Select Committee on the Family Law Act (1980)
- *Domestic Violence* (ALRC 30), (1986)<sup>17</sup>
- *Recognition of Aboriginal Customary Laws* (ALRC 31), (1986)
- *Matrimonial Property* (ALRC 39), (1987)

<sup>14</sup> Enderby, 'The Family Law Act: Background to the Legislation', (1975) 1 *UNSW Law Journal* 10, 20.

<sup>15</sup> There were six polls, conducted by private pollsters. Each surveyed around 2000 people, and results were broken down by gender and also by reference to religious denominations and political affiliations.

<sup>16</sup> Enderby, 21-23.

<sup>17</sup> This report focused on the ACT. Of particular relevance was the Report's finding that a law enforcement or criminal justice response to perpetrators was not sufficient.

- *The Family Law Act 1975: Aspects of its operation and interpretation*, Report of the Joint Select Committee on Certain Aspects of the Operation of the Family Law Act (1992)
- *Multiculturalism and the Law* (ALRC 57), (1992)<sup>18</sup>
- *Equality before the Law: Justice for Women* (ALRC 67, 69), (1994)<sup>19</sup>
- *For the Sake of the Kids: Complex Contact Cases and the Family Court* (ALRC 73), (1995)
- *Seen and heard: priority for children in the legal process* (ALRC 84) (1997)
- the Family Law Council report, *Litigants in person* (2000)
- the Family Law Council report, *Family Law and Child Protection – Final Report* (2002)
- *Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation*, House of Representatives Standing Committee on Family and Community Affairs (2003)
- the Family Law Council Report, *Improving Post-Parenting Order Processes* (2007)
- the Family Law Council report, *Family Violence* (2009)
- *Family Violence – A National Legal Response* (ALRC 114), (2010)
- *Family Violence and Commonwealth Laws – Improving Legal Frameworks* (ALRC 117), (2012)
- the Family Law Council report, *Indigenous and culturally and linguistically diverse clients in the family law system* (2012)
- the Family Law Council report, *Parentage and the Family Law Act 1975* (2013)
- the evaluation of family law services by Allens Consulting Group (2013)
- *Access to Justice Arrangements*, Productivity Commission (2014)
- the evaluation by AIFS of the role and effectiveness of Independent Children's Lawyers (2014)
- the AIFS evaluation of the 2012 family violence amendments (2015)
- the KPMG review of the future nature, location and funding models for family law services (2015)
- the findings of the Victorian Coroner's Court – *Inquest into the Death of Luke Geoffrey Batty* (2015)
- *Not Now Not Ever*, report of the Queensland Special Taskforce on family violence (2015)
- the Royal Commission into the Child Protection Systems in South Australia (2016)
- Report of the Victorian Royal Commission into Family Violence (2016)<sup>20</sup>
- AIFS' study of the experiences of children and young people of family law services (which built on the work undertaken by the National Children's Commissioner in 2014-15)
- Final report of the COAG advisory panel on reducing violence against women and their children (2016)
- the report of the Australian Human Rights Commission, *A National System for Domestic and Family Violence Death Review* (2017),<sup>21</sup> and
- *Elder Abuse – A National Legal Response* (ALRC 131), (2017), and
- the House of Representatives Social Policy and Legal Affairs Committee report on its inquiry into a better family law system to support and protect those affected by family violence (2017) (SPLA report).

<sup>18</sup> Relevantly for this inquiry, this report recommended that, for the purposes of determining a child's best interests, their cultural links should be taken into account by the court.

<sup>19</sup> Relevantly for this inquiry, this report called for changes in Family Court practices to take into account the dynamics of family violence.

<sup>20</sup> While this was a report commissioned by the Victorian Government, it made several recommendations pertinent to the family law system.

<sup>21</sup> See <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/national-system-domestic-and-family-violence>.

In addition, there has been extensive public advocacy by individuals affected by the system, and by organisations with exposure to the system,<sup>22</sup> as well as calls for radical reform by Parliamentarians.<sup>23</sup>

### Family Law Council report on support for families with complex needs

Relationships Australia highlights this review as being of particular significance in laying the foundations for the inquiry on which the ALRC is now engaged. In 2014, the then Attorney-General, Senator the Hon George Brandis QC, asked the Family Law Council to report on how to better support families with complex needs.

The concept of 'complex needs' should be considered here, before referring in more detail to the FLC report. The 2012 Legal Australia-Wide Survey of unmet legal needs referred to 'a co-occurring range of *non-legal* support needs' (emphasis added). Relationships Australia is concerned, however, that the notion of 'complex needs' in family law discourse often assumes that complexity arises from, or is intrinsically linked to, legal complexity and therefore must be dealt with in a legal framework. However, the kinds of co-occurring support needs highlighted in the 2012 survey were the needs informing the Family Law Council's report.<sup>24</sup> They are not legal in origin, manifestation or (necessarily) remedy (such as, for example, mental health issues, homelessness, poverty, and substance misuse). Other issues that are seen as driving complexity, such as family violence or criminality more broadly, may attract a legal/justice system response, but that response tends to be seen by lawyers and judges as being the most central.<sup>25</sup> Relationships Australia considers that funnelling families with these kinds of co-occurring psycho-social needs into the courts, without access to multi-disciplinary teams providing ongoing therapeutic responses, is a failure to properly respond to the family and hinders safe and healthy outcomes in the longer term. Rather, families with co-occurring needs of the kind described in the 2012 survey and considered by the Family Law Council should have access to an array of therapeutic services and decision-making pathways, of which legal services are a co-equal pillar, rather than a central axis.

The Family Law Council provided an interim report June 2015, addressing the prospect of having a streamlined, coherent and integrated approach to improve the overall safety of families and, in particular, children. The final report was provided to the then Attorney-General in June 2016, and focused on enhancements to collaboration and information sharing within the family law system, as well as other support services, including child protection, mental health, family violence, and drug and alcohol services, and services dedicated to servicing Indigenous and migrant communities.<sup>26</sup> The FLC's final report on this reference also, relevantly to this submission, recommended a comprehensive review of Part VII of the *Family Law Act*, focusing on the prioritisation of children's safety in decision-making and advice-giving.

Action 5.1 of the Third Action Plan of the *National Plan to Reduce Violence Against Women and their Children 2010-2022* calls on Commonwealth, State and Territory agencies to collaborate in implementing various recommendations made by the Family Law Council in its 2015 and 2016 reports. Relationships Australia understands that many recommendations are being progressed through inter-jurisdictional collaboration at Ministerial level, and through Parliamentary processes.

<sup>22</sup> See, for example, the *Safety First* plan, developed by Women's Legal Services Australia and advocated by Rosie Batty in 2016, and the Braveheart's report on *Abby's Project*, also released in 2016.

<sup>23</sup> See, for example, a cross-bench Senate Notice of Motion moved by then Senator John Madigan on 2 February 2016.

<sup>24</sup> Noting also that 'complex needs' can also be used to refer to single issue, but high risk, families and families exposed to intractable conflict.

<sup>25</sup> See also AIFS, 2016, *Complex Issues and Family Law Pathways: Synthesis Report, Evaluation of the 2012 Family Violence Amendments*, Table 2.2, p 16.

<sup>26</sup> This built on the 2012 Family Law Council report, *Indigenous and culturally and linguistically diverse clients in the family law system*, and contemporised the 2002 Family Law Council report, *Family Law and Child Protection*.



## Family Law Amendment (Family Violence and Other Measures) Bill 2017

Relationships Australia notes that measures currently included in this Bill would enable state and territory children's courts to resolve parenting matters, and help families avoid having to appear in multiple courts. For example, a child protection matter may come to an end when the child is placed with a protective person, such as a grandparent. That person may then need to obtain separate family law orders; such as that he or she has sole parental responsibility for the child.

### *B.3.4 Major tranches of amendments to the Family Law Act*

Since the Act was passed, there have been 16 different Commonwealth Governments, most of which have attempted piecemeal, though often significant, adjustments to the family law system. The former Deputy Chief Justice of the Family Court, and Commissioner to this review, the Honourable John Faulks, has counted 116 amending Acts.<sup>27</sup> These have included, for example:

- amendments in 1987 to expand the jurisdiction of the *Family Law Act* to deal with *ex nuptial* children<sup>28</sup>
- the 1991 amendments<sup>29</sup> to include provisions on the handling of child abuse allegations
- the 1995-6 amendments,<sup>30</sup> which effected a significant shift in how the legislation recognised the interests of children in family disputes
- amendments in 2000 intended to improve enforcement of parenting orders and establish binding financial agreements
- the introduction of superannuation splitting in 2001<sup>31</sup>
- the 2006 shared parenting reforms
- the 2008 *de facto* financial matters reforms,<sup>32</sup> and
- the 2012 family violence reforms.<sup>33</sup>

The 1987 amendments of the Act abolished, for the purposes of the family law system, the distinction between children of a marriage (in relation to whom the Commonwealth already had Constitutional power to legislate<sup>34</sup>) and *ex nuptial* children, in relation to whom New South Wales, Victoria, South Australia and Tasmania referred their powers to the Commonwealth. Queensland referred power in 1990. Following Queensland's referral, only Western Australia maintained its own legislative arrangements for *ex nuptial* children, as it had for other family law matters.

The *Family Law Reform Act 1995* was pivotal in giving legislative substance to the notion of paramountcy of children's best interests. It introduced the concept of parental responsibility, shifting language away from any suggestion that parents had 'rights' in relation to children, and emphasised children's rights to know, be cared for, and have contact with both parents.

The 2000 amendments, contained in the *Family Law Amendment Act 2000* split enforcement into three stages:

<sup>27</sup> Faulks, J, seminar delivered at the Legal Workshop, College of Law, Australian National University, 28 September 2016, p 12, n11. Other key amendments affecting the family law system included legislation such as the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*.

<sup>28</sup> See the *Family Law Amendment Act 1987*.

<sup>29</sup> See the *Family Law Amendment Act 1991*.

<sup>30</sup> See the *Family Law Reform Act 1995*.

<sup>31</sup> See the *Family Law Legislation Amendment (Superannuation) Act 2001*, which inserted Part VIII B.

<sup>32</sup> See the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*.

<sup>33</sup> This list does not include significant innovations initiated by the family law courts themselves, such as the establishment in 2003 of the Magellan List.

<sup>34</sup> See sections 51(xxi) and (xxii) of the Constitution.

- provision of information
- post-separation parenting education, and
- court injunction.

Further, people who breached contact orders could be ordered, by the court, to undergo post-separation parenting education and support services, funded under the Family Relationships Services Program.

The 2000 amendments also removed the previous concept of maintenance agreements and established a legislative framework for binding financial agreements, which could be made before, during, or after, a marriage. If validly made, financial agreements oust the jurisdiction of the court to determine matters to which the agreement applies.<sup>35</sup>

The 2006 reforms<sup>36</sup> introduced mandatory family dispute resolution for disputes about children's arrangements, placed increased emphasis on the need for both parents to be involved in their children's lives, and introduced the Less Adversarial Trial provisions in Division 12A of Part VII of the Act. More broadly, the shared parenting amendments established two primary considerations in determining the best interests of the child – the right of the child to have a meaningful relationship with both parents, and the protection of the child from harm. The Act established a new presumption of equal shared parental responsibility. While the amendments simply required a court to consider whether a child should spend equal (or, failing that, substantial and significant time) with both parents, where practical and not contrary to the child's best interests, this has often popularly been equated with 'equal time'.<sup>37</sup> The presumption does not apply where there are reasonable grounds to believe that a parent of a child (or a person who lives with a parent of a child) has engaged in abuse of the child or in family violence. The presumption of equal shared parental responsibility was an unequivocal departure from the 'clean break' principle which had underpinned the 1975 Act.

These reforms were complemented by almost \$400 million in funding,<sup>38</sup> and were aimed at implementing a range of recommendations presented in the *Every Picture Tells A Story* report of the House of Representatives Standing Committee on Family and Community Affairs.<sup>39</sup> Family Relationship Centres, and the Family Law Pathway Networks, were also established on the basis of this report, and supported the newly-required participation in FDR before filing in the family courts.<sup>40</sup> The underlying aim was to promote a culture of cooperation rather than litigation. Subsequent evaluations of FRCs and FLPNs have found that Australian families have benefited significantly from these facilities, which diverted many people away from the courts. This diversion has, however, made more visible in the system those families riven by seemingly intractable conflicts and afflicted by serious and debilitating co-occurring needs.<sup>41</sup>

The 2012 reforms<sup>42</sup> built on the 2006 amendments by requiring family courts to give greater weight to protection from harm in determining a child's best interests, and enacted expanded definitions of family violence and abuse. The reformed definitions were informed by a maturing understanding of the various forms of family violence and abuse, and of broader social, economic and institutional dynamics which can enable and perpetuate it. The amendments also reflected a growing realisation of the harm children suffer from indirect, as well as direct, exposure to family violence. These reforms strengthened

<sup>35</sup> Like all ouster provisions, these have been construed narrowly in successive judgments, and attempts to amend them in such a way as to support their validity and give parties confidence in using them (and lawyers' confidence in drafting them) have, thus far, been unsuccessful.

<sup>36</sup> See the *Family Law (Shared Parental Responsibility) Amendment Act 2006*.

<sup>37</sup> See Professor Chisolm's 2015 paper, 'Re-writing Part VII: A Modest Proposal', 25.

<sup>38</sup> Estimated at \$397 million over four years; more precise figures are not available.

<sup>39</sup> Tabled on 29 December 2003.

<sup>40</sup> Subject to exceptions around violence and abuse.

<sup>41</sup> See the 2015 and 2016 reports by the Family Law Council.

<sup>42</sup> Contained in the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*.

advisers' obligations by requiring family consultants, family counsellors, FDR practitioners and legal practitioners to prioritise the safety of children, and sought to facilitate state and territory child protection authorities to participate in family law proceedings where appropriate.

What had been incremental progress in raising awareness and understanding of family violence, and of the real public interest in having the family law system operate in conjunction with state and territory systems of child protection, was abruptly accelerated by the appalling death of Luke Batty in early 2014. There was broader acceptance both of the proposition that safety – particularly children's safety - should be a central concern of the family law system, and the view that the family law system is not equipped to prevent, address and respond to the needs of those involved in high conflict separations.

Further, the preceding 40 years have seen vast social change, including to the formation and composition of Australian families, approaches to dispute resolution, and expectations both about the role of parents post-separation and of governments in assisting families experiencing conflict amidst a background of complex psycho-social needs. These needs, many of which are hardly 'legal problems' in origin or manifestation,<sup>43</sup> include (as noted above) family violence, child sexual abuse, mental illness, substance abuse, intergenerational conflict, cultural disengagement, poverty, homelessness, and intergenerational welfare dependency. Typically, such families present to the courts and allied services with constellations of these co-morbidities. Increasingly, too, members of families so affected are self-represented in what can become the most intractable and contested of family law disputes. This intractability has its origins not necessarily in the legal concepts involved, but in the families' economic and psycho-social needs, and the inadequacy of the system's responses to those needs, which are, in their essence, legal and adversarial, rather than therapeutic and restorative.

### *B.3.5 Service delivery issues and initiatives*

Family law services play an integral role in the system, providing both alternative dispute resolution and a range of social services to assist families to prevent separation and through and beyond separation. These services have consistently received favourable evaluations. There has been an increase in demand for services and in the complexity of needs to be met, while funding has remained static since indexation was paused for three years in the 2014-15 Budget. In 2016, KPMG delivered a report to the Attorney-General's Department on future service needs, future locations and funding models for services. AGD consulted with service providers on the report in 2016; Relationships Australia provided a submission to AGD, a copy of which is attached to this submission.<sup>44</sup> In late 2017, the then Attorney-General, Senator the Hon George Brandis QC, approved rolling over various Family Relationships Services Programme funding commitments to 2022, to allow time for consideration by Government of the recommendations which will emerge from the ALRC's review, and implementation of those recommendations as the Government determines.

Key issues with service delivery at present include:

- **fragmentation** between services and other parts of the systems affecting families<sup>45</sup>
- **case complexity** – it is broadly accepted that all family law services are providing services to families with increasingly complex psycho-social co-occurring needs (see, for example, the reports by the Family Law Council in 2015 and 2016). Many families present with multiple risk factors which place severe strain on service providers' capacity to provide safe and effective services, and

<sup>43</sup> While some of them do, of course, merit a law enforcement response or remedy.

<sup>44</sup> At Appendix E.

<sup>45</sup> See responses to Questions 31-33.

- **delays in accessing children’s contact services and service delivery standards in unregulated children’s contact services**<sup>46</sup> - CCSs are intended to provide a safe, child-focused and neutral place for changeover or independently supervised visits for potentially at-risk children. Government-funded services have safety standards as part of their funding agreements, but these cannot meet current demand, either in terms of existing locations or in terms of emerging locations with a need for a CCS. This is partly attributable to increased awareness, and identification, of risk, and families needing supervised (rather than unsupervised) contact for longer periods. This has led to lengthening waiting lists and the growth of unregulated private operators, potentially leaving children and families at risk. Relationships Australia considers that CCSs could provide greater value by assisting families to build capacity, rather than acting narrowly as monitors or supervisors of contact. For example, CCSs could – with adequate funding – be re-positioned to offer more interactive opportunities for parents to learn and enhance parenting skills, as well as offering warm referral of children and their parents to other supports. There are already CCSs that seek to do this, and have had success in moving families from ‘high vigilance needs’ to ‘low vigilance needs’ through, for example, facilitating Supportive Parenting Groups (see the case study below)<sup>47</sup>. A further concern relates to the absence of regulation for children’s contact services, which has the potential to put children at risk. There are models in other sectors, including (for example) the child care National Quality Framework.<sup>48</sup>

### Case study – value-adding in children’s contact services

The four CCS’ run by Relationships Australia New South Wales have implemented a process in which parents who have undertaken an approved parenting course (eg ‘Parenting After Separation’ or ‘Circle of Security’, and who have attended the CCS for six months, may be selected to attend a low vigilance service. These services have a reduced ratio of staff to children, and included ongoing parent education sessions held before and after the children attend. The topics for the parenting education are developed by the parents themselves, in partnership with staff. Having the capacity to move parents to a low vigilance service has contributed to reduced waiting times and transformed the relationship between staff and parents to one which is described by parents as more collaborative. Most important, parents have been supported, through development of improved parenting and communication skills, to move towards self-management of contact with their children.

Recent and current initiatives include:

- specialist domestic violence units and health justice partnerships, established with funding from the Women’s Safety Programme
- Family Advocacy Support Services, established under the Third Action Plan of the *National Plan to Reduce Violence Against Women and their Children 2010-2022*
- the Legally Assisted and Culturally Appropriate Dispute Resolution pilot, established under the Third Action Plan of the *National Plan to Reduce Violence Against Women and their Children 2010-2022*
- the post-parenting order pilots, which ended in September 2017

<sup>46</sup> Which have attracted adverse media attention; see, for example, *A Current Affair*, 30 January 2017.

<sup>47</sup> In its submission to the SPLA Inquiry, Relationships Australia expressed concern that ‘decisions made in the Family Court that allow unsupervised visits and handovers of children are a court mandated gateway for ongoing abuse of children and mothers: see Appendix D.

<sup>48</sup> For more information, see <https://www.acecqa.gov.au/nqf/about>.

- collaboration between National Legal Aid and AGD on a national community legal education resource to help people affected by family violence to navigate the different jurisdictional systems, and
- ongoing development of the National Domestic Violence Order Scheme.

A number of these will have been completed, and their efficacy evaluated, by the time of completion of this reference. This should equip the Government of the day with an array of high calibre evidence and analysis with which to inform the necessary transformational reforms.

### *B.3.6 Looking to the future – the next forty years*

This review by the ALRC presents not only an opportunity to make transformational changes to the system to meet existing and immediately foreseeable needs, but also an opportunity (and perhaps a moral imperative) to seek to forecast the needs and expectations of the Australian community, and thus to recommend reforms which incorporate future-proofing. AGD has, in the past five years, commissioned some future-looking work (the Allens report and the KPMG report); however, these have not provided a publicly-available and robust evidence basis for forecasting need and informing sound policy development.

In turning its mind to this aspect of the review, the ALRC might consider other publicly available data on future trends, such as the *Intergenerational Report* (2015) by The Treasury.<sup>49</sup> Some key forecasts made in that Report were that:

- Australians will live longer and continue to have one of the longest life expectancies in the world, with implications for longer and more varied workforce participation by individuals, more intimate partnerships across the lifespan, the provision and regulation of savings and investment products to fund longer lifespans, and more blended families, as well as greater scope for intergenerational conflict<sup>50</sup>
- the effect of technological advances, including in advanced robotics, emerging 5G capabilities,<sup>51</sup> ongoing rollout of the NBN (which aspires to give all Australians access to broadband by 2020), evolving use of social media, and new means of family formation – these will affect the nature of families as well as expectations and capabilities of service delivery (perhaps particularly ‘bespoke’ service delivery), and changing nature of employment and workforce composition (which, in turn, will affect family life).

### *B.3.7 Funding sources*

Investment in arrangements to support families before, during and after separation should reflect, and be proportionate to, the fundamental importance of safe and healthy families to the overall well-being and success of the nation. Reductions in family conflict have powerful positive impacts through savings to the health system and the criminal and civil justice systems, increased workforce participation, and better employment, health, education and welfare-dependence outcomes. Unsurprisingly, therefore, calls for additional funding for this sector transcend social, institutional, professional and ideological divisions.

Relationships Australia acknowledges the initiatives of the Turnbull and Abbott Governments in funding a range of services and pilots, focussing mainly on responding to family violence and prioritising multi-disciplinary services which can address the various co-

<sup>49</sup> The next such report is not required until 2020.

<sup>50</sup> Treasury projects that 2054–55, there will be around 40,000 people in Australia aged over 100 – over 300 times the number of centenarians as in 1974–75, when the existing family law system was established.

<sup>51</sup> For more information about the forecast impacts of 5G in Australia, see the working paper, *Impacts of 5G on productivity and economic growth*, Bureau of Communications and Arts Research: [www.communications.gov.au/publications/impacts-5g-productivity-and-economic-growth](http://www.communications.gov.au/publications/impacts-5g-productivity-and-economic-growth)

occurring needs of families affected by violence. Relationships Australia further acknowledges that the Australian Labor Party committed to spend \$70 million over three years on family violence services,<sup>52</sup> and that the Australian Greens have also committed to funding initiatives for family violence services.<sup>53</sup>

Over the forty years in which the current system has been in operation, community expectations of its various components have transformed in kind *and* degree. For example, contemporary Australia expects governments to intervene in family life if vulnerable people are in danger and to fund a range of therapeutic services and dispute resolution/decision-making pathways. Meanwhile, the volume of demand continues to surge. Government and non-government agencies struggle to implement policy initiatives and deliver services from various dwindling and disjointed funding envelopes that exist in functional isolation from each other.<sup>54</sup>

Relationships Australia supports a greater quantum of investment in systems which support families and, throughout this submission, will make suggestions as to how enhanced investment could be directed. However, there is a broader point to be made. There will never be sufficient money to solve all problems, or to offer bespoke services to every family in need. Choices must be made on the basis of relative priority. This is not a criticism; it is a pragmatic statement of fiscal and political reality. Reasonable people, acting in good faith, can and will hold differing views on how this should occur, and Relationships Australia does not suggest that any one view has the monopoly on merit.

What Relationships Australia does argue is that, in conceptualising a new system to achieve the objectives outlined in the response to Question 1, a holistic and integrated approach should be taken to funding arrangements, as suggested in our comments below on integration and collaboration. Rather than service providers having to navigate a multiplicity of funding sources to deliver on the integrated wraparound services expected by the community and by governments, consideration should be given to scrutinising the full existing array of funding sources (at least from government sources) and taking a national strategic investment approach crossing portfolio and jurisdictional boundaries. This might involve aggregating funding arrangements which currently exist for disparate purposes such as, for example:

- family law services and family relationships services currently administered by AGD and DSS
- Commonwealth and State/Territory legal assistance for legal aid commissions, community legal services, Aboriginal and Torres Strait Islander legal services, and Family Violence Prevention Legal Services
- court funding for Commonwealth, State and Territory courts, and
- various Commonwealth, State/Territory and local health, child protection, justice and other social services.

If the current funding envelope is not expanded, then Relationships Australia considers that a high priority for targeting funding increases would be to assist vulnerable clients (those with safety concerns) and to augment FDR services to cope with the additional demand that would be generated by mandatory FDR for property matters.<sup>55</sup>

<sup>52</sup> For more detailed information, see <https://www.alp.org.au/familyviolence>.

<sup>53</sup> See <https://greens.org.au/domestic-violence>.

<sup>54</sup> So that, for example, an individual service provider, to meet the holistic needs of one family, might be obliged to assemble a service delivery response drawing on bits of funding from multiple funding sources, meeting multiple sets of grant criteria and complying with multiple sets of governance arrangements, all of which has an opportunity cost in terms of time and resources.

<sup>55</sup> See also response to Question 15.

### *B.3.8 A note on language*

Relationships Australia will, in this submission, argue for transformational reform to move away from traditional adversarial concepts. Wherever possible, the submission will refer to 'participants' rather than 'parties' or 'litigants', and to 'decision-making', rather than dispute resolution (which is also intended to emphasise the agency to be expected of adult participants and acknowledge the recurrent (not one-off) nature of many family conflict, which necessitates building families' capacities to self-manage).

## **B.4 Responses to specific questions**

### **Objectives and principles**

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

Once the ALRC delivers its report to Government, that Government will have a once in a generation opportunity to transform how contemporary Australian families are equipped, while intact, during and after separation, to be safe and nurturing. This transformation should focus on safety and non-adversarial processes, and promote collaboration, coordination and integration between different governments, institutions, agencies and service providers.

The primary question is: If starting from scratch, would the needs of those currently caught up in the existing family law system lead rationally to setting up a system within a legal framework, centring on an adversarial dispute resolution approach, or within a different kind of framework?

Relationships Australia considers that these arrangements should be fundamentally re-conceptualised as a network of services for whole families, throughout the life span – albeit with ancillary legal services and complemented by access to courts to set and enforce norms. The majority of families do manage to resolve their difficulties by themselves, raising the question: should we construct a system that is predicated on meeting the needs of the few? Whom is it intended to serve? The answer from Relationships Australia is: all. Any system designed to meet the acute and complex needs of those few who currently seek final judicial disposition is, after all, the system which forms the basis for negotiation and agreement among the many. This is an important consideration.

The history of the family law system, from debates on the 1975 Bill onwards, is marked with recurrent, but ultimately unsuccessful, attempts to:

- minimise conflict and adversarialism
- increase – in a practical sense – the focus on the best interests of children, and
- minimise legal, bureaucratic and other system barriers to support safe and healthy families, whether intact, separating, separated or blended – or all of these at different stages.

A significant reason underlying the repeated failures is that we have been trying to bolt mechanisms to achieve these outcomes onto an innately adversarial system, centred on adjudication of legal disputes as the governing paradigm. Many of the challenges noted in section B.3.1 stem from trying to meet needs which are economic or psycho-social or clinical using the tools of an adversarial legal process. Since the 1970s, the innate limitations of the adversarial system, and the benefits of multi-disciplinary therapeutic interventions, have been openly acknowledged, and more than 40 years, governments have

tried, unsuccessfully, to modify the very nature of the adversarial process to try and make it work. It has not worked, and families are suffering. It is not radical to say so. What is radical is our transparent rejection of a system based on an adversarial principles and methods which four decades of well-intentioned adaptation has failed to render fit for purpose.

This review offers an opportunity to genuinely engage with the following question – should the arrangements which Australia makes to support families in dispute be adversarial at their base, or should they be something else entirely?

It is the position of Relationships Australia that the objectives described below could be achieved, and the principles be expressed, through what we are calling a Family Axis approach. This is comprised of the twin pillars of:

1. multi-disciplinary and integrated wraparound services, delivered through a combination of physical and virtual Hubs, and
2. non-adversarial decision-making mechanisms.

The Family Axis approach would be supported by:

1. new legislation
2. a nationally-integrated funding model, transcending existing funding silos.<sup>56</sup>

This approach is described in greater detail at Appendix A.

#### *Proposed objectives of a modern system*

A modern system for Australian families should support:

- healthy whole of family relationships (including intergenerational and adult sibling relationships) throughout the life span
- families to stay together or separate in a way that accords primacy to the safety, development, and other needs of children, including through the establishment of safe and healthy co-parenting relationships, with functional communication and conflict prevention/resolution skills
- financial and economic recovery and stability of separating adults (including ongoing social and economic participation as well as an appropriate division of resources and debt)
- an appropriately trained and equipped professional workforce.

As a pillar of the Family Axis approach, we need decision-making mechanisms which aim to resolve family disputes by the most informal, timely, proportionate and inexpensive means possible. Effort and resources should be invested in services with therapeutic intent and effect, which promote (where safe to do so) co-operation between parents, and with supporting services, to implement arrangements which support family well-being. Interventions should focus on parent/child relationships, rather than parent/parent relationships.

The majority of families can, and do, sort out parenting arrangements for themselves – nearly 70% sort them out ‘via discussions’.<sup>57</sup> Approximately 6% resolve

<sup>56</sup> Other than the Family Court of Western Australia. More detail is set out at Appendix A. Note that the concept of ‘hubs’ for service delivery, in this submission, is a flexible one, which recognises that hubs can take a range of forms, to meet the needs, circumstances and exigencies of the communities which they serve. They may be in bricks and mortar premises; they may be online; they may exist by virtue of robust and effective cross-professional collaboration, or they may combine any or all of these. The governing principles of the ‘hub’, for the purposes of this submission, are (1) one door only/no wrong door; (2) supported case management and service navigation; (3) integration and collaboration between services dealing with the family in a way that is seamless for, and invisible to, the family.

<sup>57</sup> See Table 4.8, Experiences of Separated Parents Study (2012 and 2014), AIFS.



matters through lawyers, and 3% through the family law courts. Of these, nearly 40% have complex psycho-social support needs<sup>58</sup> which, if they had received an preventative or primary response, may not have led to a need for judicial resolution. To more safely, efficiently and effectively resolve these issues requires early competent screening for, and assessment of, risk *and* needs,<sup>59</sup> and affording access to the services which will build families' capacities to minimise risk and meet those needs.<sup>60</sup> However, the well-known backlogs in the courts mean that matters can span years (sometimes, all of a child's lifespan to date), with 'interim' orders – which are often made without the benefit of adequate information about risk and needs, taking on increased importance. It is noteworthy, in this context, that for every interim decision in a parenting matter, a judge must turn his or her mind to 42 decision points. This is a huge impost on judge-time, and has serious flow-on effects for the preparation of materials by lawyers and their clients.<sup>61</sup>

The Federal Circuit Court currently deals with 87% of first instance family law matters. For final order applications, the backlog of cases is equivalent to the number of new filings (in 2015-16, there were 17,523 final order applications, 16,379 finalised final order applications, and 17,239 pending final order applications). For interim order applications, the backlog is over one-third of new filings (in 2015-16, there were 21,521 interim order applications, 20,367 finalised interim order applications and 7,822 pending interim order applications). For the 2016-17 reporting year, the Federal Circuit Court reported a slight increase in workload, including 17,791 final orders and 22,050 interim orders.<sup>62</sup> In his Foreword to the 2016-17 Annual Report, then Chief Judge of the Federal Circuit Court, John Pascoe AC CVO, remarked that

The Court, once again, dealt with a very high volume of matters across its wide jurisdiction in both family law and general federal law. A total of 95,181 applications were filed. The majority of matters were filed in the family law jurisdiction (90 per cent of the total filings), followed by Migration (5.2 per cent), Bankruptcy (3.4 per cent) and Industrial Law (1.2 per cent).

A principal architect of the 1975 Act, the then Attorney-General Senator the Hon Lionel Murphy QC, echoed the United Kingdom Law Commission in stating that

...a good divorce law... should buttress, rather than undermine, the stability of marriage and, when a marriage has irretrievably broken down, it should enable the empty legal shell to be destroyed *without maximum bitterness, distress and humiliation*.<sup>63</sup> [emphasis added]

A Member of Parliament who would later become Attorney-General, the Hon Phillip Ruddock MP, also spoke in the House of Representatives on the 1975 Act. He said that he was

...not convinced that this Bill will remove all that heartbreak...[or] that there is any method that can be achieved to remove by legal action the sort of heartbreak that emerges when a marriage... is being put aside. I do not believe that the law or the legal profession can be blamed for that.<sup>64</sup>

<sup>58</sup> Cf AIFS, *Complex Issues and Family Law Pathways: Synthesis Report, Evaluation of the 2012 Family Violence Amendments*, Table 2.2, p 16.

<sup>59</sup> Some Relationships Australia services use DOORS: see submission to SPLA inquiry, section 3, 'Information on the extent to which DOORS has been successfully used across the RA network.' (Appendix D).

<sup>60</sup> An example of the kind of approach which would be invaluable in building the capacity of families to resolve their own disputes is provided by restorative practice: see Appendix G for more information on restorative practice.

<sup>61</sup> See the Hon G Riethmuller, 'The 42 easy steps for deciding straightforward parenting cases under Part VII of the Family Law Act 1975' (2015) 24(3) *Australian Family Lawyer* 39.

<sup>62</sup> See Table 1.1 of the Annual Report, Filings and finalisations in family law and general federal law.

<sup>63</sup> Commonwealth, Parliamentary Debates, Senate, 13 December 1973, 2827, 2828.

<sup>64</sup> House of Representatives, Family Law Bill 1974, Second Reading Speech, 28 February 1975.

Relationships Australia agrees that no system can be devised to ameliorate the pain, the disappointment, the loss and the anger that are human reactions to the irretrievable fracture of a relationship entered into, at its best, with mutual love, joy and hope. We can, however, as a society strive towards a system that does not, through its inherent characteristics, entrench or institutionalise grief and conflict, guilt and blame. It is surely within our capacities as a nation to provide families with services and tools to be safe from violence, to effectively co-parent where possible, to preserve family relationships, and to re-build lives. Family services are best placed to offer this, in a system of which multi-disciplinary service provision is a pillar, alongside decision-making mechanisms providing safe, timely and differentiated pathways and services to meet the diverse needs of contemporary families. Where law must be reverted to, it should be through a system devoid of innate conflict, such as the adversarial court system, and without an expectation of linear escalation to court as the ultimate destination. A radical new approach is needed urgently. Relationships Australia suggests an alternative approach at Appendix A to this submission.

## **Question 2 What principles should guide any redevelopment of the family law system**

Relationships Australia supports the idea of overarching principles to guide reforms. Of the principles outlined in the Issues Paper, Relationships Australia supports:

- giving the widest possible protection and assistance to family relationships
- affording safety to those affected by family conflict and violence
- assisting families to resolve conflict safely and in a way that preserves meaningful relationships, and
- the principles outlined at paragraphs 43 and 44 of the Issues Paper.

In addition, Relationships Australia considers that a contemporary system designed to support family relationships, and support families when those relationships are breaking down, should be designed according to the following principles:

- design from and around the needs of families, not around existing legal, jurisprudential, administrative, funding or single-disciplinary structures, distinctions and hierarchies; Relationships Australia respectfully suggests that the ALRC refer to expertise in industrial design and ‘user-based’ design for advice on how this might be approached
- that services (including decision-making mechanisms) be therapeutic in their aim and effect, and accommodate and respond to the enduring nature of many family conflicts
- as a corollary of the preceding point, that families are supported before, during, and after separation, as necessary
- that there be an emphasis on ‘front-loading’ costs through prevention, early intervention, capacity-building within families, and follow up
- that families, when separating, be offered pathways and services which are proportionate to their needs and resources (ie not a ‘one size fits all’ journey with court as the ultimate and most highly valued destination and vindication)
- that there be no wrong door and one door only and, as an enabler of this principle, that service integration and collaboration happen at the organisational level, and do not require active involvement of, or self-navigation by, the family
- that services be available on the basis of universal service and accessibility,<sup>65</sup> and
- above all, that the well-being of children remains paramount (and, as a corollary, will prevail over the rights and interests of adults).

<sup>65</sup> In this connection, the comments by Relationships Australia on the KPMG final report, see out at Appendix E, especially at page 9, noting that ‘...FL [Family Law] services have successfully provided services to clients with high rates of disadvantage within a universal framework....Without universal access, a proportion of higher income clients will end up in court, and many of these families will end up disadvantaged by the end of this process.’ This would undermine policies focused on encouraging timely decision-making.

## Access and engagement

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

Fragmentation within the current family law system, and between that system and other related systems,<sup>66</sup> is a significant hurdle in accessing information. For users who approach this environment in great distress, perhaps without access to technology or technological assistance, or with any other needs which might impede access, it can be an impassable barrier. While much is said about the costs of the system, what is too often overlooked is that making information available across multiple platforms, in a comprehensible way, would go some material way to achieving access to justice.

The key principle here must be client-centred design, as noted in our response to Question 2. Flowing from this, information must be:

- accessible to users across Australia
- accessible safely and privately<sup>67</sup>
- available at all hours
- up to date
- comprehensibly expressed, and mindful of particular considerations of likely constituencies of users (eg compliant with applicable disability access standards)
- integrated – ie with references to other relevant services which are easy to use.

Technology can be a great help – well-designed websites, apps and salient engagement with social media should be a given. However, Relationships Australia is also mindful that, for many Australians, the digital divide is a reality. It is important to note, also, that this is not always a function of technological skill or willingness to learn on the part of the user; many Australians simply do not yet have access to fast, reliable, safe and discreet internet access (and not only because they live in regional, rural or remote areas). Accordingly, service providers and governments must continue to offer information and services across a range of platforms.

In this connection, Relationships Australia also notes the recent investments by the Commonwealth Government in publishing resources such as the Model Parenting Orders Handbook and the Family Violence Benchbook.

In terms of existing structures that support access and engagement, Relationships Australia acknowledges the proven value<sup>68</sup> of Family Law Pathways Networks. These Networks play integral roles in developing and providing information about family law and family law services through websites, service directories, and printed resources. These resources support professionals in all parts of the system to help their clients navigate through the various elements of that system.

<sup>66</sup> See the response to Question 31 for a more detailed description of the nature and effect of fragmentation.

<sup>67</sup> For an example of an app designed with user safety at the forefront, see Penda, a financial empowerment app from Women's Legal Service Queensland: <https://www.wlsq.org.au/resources/legal-toolkit/penda-app/>

<sup>68</sup> See independent evaluations commissioned by AGD.

## **Case study – offering choice and integrated service delivery**

Relationships Australia Queensland has operated the Family Relationship Advice Line and the Telephone Dispute Resolution Service since 2006. These services are available nationally and internationally across extended hours, by telephone and online platforms. Clients can access case-managed support and information from qualified social scientists, legal practitioners and FDRPs. Consistently high demand for these services demonstrates the desire of clients to access services through modalities that are flexible and readily available. In 2017, the FRAL responded to over 63,000 calls for support and assistance. These services are in demand from clients within metropolitan areas as well as clients located in rural and remote areas, or where people are separated by distance. Our experience in operating these programs is that accessibility can be improved through technology options that enable users to choose how they access services.

Relationships Australia New South Wales delivers the ‘Kids in Focus’ parenting program. This program can be delivered both face to face in group sessions, and online, to enable parents to undertake it at a time and location which works best for them.

Relationships Australia supports an integrated approach to use of various platforms, enabling clients to pick the form (or combination of forms) of engagement that best suits them at various points in time. For example, Party A in a joint FDR process can engage online while Party B can engage using offline means, or a client who has been seeing a counsellor in one location, but who is re-locating, can continue with that counsellor using online services.

See also the response to Question 31.

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

The responses to Questions 31-33 describe the fragmentation of the current system. However, there will, inevitably, be complexities in any system built to achieve the objectives outlined in the response to Question 1. In addition, people's experience of family and conflict does not, generally, focus on a single instance of conflict followed by separation. Nor does recovery from family conflict or separation occur in a linear fashion. As the needs are complex and non-linear, so will be a system which responds to them.

Accordingly, there will always be a need for help in navigating the current, or any new, system. As the Issues Paper notes, there are some navigation services available to people affected by cancer, and these could usefully be replicated in this context. There have been some good examples of services that aim to help people to work out where they need to go and what services and help are available to them (such as the Kiosks in some family courts).<sup>69</sup> Another example of case management/navigation is provided by the FRAL.

The Family Axis approach described at Appendix A suggests an approach to navigation which could operate at several points along a continuum of intensity, depending on need and capacity. It might include:

- sophisticated intake, screening and triaging
- warm referrals (and, where applicable, safety planning)
- ongoing support and case management through a family's time in 'the system', and
- post-engagement follow-up.

Elements of these can be seen in existing services within Relationships Australia,<sup>70</sup> and in services operating in other environments, such as the Collingwood Neighbourhood Justice Centre and the Access Gateway in Logan, Queensland.

While integration may take variable forms, according to the exigencies of the community it serves, the key is that distraught families should not bear the onus of navigating a complex and multi-layered array of services and sources of information. Whether integration takes physical form in co-location, or occurs as part of virtual or other networking structures and approaches, this needs to be seamless and invisible to the end user.

<sup>69</sup> For example, the South Australian Family Law Pathways Network funds such a kiosk in Adelaide. This service is well-used by judges and lawyers who direct litigants to the kiosks to seek help with referrals.

<sup>70</sup> For example, the Family Safety Model run by Relationships Australia Victoria, and described in Relationships Australia's submission to the SPLA Inquiry, set out in Appendix D of this submission.

## Case study 1 – service integration and collaboration

This case study illustrates how services providers can collaborate effectively to meet multiple complex needs in a family.

Betty is a widow in her early eighties who normally lives alone. She is in quite good health generally, but recently had a knee replacement and needs the other knee done, due to arthritis. Her son John is in his early fifties and came to stay with her to give her a hand after her operation, but also because he and his wife separated six months ago and he had nowhere to live. They have two children who are 19 and 20 who are studying and working part time while still living in the family home.

At first, Betty was very pleased to have John stay with her. He did the shopping, cleaning, cooking and the lawns. John used Betty's ATM card for the shopping and paid some of her bills at the post office. Betty has always managed her finances but recently seemed to be having trouble making ends meet. Bills had been turning up as overdue accounts. When Betty confronted John about money, he became defensive and angry and said that as he had been doing so much for her that he didn't think she would mind if he borrowed a bit of money. He told her that the kids were always asking him for money for this and that, and that he would pay it back.

Betty accepted this initially, but it happened over and over again and John became increasingly rude, impatient and dismissive of her. Betty also noticed that John was drinking a lot. Betty confided in her daughter Jenny who lives in the country. Jenny rang an advocacy service specialising in the needs of older people, who advised her to contact Relationships Australia. Betty and her daughter attended an intake and assessment session. As Betty was reluctant for Relationships Australia to contact her son John, the practitioner suggested that Betty's daughter Jenny talk to her brother and suggest that he contact Relationships Australia about his property separation and sort out his finances.

John took up the suggestion and contacted Relationships Australia for property mediation. During the screening process, he identified that he had financial worries, was concerned about his gambling and drinking and was struggling with depression. This information enabled the practitioner to make a referral to a Gambling Help Service Counsellor. When John attended counselling, he disclosed that he gambled away his redundancy money which he had received ten months ago and that he had also drawn on the mortgage. This was what finally led to his marriage breakdown. John said that he had felt suicidal and had been using alcohol to self-medicate. He admitted to misusing his mother's money to gamble in the hope that he could win back money to fix the financial mess he was in. John stated that he was ashamed of treating his mother this way because she had always protected him from his violent father when he was growing up. The GHS counsellor noticed that his mother had contacted the advocacy service recently. She asked John if he would like to invite his mum to counselling to talk about

<p>how gambling has affected him and others, including his mum. John agreed to the counsellor contacting his mother.</p> <p>When the counsellor contacted John's mother, Betty mentioned that she had recently contacted someone at Relationships Australia. The counsellor suggested that she may wish to work with her, John and the practitioner whom Betty had seen. Betty agreed and counselling was set up with John, Betty, the GHS counsellor and the Elder Relationships practitioner. John and Betty agreed that John wouldn't handle her money anymore and that he would pay back the money that he borrowed by doing chores until Betty is back on track. A financial counsellor linked to the GHS helped Betty to set up electronic banking and bill paying so that she can continue to manage her own finances.</p> <p>John proceeded with property mediation and continues to work to address his alcohol use, gambling and depression with the counsellor. John is learning to manage his frustration and grief through counselling and his interactions with Betty are no longer angry and abusive. John and Betty agreed that when John has completed his property mediation he would move out of Betty's house.</p>	



## **Questions 5-10      How can the accessibility of the family law system be improved**

In its current form, the Family Law Act is lengthy and cumbersome; a contributing factor has been a series of amendments ‘retrofitting’ provisions which make prescriptive arrangements to address specific circumstances or to meet the needs of a specific cohort of users.

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

Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people to the family law system. Policies made in the context of urbanised clients often do not translate well to the situation of Aboriginal people in the Northern Territory.<sup>71</sup> Distrust of government agencies in matters relating to children is also a significant problem, with fears of another stolen generation very present. Additionally, many of our clients suffer from intergenerational and complex trauma and, in some communities, violence has been normalised.

Cultural safety training and trauma informed practices should be mandatory for all those involved in the family law system. Recommendations from the *Bringing them home* report, the *Little Children are Sacred* report and, most recently, the report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, offer valuable insights into working in a culturally appropriate manner.

Relationships Australia Northern Territory employs a team of Aboriginal and Islander Cultural Advisors (AICAs) to assist clients to navigate the FDR process, but these supports have ceased to exist in the court system. The AICA team has developed its own presentation around the history of colonisation, lateral violence, how trauma can impact behaviour, and reactions to address this normalisation before even beginning to discuss how ongoing conflict can affect children.<sup>72</sup>

Another important consideration is that of access to family services professionals from Aboriginal and Torres Strait Islander communities, and its necessary enabler of education and training. It is important to expand professional education opportunities for Aboriginal and Torres Strait Islander people. There have been some programs which offer this, such as the Diploma of Counselling for Aboriginal and Torres Strait Islander Peoples. Regrettably, current resources constraints do not allow us to offer this programme.

Levels of reciprocal and severe family violence between parents and extended family members can preclude FDR. However, the family law system is challenging for Aboriginal people to pursue. It has been suggested that an option of mediation with a judge (with involvement of police for safety planning) could be useful in extreme violence situations.

A challenge for some Aboriginal families is navigating the differences and intersections between Aboriginal law, the federal family law system and state/territory domestic violence and child protection law. Often, these families are in all the systems and families may want to discuss the care of the children in a traditional way, but there are difficulties in having that recognised in the family law system. Recognition of kinship systems requires greater consideration be given to the role of Aboriginal grandparents in making decisions for children.

<sup>71</sup> For more information on how culturally safe practice is undertaken in South Australia, please see the separate submission from Relationships Australia South Australia. For broader consideration of issues facing Aboriginal and Torres Strait Islander people in engaging with the family law system, see the Family Law Council's 2012 report on Indigenous and CALD clients in the family law system: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>, and section 9.3 of the Family Law Council's 2016 report.

<sup>72</sup> See also Ross et al, *Model of Practice for Mediation with Aboriginal Families in Central Australia*, 2010, and the recommendations made by the Indigenous Legal Needs Project, 2016.

## **Case study – barriers to access for Aboriginal and Torres Strait Islander people and the need for investment in services**

Relationships Australia Queensland operates an outreach of the Far North Queensland Family Relationships Centre on Thursday Island in the Torres Strait. There are several barriers to effective access to services here, including difficulties recruiting suitably trained staff and the impacts of remoteness. It is essential that investment be provided to develop, support and train a Torres Strait Islander workforce. The costs of delivering services here are prohibitive, and include travel costs, staff costs, accommodation and property expenses, and the costs of providing adequate and culturally appropriate support and development to staff in these regions. Relationships Australia Queensland has invested in working with the community to develop culturally appropriate and responsive service delivery models. However, we recognise that effective and sustainable access to services in the Torres Strait and Northern Peninsula Area requires community capacity-building and community development, so that communities are able to develop, deliver and maintain services that work best for them.

[For further consideration, please see **Appendix H** for a discussion paper, prepared by Relationships Australia National Office, on 'Enhancing the responsiveness of the Families and Children Activity for Indigenous families and children'.]

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

Relationships Australia acknowledges the work being done in the current pilot of legally assisted and culturally appropriate FDR (LACA FDR). However, the pilot is limited to clients who have experienced domestic violence and, as a pilot, may well come to an end without being rolled out.

A challenge we see is where one participant is interstate, as many CALD clients prefer to speak with an FDRP in person, rather than access the Telephone Dispute Resolution Service.<sup>73</sup>

Relationships Australia sees virtue in having CALD-specific services that are broader than focusing only on family violence-affected families, and that are rolled out on an ongoing basis.

Further, there are occasions in which inadvertent barriers are placed in the way of CALD users accessing services. For example, family violence services currently in pilot phase may require that family violence be explicitly named and acknowledged; some of our female clients who are family violence survivors strongly resist naming perpetrator behaviour as family violence, which inhibits access by the family to services that might be of real value. Accordingly, Relationships Australia suggests that all services, but *particularly* services targeted for CALD users, be carefully designed to avoid deterring help-seeking.<sup>74</sup>

<sup>73</sup> Noting, nevertheless, that the FRAL has capacity to undertake calls using interpreters and that the Telephone Dispute Resolution Service has capacity to assist with international family disputes.

<sup>74</sup> For more information on CALD-sensitive practice in South Australia, please see the separate submission from Relationships Australia South Australia.

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

Relationships Australia is committed to inclusive services which are predicated on the autonomy and dignity of all individuals,<sup>75</sup> and which – accordingly - are strength, not deficit, based. This commitment should inform the development of all systems and services for Australian families.

It is suggested that, while it may not be appropriate to incorporate into legislation the provisions of the Convention on the Rights of Persons with Disabilities (one of the suggestions noted in the Issues Paper), decision-makers' attention should be directed to the relevant domestic law relating to discrimination on the grounds of disability.

One particular difficulty that Relationships Australia would like to highlight in responding to this question is the serious difficulty in finding people willing to be appointed as case guardians. This is a grave obstacle to providing access to justice for persons with disability. Relationships Australia understands that AGD is aware of these difficulties, and has – over some years now – been seeking to address them, but with little success. A reformed system should ensure that persons with disability have access to the advocacy and, where warranted, decision-making supports, to facilitate their fullest engagement with family services, including legal and decision-making services and frameworks. As a corollary, steps should be taken to remove barriers deterring people from acting as case guardians.

Finally, Relationships Australia notes that there may be potential to adapt Family Group Conferencing (FGC) to support the participation of people with disability. For more on FGC, see the response to Question 30.

<sup>75</sup> As articulated, for instance, in *Secretary, Department of Health and Community Services v JWB and SMB (Marion's case)* (1992) 175 CLR 218.

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

Relationships Australia supports Recommendation 1 made in the Family Law Council's *Report on Parentage and the Family Law Act* (2013), that provisions relating to parenting apply to children regardless of their family form, or the way in which their families are formed.

We share the concern, noted at paragraph 93 of the Issues Paper, that there are deficiencies in the data about the access to and use of family law services by LGBTIQ+<sup>76</sup> people, and any specific needs with which they may present. Relationships Australia encourages the capture of such data, to inform relevant and inclusive policy and programmes.

Relationships Australia endorses the findings of the Victorian Royal Commission, highlighting the significant and pressing need for policy and programmes to address the risks of family violence which arise particularly as a result of sexuality or gender identity.

Further, governments and services need to be mindful of using inclusive language. For example, Relationships Australia Northern Territory has received feedback which criticises literature which assumes that families are composed of 'a mum and a dad'.

<sup>76</sup> Relationships Australia is using the term 'LGBTIQ+' to be as inclusive as possible of all forms of identification.

## **Question 9 How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?<sup>77</sup>**

Relationships Australia notes with particular concern that many vulnerable communities are severely impoverished. In the Northern Territory, for example, there are families living in over-crowded, inadequate housing and struggling to provide basic food and shelter. There is no additional money to access family law services. In addition, remoteness, lack of transport or technology, and access to services and neutral interpreters means that issues in remote communities can go unaddressed.

Assumptions that technology can fully fill gaps in service delivery do not factor in issues of literacy, lack of internet services and safe and appropriate spaces and technology. For example, while online services may work for most urbanised people in cities, Aboriginal people in communities may be suspicious about dealing with practitioners other than in face to face settings. CALD groups may have similar sensitivities and, in any event, in dealing with issues as inherently personal as family conflict and separation, many people of all backgrounds may have a therapeutic need to engage face to face to tell their stories, to be heard, and to be supported in navigating a strange and formidable network of institutions and services.

While the LACA FDR Pilot goes some way towards addressing access for remote clients (travel costs were factored into the tender from Relationships Australia Northern Territory, for instance), it is limited to clients experiencing family violence and, at this stage, is a pilot. Aboriginal workers who visit remote communities have been reporting for many years the frustration about lack of access to services for those in the bush, and that funding only covers the urban centres.

Perhaps the family law system could work with existing bush courts to provide FDR in remote Aboriginal Communities so families can access services?

A further, and not insignificant, barrier to reliance on technology is constituted by rates of functional illiteracy in Australia. According to the most recent ABS and OECD data, lack of functional literacy is a not uncommon barrier to participation in economic and social participation, including engagement with online media.<sup>78</sup> These barriers are particularly high for Indigenous and CALD populations, but by no means confined to these cohorts.

Finally, and as a general observation, Relationships Australia notes that online services can only ever complement, not substitute, face to face services.

<sup>77</sup> Relationships Australia supports the FLC's recommendations in its 2016 report.

<sup>78</sup> See, the ABS fact sheet on the *Programme for the International Assessment of Adult Competencies*, Australia, 2011-2012, at <http://www.abs.gov.au/ausstats/abs@nsf/Lookup/4228.OMain+Features202011-12>. A 2016 study by the Australian Industry Group indicated that 90% of employers were concerned by low rates of literacy and numeracy among their employees.

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

Cost, complexity and delays are at the heart of distress and disquiet about the family law system. There is nothing new about this - it has been the case since the days of the *Matrimonial Causes Act 1959*. It is notable that the establishment of the Family Court of Australia, recommended by the Senate Committee in its report on the Bill, was a last minute addition to the Family Law Bill that became the *Family Law Act 1975*. The Committee took the view that the creation of a specialist family law court, with an emphasis on reconciling families and 'reducing the area of disharmony and bitterness', would 'put Australia in the forefront of family law reform.'<sup>79</sup> Through no want of effort, commitment or good intent, most stakeholders and actors in the contemporary family law system would agree that these laudable goals have – far from being met – been comprehensively overturned over the ensuing decades.<sup>80</sup>

### *10.1 Provision of family relationships services*

Relationships Australia considers that early intervention by multi-disciplinary services, providing appropriate therapeutic and early decision-making services to the family as a whole, can act as an effective circuit breaker to prevent families being consumed by a downward spiral of conflict which, ultimately, is only halted – some years later - by judicial resolution. It is worth considering whether the current system diverts clients into dispute resolution at an early enough stage, and whether section 60I certificates are an effective mechanism to encourage the early use of FDR. Relationships Australia Victoria has recommended that Government evaluate the effectiveness of the section 60I system to ensure that appropriate cases are not bypassing FDR services, and are being referred into FDR at an early enough stage. Such an evaluation could also examine whether some services are exempting clients who might benefit from FDR and whether courts are appropriately monitoring and enforcing mandatory FDR.

This is the main reason why simply providing more funding for the courts is not a sufficient or helpful response to the concerns expressed by the many critics of the family law system. We know far more now than we did in the early 1970s about secure attachment of children, the devastating impact of family conflict on children, and about the importance of engaging with children. We know far more about the causes and effects of family violence. We know far more about the debilitating effect, on all family members, of protracted conflict. In short, in 2018 we have the evidence base absent 40 years ago to demonstrate, beyond question, that prolonged conflict, ending in the courts, can utterly deplete the emotional, physical, social and financial resources of family members, drive them into hopeless cycles of debt, inhibit productive workforce and social participation, and cause intergenerational conflict and welfare dependency. As a corollary, we also now have the evidence base to demonstrate efficacy of early intervention by social science and therapeutic services. There is, therefore, every reason for society to take all possible steps to shift social expectations that judicial resolution is inevitable, is the 'gold standard' for family dispute resolution, or as providing ultimate vindication for wronged adults.

Finally, Relationships Australia notes that the majority of families can, and do, sort out parenting and property arrangements for themselves.<sup>81</sup> Only around 3% of separating couples require judicial resolution. Those matters that do go to hearing generally involve

<sup>79</sup> *Report on the Law and Administration of Divorce and Related Matters and the Family Law Bill 1974*, (1974) Parl Pap No 133, paras 44, 46. The Family Court of Western Australia was established in 1976 as a State court under section 41 of the *Family Law Act*.

<sup>80</sup> For example, there are indications that the high costs of litigation can, in some cases, lead to an outcome favouring the client with the greater capacity to pay, including through tactics such as 'burning off'.

<sup>81</sup> See Table 4.8, *Experiences of Separated Parents Study* (2012 and 2014), AIFS.



psycho-social complexities such as family violence, mental health issues, substance abuse, or a combination of two or more of these.<sup>82</sup>

## 10.2 Improving court service delivery

That said, Relationships Australia urges that:

- courts in states and territories be properly resourced (including by funding and training) to exercise family law jurisdiction when families come before them with other matters, using inquisitorial, rather than adversarial, processes<sup>83</sup>
- enhanced judicial training be provided across a range of domains, including attachment theory, child-focused practice, trauma-informed practice, cultural fitness, LGBTIQA+ literacy<sup>84</sup>
- courts be resourced to provide 'fast track' services for matters including:
  - matters where there is a safety concern (including to enable courts to make earlier findings in relation to allegations of family violence)
  - matters in which a parent is denied reasonable contact with children
  - property/debt disputes under a particular monetary limit
  - those seeking a parenting order in families where a person with parental responsibility becomes terminally ill, to facilitate the making of appropriate arrangements<sup>85</sup>
- courts be resourced to employ family consultants to write reports earlier in proceedings, and to ensure those family consultants are adequately trained and supervised; alternatively, a community or independent statutory agency (such as a child protection agency) could be engaged to assume this function, to ensure proper expertise and governance
- government prescribe minimum standards for family consultants who are not employed by courts and ensure that they are subject to adequate supervision and accountability mechanisms; consideration could also be given to regulating fee structures for external family consultants
- family consultants, employed by the courts, and FDRPs, be not only trained to continually assess for risk and safety, but also be empowered to refer families with particular characteristics and needs directly to appropriate pathways in the courts (eg fast track processes)
- government consider alternative means (other than conventional family reports) by which family courts could obtain reliable and timely information
- courts be resourced to provide improved support for vulnerable witnesses, and
- enhanced welfare supports be provided for judicial officers and court staff.<sup>86</sup>

## 10.3 Family Law Amendment (Parenting Management Hearings) Bill 2017

Relationships Australia notes that on 6 December 2017, the Government introduced into the Senate a Bill to establish a Parenting Management Hearings Panel, in the form of a pilot program. It is intended that the Panel would be a forum for self-represented litigants, entered into by consent of both parties. The Explanatory Memorandum for the Bill states that the Panel would offer

<sup>82</sup> See Table 2.2, p 16, *Complex Issues and Family Law Pathways: Synthesis Report, Evaluation of the 2012 Family Violence Amendments*, AIFS (2016).

<sup>83</sup> Eg child protection or family violence.

<sup>84</sup> See answers to Questions 41-44.

<sup>85</sup> For more information on this service, please see the separate submission from Relationships Australia South Australia.

<sup>86</sup> See answers to Questions 41-44.

a more flexible and inquisitorial alternative to the court process for resolving parenting disputes.... aimed at transforming the family law system to support families to resolve their family law disputes as quickly as possible, while adequately managing risks.<sup>87</sup>

During the pilot phase, use of the pilot would be free of charge.

Further to evidence which Relationships Australia provided to the Senate Committee considering this Bill, we support mechanisms which encourage early and rapid intervention and access to multi-disciplinary services,<sup>88</sup> allowing families to spend as little time as possible in 'the system', prolonged exposure to which entrenches the conflict which is so damaging and destructive, especially to children. Relationships Australia supports access to multi-disciplinary services, including early screening and risk assessment and therapeutic interventions,<sup>89</sup> to address family violence, mental health issues, substance abuse issues, gambling dependencies, homelessness and financial crisis. Relationships Australia considers, too, that further work needs to be done to identify and remove barriers to disclosure of factors affecting family safety. Currently, for example, we are aware that many people affected by family violence do not disclose, even when asked.<sup>90</sup> Barriers to disclosure include lack of awareness of the seriousness of violence that they have experienced, a fear of repercussions by the perpetrator and a fear of being judged. Just as concerning is the finding that many people are not asked.<sup>91</sup>

Too often, the assumption is that complexity of a family dispute equates to, or is manifested through, legal complexity, and demands a legal solution as both necessary and sufficient. This is not so. Complexity is not always driven by legal complexity, but by psycho-social factors affecting a family. It follows, therefore, that lawyers and judges are not necessarily the best equipped to respond fully to the needs of families with multiple and intersecting needs.

Should the pilot of Parenting Management Hearings not proceed, Relationships Australia recommends the Government consider piloting a service along the lines of Parenting Co-ordination, which is in use in parts of the United States of America and Canada, as well as in South Africa. Relationships Australia Western Australia is currently running an unfunded pilot of Parenting Co-ordination. Essentially, a family with a court order, or a parenting agreement, can access a parenting co-ordinator for assistance in applying the order or agreement (eg resolving day to day conflicts about application of the order or agreement, or facilitating the variation of an order or agreement that may have become unworkable because of a change in circumstances). Conceptually, it is a specific application of mediation-arbitration. It provides a simpler, faster and less expensive response to families' needs for some assistance in giving effect to orders and agreements, and frees up court resources. Detailed information about Parenting Co-ordination models, the pilot being run by Relationships Australia Western Australia is set out at Appendix I.

#### 10.4 *Legal services*

There is no doubt the cost of access to legal services is an impediment to resolving family disputes. Many Relationships Australia clients across the country are financially stressed, but have sufficient assets so as not to qualify for legal aid – the 'missing middle'. They

<sup>87</sup> Explanatory Memorandum, paragraph 1.

<sup>88</sup> Several stakeholders support service models which offer access to multi-disciplinary teams (see, for example, evidence given by Women's Legal Services Australia to the Senate Legal and Constitutional Affairs Legislative Committee hearings on the Family Law Amendment (Parenting Management Hearings) Bill 2017).

<sup>89</sup> For information about how Relationships Australia identifies violence, see our submission to the SPLA Inquiry, at Appendix D.

<sup>90</sup> Cf Kaspiew, Carson, Dunstan, De Maio, Moore et al, 2015. This does not appear, however, to be unique to Australia: see Cleak and Bickerdike, (2016) 9 8 Family Matters 16, 19.

<sup>91</sup> Cf Kaspiew, Carson, Dunstan, De Maio, Moore et al, 2015. This does not appear, however, to be unique to Australia: see Cleak and Bickerdike, (2016) 9 8 Family Matters 16, 19.

struggle to afford basic legal advice, let alone representation in court. Appropriate legal advice can be invaluable to clients who are resolving the issues themselves through FDR; for example, it offers the legal ‘reality testing’ that FDRPs are not permitted to give (an important aspect to preparing clients for mediation). Until recently, funding was available for FDR clients at Family Relationship Centres to have one hour of free legal advice, which was an effective way of delivering much-needed multi-disciplinary services in a way which was accessible to clients. Unfortunately, this funding has been withdrawn and clients are struggling as a consequence.

<p><b>Case study – offering collaborative legal and therapeutic services at minimum cost to clients</b></p> <p>This case study provides an example of low cost and high quality legal services.</p> <p>The Legal Advice Service is a component of the FRAL operated by Culshaw Miller Lawyers, who work in collaboration with Relationships Australia Queensland to provide a high quality legal advice service at no cost to clients. A high proportion of clients accessing this service are contemplating, or in the midst of, legal proceedings and the majority are self-represented, or no longer have legal counsel. The role of the Legal Advice Service is to guide clients to a resolution. Approximately 12,000 clients per year are helped through this service.</p>	
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### 10.5 Discrete task representation (DTR)

Relationships Australia notes the suggestions made by the Productivity Commission, and noted at paragraph 108 of the Issues Paper.

More affordable legal advice or services through DTR may help parents seeking information before or during FDR, as well as in converting a parenting plan or property settlement agreement into legally checked and appropriated framed consent orders.

Relationships Australia Tasmania, for example, has experience with a number of clients who are unable to obtain affordable legal representation for a variety of reasons, and are self-representing. Some of these clients have experienced family violence and Relationships Australia questions whether they are genuinely in a position to self-represent effectively. Provision of DTR could also be assisted and enhanced by technology (eg using apps or other interfaces).

A further benefit of DTR would be greater transparency for clients in billing. Relationships Australia supports clients receiving clear and detailed bills so that they can better see what they are paying for.

Relationships Australia Queensland and Culshaw Miller Lawyers will make a separate joint submission in response to the Issues Paper. That submission will canvass options for expanding the current benefits offered through the collaborative offering of the FRAL and the Legal Advice Service as described in section 10.4.

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

Self-represented litigants are increasingly common in the family law courts. The Family Court's Annual Report for 2016-2017 indicated that 23% of finalised cases involved one or more self-representing parties, increasing to 41% for matters which went to trial.<sup>92</sup> Unless legal costs are dramatically curtailed, it is likely that these percentages will continue to increase.<sup>93</sup> Of clients presenting to the FRAL, a high proportion are self-representing. In 2004, the former Chief Justice of the Family Court, the Hon Alastair Nicholson, wrote that increasing numbers of self-represented litigants lead to

Judges find[ing] themselves being presented with reams of unnecessary material, usually dwelling on events long past, adult rather than child focused, and replete with allegations about what each party is alleged to have done to the other. Witnesses who are called can provide little or no relevant information, and trials become lengthier and more expensive. The relationship between the parties – if it is not already in tatters – deteriorates to the extent that they are unable to effectively co-parent their children in the future...<sup>94</sup>.

The presence of one or more self-represented party generally requires a greater degree of judicial intervention than would be appropriate where solicitors or counsel are appearing. It could be argued, then, that with an increasing proportion of self-represented litigants, the arguments for retaining an adversarial system – centring around procedural justice – are correspondingly weakened. In an adversarial system, the court cannot make its own inquiries, and depends on the evidence brought by the parties. Particularly (although not only) when litigants are self-represented, and where trauma is involved, this is an unreasonable burden on litigants. Further, in the absence of legal representation for either party, and without an ICL, the onus is increasingly on the judge to ensure that relevant, probative evidence is brought before the court to assist in a decision – a decision which can only ever be as good as the available evidence allows. The quality and timeliness of judicial decisions could be significantly enhanced by better evidence being led in a timelier and more coherent manner.

Compounding the difficulties of that situation is the also ever-increasing probability that the capacity of individuals before the court will be compromised by morbidities including mental health issues or substance abuse. These co-occurring needs create complexities which it is unreasonable, and untenable, to expect judges to effectively manage.

Many of the characteristic features of an adversarial justice system are necessary to afford procedural justice. This imperative cannot be maintained when one or both participants is or are self-represented. The trend towards self-representation is common throughout western family law systems and is clearly a growing phenomenon that is here to stay, absent transformational change in our approach to family disputes. Providing additional resources to courts or legal services does not appear to have the requisite political support, however much we may wish it otherwise. An alternative approach, not requiring legal representation, is needed. Conferral of the necessary powers and functions on courts which can use inquisitorial approaches to provide decision-making services would meet that need.

For these reasons, Relationships Australia considers that a new decision-making approach would be based on an inquisitorial model, with a Counsel Assisting. Piloting such a model

<sup>92</sup> *Family Court of Australia, Annual Report 2016-17*, 41. The 2016 Annual Review for the Family Court of Western Australia reports that 47.2% of applications for final parenting orders filed in 2016 were made by self-represented litigants.

<sup>93</sup> Relationships Australia acknowledges that people self-represent for reasons other than cost.

<sup>94</sup> The Hon Alastair Nicholson, 'Sixteen years of Family Law: A Retrospective' (2004) 18 *Australian Journal of Family Law* 131, 144.

was suggested by the Family Law Council (although limited to cases where parties were unrepresented).<sup>95</sup> Even where family members were legally represented, the judge would then have far greater control, and access to relevant, probative evidence. Relationships Australia acknowledges the Constitutional barriers impeding implementation of an inquisitorial system at the federal level,<sup>96</sup> and considers these to give additional weight to the argument that state and territory courts should be better positioned – and appropriately resourced – to exercise family law jurisdiction.

<sup>95</sup> As noted in the Issues Paper, paragraph 118.

<sup>96</sup> See, for example, concerns raised by the Opposition in its dissenting report on the Parenting Management Hearings Bill, 26 March 2018.

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

Relationships Australia supports the suggestions identified at paragraph 117 of the Issues Paper, combined with the suggestions made earlier in this submission, dealing with accessibility of information, and the provision of 'navigation' (as mentioned in the response to Question 4) and case management services, existing along a continuum as described at Appendix A. That continuum might include:

- sophisticated intake, screening and triaging
- warm referrals (and, where applicable, safety planning)
- ongoing support and case management through a family's time in 'the system', and
- post-engagement follow-up.

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

The physical appearance of family courts is often impersonal, alienating and intimidating. To an extent, this is driven by a combination of contemporary security concerns and the traditional characteristics of court rooms, which generally reflect the adversarial character of court proceedings in the common law tradition. While not denying the imperative of the former, there is much that can be done to soften the impact of the latter. Safety and accessibility are of prime importance.

Previously in this submission, Relationships Australia has made suggestions about shifting the paradigm of services supporting separating families away from adversarial litigation and towards a more therapeutic response, and has also made suggestions about the desirability of co-located, multidisciplinary service provision models. To varying degrees, these already exist in many Family Relationship Centres. Were these suggestions to be taken up, then this would provide the opportunity to re-think the physical characteristics and presentation of services. A range of possibilities already exists for consideration.

Centres like the Neighbourhood Justice Centre in Collingwood have a range of features that 'soften' the atmosphere, while not compromising safety of users, the general public, or staff. It is noteworthy that the Collingwood Centre includes court facilities, but these do not physically sit 'at the core' of the Centre. In addition, the kinds of features recommended by the Victorian Royal Commission, and noted at paragraph 120, should be incorporated. Other amenities, such as the presence of free and private access to wifi, inviting cafes, vertical gardens and companion animals,<sup>97</sup> could also be considered. Some of these could readily be trialled in particular locations to evaluate their impact and cost effectiveness.

There should be onsite capacity for screening, risk assessment and safety planning. There should be also capacity to enable people who have experienced family violence, other kinds of abuse, or who have other safety concerns, to give evidence from a separate room by CCTV and, if appropriate, having questions read to them by an officer of the court. Relationships Australia understands that these facilities do exist in several locations.

<sup>97</sup> The Parramatta Family Court has a ground floor to roof atrium. The atrium houses poultry. Other public facilities, including courts in New South Wales, are increasingly availing themselves of the services of companion animals to provide comfort and reassurance to service users.

## Legal principles in relation to parenting and property

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

The 2016 Family Law Council report recommended a comprehensive review of Part VII of the *Family Law Act*, focusing on the prioritisation of children's safety in decision-making and advice-giving and supporting efficient and expeditious decision-making in light of the complex features of the contemporary client base of the family courts. Relationships Australia supports that recommendation and notes the proposals for a simplified Part VII made by Professor Chisolm in his 2015 paper.<sup>98</sup> Any legislation dealing with parenting matters – whether included in an amended form of the current Act or in a more radically re-imagined Act, should be framed to achieve the objectives, and developed in accordance with the principles, referred to in the response to Questions 1 and 2. In particular, the legislative framework should ensure that decision-making is driven by the children's needs, with clear primacy accorded these relative to adult wishes. In relation to the specific suggestions described at paragraph 133 of the Issues Paper, Relationships Australia takes the following positions:

- including abuse of process as an example in the definition of family violence - **support**
- removing the presumption of equal shared parental responsibility and the language of equal shared time from Part VII – **support** (endorsing the comments made on the history of these, and the experience in applying these, set out in Professor Chisolm's paper)<sup>99</sup>
- amending the best interests of the child checklist – **support the principle of** prioritising the protection of children, but consider that the division of factors into 'primary' and 'additional' has led to confusion, and unnecessarily protracted disputes, as well as inflating legal costs<sup>100</sup>
- simplifying the decision-making framework for interim parenting matters – **support**, noting Judge Riethmuller's paper on this subject<sup>101</sup>
- providing a dedicated pathway for decision-making in cases involving family violence – **support in principle**, but Relationships Australia takes the view that family violence is not the only, or necessarily the most dominant, factor which puts safety at risk, and that it would be preferable to have a dedicated, case-managed pathway for any matters where screening and risk identification suggest the presence of *any* factors which put safety at risk
- mandating risk assessments for family violence on filing of a matter, and at each hearing or court appearance, and that findings of fact be made about allegations of family violence as soon as practicable after proceedings are filed – **support in principle**, subject to risk assessment being treated as an ongoing process.

Internationally and domestically, there is a diverse array of models and tools designed to assist families, including high conflict families, to reach and give effect to sustainable agreements on parenting matters. For example, in some USA and Canadian locations the New Ways for Families model has proven of value in equipping high conflict parents with the skills and behaviours to communicate and make decisions together with accountability built in, by having to report to the courts on their progress. Another model, known as New

<sup>98</sup> Prof Richard Chisolm AM, 'Rewriting Part VII of the Family Law Act: A modest proposal' (2015) 24(1) *Australian Family Lawyer* Volume 1. The proposals described in this paper are also supported by the Law Council of Australia: see its submission on the Family Law Amendment (Parenting Management Hearings) Bill 2017, paragraphs 20, 22.

<sup>99</sup> Chisolm, 2015, see p 20, in particular.

<sup>100</sup> Chisolm, 2015, see pp 10, 26, in particular.

<sup>101</sup> The Hon G Riethmuller, 'The 42 easy steps for deciding straightforward parenting cases under Part VII of the Family Law Act 1975' (2015) 24(3) *Australian Family Lawyer* 39.



Ways for Mediation, is being provided at the Alice Springs service of Relationships Australia Northern Territory as part of its Post Separation Co-operative Parenting Program.

A further suggestion is that child support formulae should no longer be calculated by reference to the number of nights a child spends with each parent. This is often presents as an underlying, unspoken and unaddressed agenda in FDR, which impedes the achievement of an outcome in the child's best interests.

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

The terms of reference require the ALRC to make recommendations concerning the ‘protection of the best interests of children and their safety.’ Since the ALRC’s notable contributions through its 2010 and 2012 reports,<sup>102</sup> awareness of the prevalence, severity and damage done by family violence has led to a far greater willingness to address it as an issue of public concern, not merely a domestic matter. Both Queensland and Victoria held inquiries into family violence, and have been implementing measures recommended by those inquiries.<sup>103</sup>

As a nation, Australia has travelled a long way from the widely-held assumptions about family violence underpinning the original Family Law Act. At its commencement, the Act was – as noted by the ALRC<sup>104</sup> – silent on family violence. The then Attorney-General, Senator the Hon Lionel Murphy QC, noted this expressly in his second reading speech, indicating that he thought that including family violence as a ground for dissolution of marriage would undermine the no fault premise of the Act and that injunctive relief would be adequate as a remedy for those affected by family violence.<sup>105</sup> It was thought, too, that family violence was ‘an artefact’ of the *Matrimonial Causes Act*,<sup>106</sup> partly because the requirement to prove fault offered an incentive to confect allegations and partly because of frustrations with the five year waiting period if one of the statutory grounds for divorce could not be established. Moreover, in an effort to banish fully any concept of fault, the early Court assiduously avoided any form of interrogation of past conduct, including family violence, in both children’s and property matters.<sup>107</sup>

The Family Court simply was not, as the ALRC has observed, ‘conceptually set up as a court that would deal with issues of family violence,’<sup>108</sup> or complex psycho-social issues more broadly. Rather, it was established to resolve what were then seen as purely private disputes between individuals: adults who were the parties to a marriage.

As insight into family violence has grown, however, there has been a series of amendments to the Family Law Act acknowledging the connectivity between presentation before the family law courts and experience of family violence. Increased funding has also been committed to address family violence, and assist those who have experienced it.

Relationships Australia suggests that a further review of the efficacy of the 2012 amendments be undertaken, given that the earlier AIFS evaluation was conducted relatively soon after the commencement of the amendments. Relationships Australia further notes the desirability of any reforms being informed by the evaluation to be undertaken of the current pilots of Legally Assisted and Culturally Appropriate FDR.

Relationships Australia urges funding for, and mechanisms to ensure, early and ongoing screening and risk assessment for families to enable decision-makers to have access, as

<sup>102</sup> *Family Violence – A National Legal Response*, ALRC Report 114, 2010; *Family Violence and Commonwealth Laws – Improving Legal Frameworks* ALRC Report 117, 2012. Relationships Australia also acknowledges the ALRC’s earlier 1986 report, *Domestic Violence*, ALRC Report 30, which examined the issue of domestic violence in the ACT. Against a broader background of the social context in which domestic violence manifested, that report looked at law enforcement and judicial responses to complainants, including the limitations on powers which were then available to police and the courts.

<sup>103</sup> Victoria held a Royal Commission into Family Violence, which delivered its report in 2016. The Queensland Government established a Special Taskforce, which delivered its report, *Not Now Not Ever*, in 2015.

<sup>104</sup> ALRC Report 114, para 4.31.

<sup>105</sup> Commonwealth Parliamentary Debates, Senate, 3 April 1974, 640, 641. Noting also that, at time of writing, breach of an injunction issued under the *Family Law Act* remains a civil matter. The Parliament is currently considering a Bill which would amend the Act to criminalise a breach of such an injunction: Family Law Amendment (Family Violence and Other Measures) Bill 2017.

<sup>106</sup> See Moloney, 247–8, citing Behrens, 1993.

<sup>107</sup> Fogarty, 11, 14.

<sup>108</sup> ALRC Report 114, para 4.33.

early as possible, to high quality information about safety concerns of all kinds. Many professionals in the system, including judges, have expressed serious concern that allegations of family violence are not properly dealt with until final hearing, all but ensuring entrenched and during conflict. Ongoing screening<sup>109</sup> and risk assessment may assist both in defusing conflict caused by delayed determination of these issues, as well as facilitating diversion access to therapeutic programs and services. If the current funding envelope were not to be expanded, then Relationships Australia considers that a high priority for targeting funding increases would be to assist vulnerable clients (those with safety concerns) and to augment FDR services to cope with the additional demand that would be generated by mandatory FDR for property matters.

Relationships Australia has given evidence, in its submission to the SPLA Inquiry (see Appendix D) about the need for family violence court processes to be more child-focused.

For specific proposed amendments, see Appendix B.

<sup>109</sup> Noting evidence on pro-disclosure factors: cf Cleak and Bickerdike 2016, citing Spangaro et al 2011 and Bailey and Bickerdike, 2005.

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

The composition of families, and methods of family formation, have changed considerably since the 1970s, as have community expectations, due to the confluence of a range of social, economic and demographic shifts. Nevertheless, in its 2010 report on family violence, the ALRC noted that 'it is apparent that the notion of the nuclear family – comprising a mother, father and their children - still underlies the Family Law Act.'<sup>110</sup>

Relationships Australia notes the comprehensive commentary on the diversity of family forms, and modes of family formation, in the 2013 Family Law Council Report on *Parentage and the Family Law Act*. We further note that reproduction and child-rearing each have genetic, gestational and social aspects. Each of these aspects needs to be respected and reflected in laws relating to parenting arrangements – and in service provision to support families.

Provisions relating to parenting matters should be structured to give standing to any person who is significant in the life of a child. Exhaustive definitions or lists may compromise a child's best interests by inadvertently excluding individuals with whom a child has a significant relationship, if the individual does not fall within conventional notions of family or kinship. Further, laws and service provision arrangements should be technologically-neutral, recognising that it is often difficult for the law to keep pace with technology; in this context, children can suffer from these lags.<sup>111</sup>

It is preferable for the law to take a nuanced and flexible approach not only to the specific question of identification of a child's parents, but also to the broader question of identifying who comprises a child's family.

<sup>110</sup> *Family Violence – A National Legal Response*, ALRC Report 114, 2010, para 4.43, citing B Fehlberg and J Behrens, *Australian Family Law: The Contemporary Context* (2008), 145.

<sup>111</sup> Such as, for example, children born as a result of overseas commercial surrogacy arrangements which can be unlawful in Australia. See, for example, commentary at <https://www.theaustralian.com.au/news/inquirer/surrogacy-innocents-in-legal-limbo/news-story/1a2ee2de5496828f003eObdbcd32f0d4>, relating to a 2017 parentage decision by the Family Court.

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

While the 2006 reforms saw filings in parental matters drop by 25%, filings in property disputes have increased, mainly due to the *de facto* reforms. Relationships Australia suggests that pre-filing mediation be mandated for property matters (and fees be similarly subsidised), as is currently the case for parenting matters. This is consistent with the recommendations made in the Access to Justice report by the Productivity Commission in 2014. This would be highly desirable for reasons including, most significantly, that:

- the distinction between these two categories is a matter of legal artifice which does not reflect or respond to the experience of separating families, and
- Relationships Australia regularly encounters cases in which an otherwise successful parenting plan is undermined by a subsequent adversarial property dispute.

Mandating FDR for property disputes could significantly reduce the workload currently experienced by courts, and allow many more families to avoid going to court altogether.

Relationships Australia has been providing effective property dispute resolution for more than 30 years, often in collaboration with lawyers. Relationships Australia is in the process of evaluating these services, and will be able to provide a report later in 2018.<sup>112</sup> Through Relationships Australia Victoria, Relationships Australia is providing property conciliation services to cases directed to it by orders of the Federal Circuit Court. This service, too, has been operating in various forms for many years, and has a long history of providing safe and effective outcomes for clients, with settlement rates in excess of 70%. The Chief Judge of the Federal Circuit Court has recently initiated a call over of property cases listed before the Court, requiring cases to go to mediation. Over 60 cases in two months have been diverted to the Relationships Australia property conciliation service, and these are also achieving high settlement rates.<sup>113</sup> These results indicate that many property disputes listed for judicial determination would be suitable for FDR and, arguably, should not be consuming scarce and expensive judicial resources.

Relationships Australia does caution against a simplistic implementation of mandated property FDR. Workforce planning and development is necessary to ensure the availability of practitioners with expertise in assessing risk (including but not limited to risk arising from family violence), child development, and mediation. Clients will also need legal information and advice, whether from private lawyers, legal aid, and augmented community legal centres. Although more expensive, a lawyer-assisted model could be piloted. Alternatively, legal services could be embedded in, or co-located with, FRCs, using the Family Axis approach described in Appendix A to this submission.

Relationships Australia further notes, in this connection, the scope for online decision-making services, as is increasingly the case in the United States of America and the United Kingdom.<sup>114</sup>

<sup>112</sup> Relationships Australia New South Wales will shortly begin delivering property mediation in FRCs where a property dispute is associated with a parenting matter. This is expected to provide easier and more efficient access to both services, with the same mediators and in the same location.

<sup>113</sup> An evaluation is underway. See also the response to Question 22.

<sup>114</sup> Such as My Family Wizard, being used in the USA and sponsored by the Association of Family and Conciliation Courts. There are some emerging commercial products in Australia which aim to support families to reach property agreements by use of predictive algorithms based on precedents. However, the use of predictive algorithms to support quality decision-making by Australian families is currently hampered by the lack of a consistent jurisprudence around property division and a lack of robust and reliable data about property settlements. In addition, there are a range of communities in Australia who simply do not have access to reliable, high quality online services (and not all of these are regional or remote communities).

Relationships Australia notes the suggestions at paragraph 152 of the Issues Paper, and supports reforms that would simplify the current law and provide greater predictability (and, consequently, greater impetus and certainty when negotiating agreements). In addition, consideration should be given to developing clear guidelines, perhaps in legislative form, around property division. It might also be possible to develop statutory formulae; this could improve the predictability of property outcomes, and thus potentially improve consistency and support public confidence.

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

Relationships Australia supports the suggestions identified at paragraph 171. In addition, Relationships Australia supports resources and programs to help families after an agreement is reached or a final judicial determination made. This includes resources and services which help parents to reach sustainable, practical agreements, and to build their capacity to communicate and problem-solve issues that may arise with implementation of agreements and orders. Without such resources and services, high conflict families in particular are destined to end up again in a protracted dispute, with further expense, delays and distress.

As noted in the response to Question 10, Relationships Australia also suggests that court-employed family consultants and FDRPs be not only trained to continually assess for risk and safety, but also be empowered to refer families with particular characteristics and needs directly to appropriate pathways in the courts (eg fast track processes).

Parenting co-ordination services<sup>115</sup> also offer an avenue by which parents can continue to learn about safe and effective co-parenting, communication, and hearing and addressing children's concerns, and by which all family members can be prepared for life after family separation. Parenting co-ordination is subject to judicial supervision. Families in which there is high conflict or enduring conflict (or which meet other relevant criteria) could be required by court order to attend on parenting co-ordination services to help them to resolve their disputes and continue to provide a safe space for children to be heard. In the experience of Relationships Australia Western Australia, it is generally possible to have disputes dealt with by a Parenting Co-ordinator in a fraction of the time that it would take to obtain a court date, which is particularly relevant for those families who would otherwise appear repeatedly before the courts.

If more disputes can be channelled into other resolution pathways – and this submission argues that there is scope for much more to be done in this regard – then this will free up court resources to provide timelier resolution for matters that do require judicial determination. If coupled with more prescriptive property determination processes, this would also improve the cost effectiveness of running those cases which do require judicial determination.

<sup>115</sup> See the response to Question 10 (especially 10.3) and Appendix I for more detail.

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

Relationships Australia supports courts referring cases to FDR sooner rather than later.

In circumstances where a section 60I certificate has been issued to the effect that FDR is inappropriate, but the court subsequently refers a family back to FDR, then the courts should fund the FDR and additional clinical support.

If FDR is inappropriate, Relationships Australia seeks to offer other services which may assist families, including (but not only) in their engagement with the legal system (see the case studies set out in the boxes below). Further, the existence of family violence does not, *per se*, mean that FDR cannot be helpful. As noted in Relationships Australia's response to questions taken on notice at the SPLA Inquiry, we find that situational violence has a better prognosis for successful outcomes in FDR than other types of violence. Physical violence does not necessary preclude the suitability of FDR, whereas the presence of emotional, psychological and power and control issues will often mean that FDR is unsafe and will be unsuccessful. Also, FDR is not a 'one size fits all' proposition; the services offered can and are tailored to meet specific needs; for example:

- case management
- FGC to engage a wider circle of people to assist with problem-solving<sup>116</sup>
- involvement of a Parenting Co-ordinator before, during or after litigation has commenced, whether by agreement or court order,<sup>117</sup> or
- referral by the court to FDR to support decision-making on specific issues; for example, which school a child will attend, and the amount of time spent with particular adults.

Further, there should be a clear process for reporting back to the courts on FDR outcomes, subject to confidentiality considerations.<sup>118</sup> When ordering families to undertaken FDR, courts should make clear that FDRPs are not decision-makers undertaking a judicial function.

The success of the recent 'blitz' by the Federal Circuit Court, in which cases on the Court's list were referred to mediation, indicates that many property matters are amenable to resolution through mediation. Relationships Australia would support diversion of participants involved in property disputes into mediation services, subject to those services being staffed with trained professional mediations who are skilled in family violence assessment and are properly accredited (preferably in FDR).<sup>119</sup>

<p><b>Case study 1 – benefits of service responses where FDR assessed as inappropriate</b></p>
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<p>John approached the FRC to initiate FDR with his former partner, Sandy, about their two children aged 7 and 8 years. He completed universal screening and had an intake and</p>
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<sup>116</sup> For more on FGC, see the response to Question 30.

<sup>117</sup> For more on Parenting Co-ordination services, see Appendix I.

<sup>118</sup> Relationships Australia understands that California has arrangements for court-ordered mediation without suitability screening. It is conducted within the court precinct for security reasons. This could be considered.

<sup>119</sup> See the response to Question 17.



	<p>assessment interview for FDR. John said that Sandy would probably say she was scared of him. He said that he had used alcohol more than he should and had been very low since separation. John was referred to counselling to address these issues.</p> <p>Sandy was invited to FDR and attended her screening and intake and assessment interview for FDR. Sandy revealed serious concerns around family violence and child protection and said that she was terrified of John and didn't know what to do. Sandy disclosed that although there had been no police involvement, John had seriously assaulted her, the children had been exposed to his violence and that she believed that he may have sexually assaulted her oldest daughter, who had a different father. Sandy had left John a month ago and had been staying with her sister and brother in law with the kids as she felt safe there, but this couldn't go on for much longer as the house was overcrowded and not appropriate for the kids.</p> <p>The FDRP assessed this case as inappropriate for FDR, did some immediate safety planning, and referred Sandy to a Family Advisor. A Child Protection notification was made. The Family Advisor conducted the family safety risk assessment with Sandy and referred her into the Family Safety Framework. Sandy was also referred to a Family Advocacy Support Service (FASS) through which a social worker is available to support people experiencing family violence. The FASS worker linked Sandy into legal advice and FDV counselling services which organised emergency housing for Sandy and her children. Sandy was also assisted to take out an intervention order against John.</p> <p>Although FDR did not proceed in this case, John was linked into counselling and eventually attended a behaviour change program. Sandy was linked into multi-disciplinary professional support to assist with safety and child protection issues. Supervised contact was eventually ordered.</p>	
	<p><b>Case study 2 – benefits of early intervention and wrap around services</b></p> <p>This example shows how wraparound services, based on a tailored assessment of a family's needs, can be used to recognise the emotional complexity of separation and, where necessary, slow down the FDR process and support families to achieve more workable and sustainable outcomes – as opposed to participating in a 'one size fits all' linear FDR process which ultimately escalates to court.</p> <p>George initiated FDR for property and children's matters. He said that he was living with his parents after being kicked out of his family home by Anna four weeks earlier. He said he wasn't seeing their kids, aged 9 months and 3 years, at all, as Anna wouldn't let</p>	

him. George identified that anxiety and depression were ongoing issues for him and said that he was under financial pressure paying the mortgage and child support.

Anna, 25, attended her screening, intake and assessment interview for FDR. She said that she and George had been together since they were 16 and married at 18. They lived with her parents until about four months ago so that they could save for the purchase of a family home. They had just moved into their home when she discovered George had a girlfriend whom he had met at the gym two years ago. As a result of this discovery, she kicked him out. Anna said that she was humiliated and angry, and that she was being pressured by family and friends to take him back. Anna said that she was not going to cave in and that it was over with George. She said that George did not deserve to see the kids or get any of the property.

Anna demanded to have her aunt, who was a lawyer, attend FDR with her.

The FDRP referred both George and Anna to different counsellors to support them throughout the FDR process. Shuttle mediation was chosen due to their high emotions. George consented to Anna's aunt attending with her on the understanding that she would not be giving her legal advice or acting as her advocate. Anna was referred to a family lawyer and George already had a lawyer. Anna had weekly counselling sessions to manage her emotions and scheduled them just before her FDR sessions to help her regulate her emotions. George and Anna both attended the psycho-education session Child Focussed Information Session. They both found that to be very useful.

Anna and George attended three shuttle sessions to negotiate children's issues and made small incremental changes each time. Property was eventually settled after another four sessions. Had it not been possible to fast track George and Anna into suitable supports at such a critical point in time, it is likely that they would have attended one session, not reached agreement and received a section 60I certificate and then had to go to court.

### **Case study 3 – highlighting gaps between services and initiating court processes**

This case study demonstrates how people can fall through the cracks between multiple services, and experience an increasing sense of hopelessness. The gap between what we are able to provide within program guidelines, the law services and court processes, leaves a large void that becomes increasingly difficult to navigate. In these instances, an integrated program, including a case navigator/case manager could provide an effective response, particularly for dealing safely with family violence. This service capacity could involve coordinating activities between agencies and provide to families a seamless pathway through the service and court systems.

This case involves Sally, Simon, Evie, 11, and Ella, 9. The marriage has broken down, Simon suffers from PTSD, and Ella has recently received a diagnosis of autism.

The first Relationships Australia interaction started with this family five years post-separation. They were married for six years prior to separation. Sally and Simon both had intake, individual sessions and then two mediation sessions occurred, after which it was concluded not appropriate for mediation at this time and a certificate was issued. Soon after, Simon contacted Relationships Australia again and attended a new intake session. Sally attended a new intake appointment some months later. It was once again deemed inappropriate to mediate, given the history of family violence. In the meantime, other Relationships Australia services were accessed, including

- Relationship Counselling
- Family Dispute Resolution – deemed inappropriate: paragraph 60I (e)
- Supporting Children After Separation – counseling for both of the children
- Children’s Contact Centre- currently using
- Parenting Orders Program – both parents attending court ordered POP with separate practitioners.

Simon had legal representation and Sally reported that he presents well in court. He can operate well under the scrutiny of the legal setting and will often allude to his PTSD. Simon has established a good support network from his military days and also a local boxing club.

There were ongoing concerns about how Simon managed his PTSD. This included regularly not sleeping for days, falling asleep and being unable to be roused, excessive alcohol use, previous reported neglect of the children when in his care, and family violence (including psychological, emotional, verbal, financial and sexual violence, towards Sally). Consequently, Sally had serious concerns about the girls being in Simon’s care. Therefore, supervised contact was occurring at the child contact centre. Sally accessed the POP to continue to try and navigate her way through the system.

Court proceedings were initiated in light of the section 60I certificates. Sally felt extremely unsupported and unsure throughout the entire process. Some of the services she contacted for assistance were:

- Support Help and Empowerment (SHE)
- Legal Aid
- Women’s Legal Service
- Community Legal Service
- Private Legal practitioners
- Medical professionals including GPs, pediatricians and pediatric nurses
- Veterans’ Affairs Counselling Service
- City Mission, for financial assistance, and
- Police.

Sally found herself in an increasingly difficult financial situation and was unable to pay for a lawyer. She was therefore self-representing. Sally spoke with the duty lawyer whose advice only caused more stress in an already stressful situation. Sally lacked a support network and was advised that her ‘failure to report any of Simon’s violent behavior in the past’ would weaken her case. Sally expressed on numerous occasions

	<p>her frustrations and feelings of hopelessness in her case. On reflection, she recognised that she downplayed the violence because she was afraid of what could happen if she withheld the girls. This included concerns for her own physical and emotional safety. Sally found it extraordinarily difficult to open up and relive much of what has happened.</p>	
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## **Question 22 How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?**

Relationships Australia agrees with the concerns identified at paragraph 173 of the Issues Paper, and is supportive of the suggestions identified at paragraph 175.

Relationships Australia supports a more differentiated set of options being available for property matters, based on a more nuanced understanding of families' needs than that manifested in the current Act, which reflects a conventional understanding that court is the final destination, and the gold standard of dispute resolution and vindication. It may be that extensive culture change is needed, not just among family law and family services professionals, but across the community as a whole, to raise awareness and appreciation of the value of alternative pathways. There needs to be a culture shift away from assuming that anything other than judicial resolution is a 'second rate' service, or 'justice on the cheap'. This assumption, which admittedly makes good click bait and headlines, has served no one well – not children, not families, not the broader community.

Relationships Australia considers that 'one pathway for all' is not useful, and contributes to denial of access to justice for those many families not in a position, for whatever reason, to avail themselves of the avenues currently available. Families should have access to options that are proportionate to their resources.

For example, many clients presenting for FDR have very small property pools, and often want to mediate about sharing debt. There is a great need for families to have access to FDR in small property matters, and in matters where the main issue is about allocation of debt. There should also be proportionate and expedited<sup>120</sup> decision-making pathways for such matters, perhaps along the lines of small claims courts. Other options might include increasing PSCP funding to include use of tools such as New Ways for Mediation (cf our responses to Questions 14 and 31), and to cover property/debt only cases.<sup>121</sup>

Relationships Australia provides extensive property dispute resolution services across its federation. An internal survey carried out in 2013 found that more than 2500 property disputes per year were handled. This figure is likely to have risen significantly since the survey was undertaken. Many of these cases involved small property matters, and internal evaluations reveal a high settlement rate (a contemporary evaluation is underway and will be completed later in 2018). The provision of property dispute resolution services enables families to deal with concurrent parenting matters. The Federal Circuit Court has ordered cases to Relationships Australia's lawyer-assisted property conciliation service; these are frequently matters involving small property pools. These are funded by the Court and have been provided at no cost to families.<sup>122</sup>

By way of further example, Relationships Australia Tasmania provides a property mediation service. Most clients who access it are seeking to divide a small and uncomplicated asset pool; there are also occasions where the issue is more about division of debts than division of assets. The latter can sometimes be as a result of financial abuse, or other issues such as gambling addiction. Participants are encouraged to seek legal advice or legal information; this is especially important when financial abuse or family violence is an issue. Relationships Australia Tasmania suggests that where one of these circumstances exist, it is appropriate to ensure that the vulnerable participant has a legally qualified advisor.

<sup>120</sup> To minimise delay in settling the debt.

<sup>121</sup> See also recommendations made in the SPLA report (eg recommendations 14, 17, in the report of the Victorian Royal Commission into Family Violence and the 2016 Family Law Council report.

<sup>122</sup> See also the response to Question 17.

Each of the suggestions at paragraph 175 of the Issues Paper has merit. Relationships Australia notes the Constitutional limitations on federal courts in ordering arbitration;<sup>123</sup> implementation of the suggestion at the third dot point might offer a pathway through that difficulty.

<sup>123</sup> See *Brandy v Human Rights and Equal Opportunity Commission* [1994] 69 ALJR 191, and the Family Law Council's Discussion Paper on arbitration.

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

There needs to be better access, with much-reduced waiting periods, to programs that separately support survivors of family violence (including specialist services for children) and provide behaviour change opportunities for perpetrators.<sup>124</sup>

The considerations raised in the response to Question 13 are also relevant here. In particular, though, Relationships Australia highlights the necessity for:

- concierge, reception and security staff trained in screening and risk assessment issues associated with family violence, as well as in self-care
- discreet, easily accessible safe rooms
- safety planning and case management for families between court events and after the conclusion of court processes
- arrangements for separate parking, entrances and exits
- appropriate support arrangements for alleged perpetrators
- attendance at court by navigators and case managers (cf response to Question 4 and Appendix A), and
- readily-available and reliable remote access to, and appearance at, court for people at risk.

<sup>124</sup> For example, Relationships Australia New South Wales offers the 'Taking Responsibility' programme for male perpetrators and 'Women's Choice and Change' for women. It is introducing further programmes for women who initiate violence and for LGBTIQ+ families. To date, demand has outpaced capacity, and that demand is likely to continue to grow, due to a range of factors. These include, for example, greater community understanding of family violence, and the establishment of multi-disciplinary services such as FASS, specialist domestic violence courts and units, and health justice partnerships, which allow for increased detection of violence and support referral to appropriate services and programmes.

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

Getting families to engage with FDR is not the beginning of a process. Rather, it is the end result of the first phase of intensive work to ensure that family members are adequately equipped and ready to engage. Additional support and expansion of post-separation services, for instance, would be enormously helpful in achieving this.

Relationships Australia agrees that there could be a greater role for legally-assisted FDR in the court system, *and* as an alternative to the court system, including where there is or has been family violence.<sup>125</sup> There is benefit for parents in the long term if they can be supported to have a facilitated discussion (such as is provided LACA FDR Pilot currently run by FRCs), and to also have access to therapeutic programs which may assist in developing parenting skills (including being able to communicate safely and effectively with the other parent when future parenting decisions need to be made). As noted previously, Relationships Australia currently offers a range of FDR services.

Relationships Australia notes the Coordinated Family Dispute Resolution pilot, announced by the Commonwealth Government in 2009. AIFS conducted an evaluation of this pilot, and its report was published in 2012.<sup>126</sup> The pilot was underway at most of the five trial sites by the final quarter of 2010. The evaluation report described the nature of the service as follows:

CFDR is a process where parents are assisted with post-separation parenting arrangements where family violence has occurred in the relationship. The process involves a case manager/family dispute resolution practitioner (FDRP), a specialist family violence professional (SFVP) for the person assessed to be the “predominant victim” in the language of the model, a men’s support professional (MSP) for the person assessed to be the “predominant aggressor” (when they are male), a legal advisor for each party and a second FDRP. Child consultants are part of the professional team and may be called upon to feed into case management decisions.... Specialised risk assessment and management takes place throughout the process, which unfolds over several steps involving screening, intake and assessment, preparation for mediation, mediation (up to four or more sessions) and post-mediation follow-up. The process is applied in a multi-agency, multidisciplinary setting and it aims to provide a safe, non-adversarial and child-sensitive means for parents to sort out their post-separation parenting disputes. The level of support provided to parents is intensive, and this is a key means by which the process attempts to keep children and parties safe and ensure that power imbalances resulting from family violence do not impede parents’ ability to participate effectively.

The pilot was not rolled out across Australia, despite evaluation findings validating key principles underlying CFDR; in particular, the efficacy of multi-disciplinary, multi-agency clinical collaboration and support for participants. Since publication of the evaluation report, however, further work has been undertaken to refine and continue advocacy for a safe model of mediation for families which have experienced family violence.<sup>127</sup> Relationships Australia respectfully submits that the ALRC should have regard to this work in considering safe and multidisciplinary service models for families affected by family violence.

<sup>125</sup> For more information on Legally Assisted FDR in South Australia, please see the separate submission from Relationships Australia South Australia.

<sup>126</sup> See

<https://www.ag.gov.au/Publications/Documents/ArchivedFamilyLawPublications/CFDR%20Evaluation%20Final%20Report%20December%202012.PDF>.

<sup>127</sup> See, for example, Rachael Field, ‘A Call for a Safe Model of Family Mediation’, (2016) 28(1) *Bond Law Review*; Rachael M Field and Angela Lynch, ‘Hearing parties’ voices in Coordinated Family Dispute Resolution (CFDR): An Australian pilot of a family mediation model designed for matters involving a history of domestic violence,’ *Journal of Social Welfare and Family Law*, 36(4), 392-402.



Relationships Australia notes client feedback that legally assisted FDR is often very outcomes focused, and that some clients report a feeling of pressure to reach an agreement on the day of the FDR 'event', which seems to be created by a combination of an outcomes focus and a lack of funding for future FDR services. Optimally for healthy families, FDR should be a process which can be flexible, with several sessions separated by intervals of time to allow individuals to consider proposals, seek advice and address issues before seeking a final agreement. This reflects and responds to the non-linear experience of family separation.

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

Relationships Australia supports inclusion of misuse of process as a form of abuse in family law matters.

Relationships Australia notes opportunities for perpetrators to misuse the courts and their processes as a tool for continuing their abuse, and the incentives for controlling perpetrators to do so. Relationships Australia notes that training of professionals in family violence dynamics and trauma-informed practice should include training in identifying misuse of the process as a means to perpetuate abuse, and in implementing measures to counter that. In addition, Relationships Australia notes that any moves away from an adversarial model, to a more inquisitorial model which included a Counsel Assisting, would mitigate the risk of misuse of process by an abuser.<sup>128</sup>

### **25.1 Consent orders**

Relationships Australia is aware of reported instances in which consent orders have masked misuse of processes, and exploitation of a parent's vulnerability. It is conceded that it is impractical (and possibly impermissible) for courts to look behind consent orders – particularly when both parties have the benefit of legal representation. Nevertheless, this limitation underlines the necessity for all professionals involved in family disputes to be able to recognise and counter dynamics of control and violence, and the effects of trauma on the behaviour of family members who have been subject to control and violence, as well as the desirability, where possible, of co-located and multi-disciplinary services to ensure ease of access by lawyers and clients to relevant support services.

<sup>128</sup> Relationships Australia notes that several stakeholders have shown interest in exploring more inquisitorial approaches (see, for example, evidence given by Women's Legal Services Australia to the Senate Legal and Constitutional Affairs Legislative Committee hearings on the Family Law Amendment (Parenting Management Hearings) Bill 2017).

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

In 1979, the first Chief Justice of the Family Court suggested that adversarial interventions were ‘destructive of morale and [likely to] create bitterness for all.’<sup>129</sup> Sharing the recognition that institutionalising adversarial relationships between former intimate partners is not a recipe for minimising ongoing conflict (or, more recently, fostering healthy co-parenting), successive Parliaments – and courts – have sought to instigate measures to soften the harsher edges of an inherently adversarial structure, baked into the 1975 Act by its creators.

The measures have, as noted elsewhere in this submission, included the establishment of FRCs and the diversion of many families to family dispute resolution services.<sup>130</sup> These have been of great benefit to many Australians.<sup>131</sup> The Less Adversarial Trial processes in Division 12A of Part VII of the Act emerged from the pilots, in Sydney and Parramatta, of the Children’s Cases Programme.<sup>132</sup> That Programme, and the LAT provisions which emerged from it, acknowledged that ‘adversarial legal processes play a part in exacerbating parental conflict and inhibiting the development of parenting capacity.’<sup>133</sup>

Many reviews and reports have identified the need for a less adversarial, and multi-disciplinary, approach to resolving parenting disputes – most recently, the Family Law Council’s 2016 report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*.

Relationships Australia acknowledges the Constitutional law considerations, set out in Chapter III of the Constitution, which preclude the exercise of non-judicial powers by Judges of Chapter III courts and the exercise of judicial powers by non-judicial officers.

Australian Parliaments have long sought to address the practical issues presented to families by our federal system. It was the impetus for the *Matrimonial Causes Act*, to replace State laws which had their origins in the colonial governments of the mid to late 19<sup>th</sup> century. Although most of these were themselves based on the English Matrimonial Causes Act 1857,<sup>134</sup> they came to diverge widely. By the time of the Australasian Federal Convention Debates, there was a recognition that it would be advisable

...to avoid the great mistake made by the framers of the Constitution of the United States of America, who left the question [of powers to regulate marriage] for the States to deal with...<sup>135</sup>

Hence, the inclusion of ss 51(xxi) and (xxii), to confer the requisite powers on the new Commonwealth Government. Nevertheless, a single and comprehensive national law did not come about until the mid-20<sup>th</sup> century. Australia still does not have a fully national family law. Further, the ever-increasing incidence of presentation in the family courts of family violence and child protection/child welfare issues has created additional jurisdictional challenges for families to navigate. The community served by the family law system expects seamless information and services – to tell their story on one occasion, in one place. Parties and witnesses are understandably frustrated by the need to re-tell their

<sup>129</sup> Evatt, E, ‘The administration of family law’, *Australian Journal of Public Administration*, 38(1), 1, at 10.

<sup>130</sup> Relationships Australia notes current pilots trialling models of LACA FDR for vulnerable families.

<sup>131</sup> By way of illustration, KPMG’s analysis reported that FRCs were attended by 80,000 per annum.

<sup>132</sup> The Children’s Cases Programme was established by the then Chief Justice of the Family Court, the Hon Alastair Nicholson, drawing from inquisitorial processes used overseas.

<sup>133</sup> The Hon Diana Bryant AO QC in the Foreword to the *Less Adversarial Trial Handbook*, 2009.

<sup>134</sup> Itself a response to public dissatisfaction with the ecclesiastical systems which had applied up to that time.

<sup>135</sup> Enderby, p 12, n 11, citing R E O’Connor and I A Isaacs in the Australasian Federal Convention debates, Sydney, 1897, quoted in Quick and Garran, *The Annotated Constitution of the Commonwealth of Australia* (1901) 610.

stories at multiple points in multiple processes, with divergent parameters. And the issue is one of far greater concern than simple frustration with unnecessarily complicated bureaucracies – multiple re-telling can also re-traumatise and trigger vulnerable people.

Relationships Australia supports the further development and funding of FDR as a proven means of diverting people from court, and supporting those who do go to court, including by the provision of post-order and post-agreement services. Research on child inclusive practice has long shown the benefit this can confer,<sup>136</sup> but organisations must currently fund this work themselves. As noted in response to Question 22, property FDR in tandem with provision of legal advice is often a useful first step in settling uncomplicated property matters.

Relationships Australia also supports the consideration of conciliation services in both parenting and property disputes. Conciliation is a process in which practitioners may assist individuals by providing advice on the matters under discussion, drawing from his or her expertise in the content under discussion. Any development of conciliation services in the system would need careful implementation to ensure that participants are properly protected and practitioners properly trained and supervised.

Many of the clients do not have the means to pay for more post-separation services, so Relationships Australia bears the cost. Expansion of services to not just provide feedback from the children, but also therapeutic assistance to the parents about developmental information relevant to their parenting plans, would benefit greatly those parents who may have little understanding of the needs of young children.

#### *26.1 Scope for development in Australia of interdisciplinary collaborative practice (ICP)?*

While interdisciplinary collaborative practice (ICP) has not received broad take up in Australia, there may be scope for greater use of it in some cases. It is generally very costly for clients; there are few low cost options available. However, it is likely that these would be ‘front-loaded’ costs which could save the greater cost of going through to a contested hearing and final orders. In view of the more therapeutic and less adversarial framework offered by ICP, Relationships Australia recommends that Government recognise ICP as an alternative to FDR.

<sup>136</sup> See, for example, J McIntosh, ‘Child inclusion as a principle and as evidence-based practice: Applications to family law services and related sectors’: <https://aifs.gov.au/cfca/publications/child-inclusion-principle-and-evidence-based-practice>.

## **Case study – ICP in New South Wales<sup>137</sup> - the experience of Relationships Australia New South Wales**

Relationships Australia New South Wales offers an ICP services in which lawyers, financial guidance professionals and mental health professionals work together to support decision-making about both parenting and property issues. The service was launched by the then Attorney-General, the Hon Robert McClelland MP, in 2009. Eight years later, this service remains popular, achieving a success rate of over 90%, and Relationships Australia New South Wales continues to build professional capacity in this area, having trained more than 100 professionals in ICP.

### **26.2 Parenting Co-ordination<sup>138</sup>**

Another option is Parenting Co-ordination. Parenting Co-ordination can be court-ordered, or participants can agree to be bound by the views of a Parenting Co-ordinator pending judicial resolution. This would offer participants a service in which the co-ordinator could manage communication between the participants, emerging co-parenting issues and development of a parenting plan. This would reduce the demand on court resources and costs to the participants. Government could mandate attendance at a minimum number of sessions at different stages of separation.

<sup>137</sup> Relationships Australia South Australia is now also offering an ICP service.

<sup>138</sup> See the response to Question 10 (especially 10.3), and Appendix I, for more detail).

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

Relationships Australia supports the availability of a diverse array of decision-making services, and principles of choice and accessibility to ensure services can meet the needs of contemporary Australian families.

Relationships Australia notes the limits on non-consensual arbitration identified by the Family Law Council.<sup>139</sup> The effect of the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission*, as described by Council, was that

...two requirements must be met if a non-consensual arbitration scheme is to be found constitutionally valid. Firstly, it is crucial that judicial power is not conferred on the arbitrator without provision being made for a full rehearing de novo as of right. Secondly, it must be ensured that determinations made in court-ordered arbitration are enforceable only after the involvement of the court and not simply as a result of registration.<sup>140</sup>

Relationships Australia notes that the current provisions which contemplate the use of arbitration<sup>141</sup> are cumbersome, and have enjoyed very little take up,<sup>142</sup> in contrast with the immediate success enjoyed by mediation.<sup>143</sup> In its 2007 Discussion Paper, the Family Law Council suggested that reasons for low take up included:

- lack of funding (mediation having been funded within the \$397 million package that accompanied the 2006 reforms)
- lack of recognition, within the legal profession, of arbitration as a viable option, and
- limitations on review of arbitrations have been viewed by the legal profession as too narrow, making arbitration a potentially risky strategy for lawyers to recommend to their clients.<sup>144</sup>

Within Relationships Australia, there have been suggestions that arbitration could be more extensively used as a tool to administer and enforce judicial orders, as well as in particular circumstances (eg disputes involving modest asset pools, where going to court is a disproportionate course of action).

The Legal Aid Queensland arbitration service appears to be a useful way to enable clients with a small asset pool, or an uncomplicated property dispute, to access a timely and proportionate resolution pathway. If such a model could be adapted for use in family law disputes, it should include an educative component to focus participants' minds on the need to consider children's future needs and encourage disputants to maintain respectful communication. Relationships Australia would be well-placed to provide a pre-arbitration service along these lines; it currently does so in respect of FDR, access to CCSs, and in its Parenting Orders Programme.

<sup>139</sup> See *Brandy v Human Rights and Equal Opportunity Commission* [1994] 69 ALJR 191; the 2007 Discussion Paper on arbitration in family law, published by the Family Law Council: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Discussion%20paper%20on%20arbitration%20in%20family%20law%20matters.pdf>. This Discussion Paper had been preceded, in 1998, by advice from the Family Law Council to the then Attorney-General, the Hon Daryl Williams AM QC MP, about potential amendments to the Act to facilitate arbitration in family law matters: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Arbitration%20in%20Family%20Law.pdf>. In its Discussion Paper, Council outlined a 'Continuum of Compulsion' (Figure 1, p 13) to assist in the development of an arbitration model.

<sup>140</sup> See Family Law Discussion Paper, 2007, paragraphs 6.18, 6.29. In Chapter 7 of the Paper, Council proposed two viable models of discretionary court-ordered arbitration. Each of these provide for a rehearing de novo and seek to confer non-judicial power only on arbitrators: see paragraph 7.4. To seek to deter unmeritorious applications for re-hearings, Council advocated cost sanctions: see paragraph 7.26.

<sup>141</sup> Outlined by the Family Law Council in Chapter 3 of its Discussion Paper.

<sup>142</sup> See Chapter 4 of the Family Law Council's Discussion Paper.

<sup>143</sup> See the Family Law Council's Discussion Paper, paragraph 4.17, for example.

<sup>144</sup> At paragraph 4.23.

**Question 28 Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?**

Relationships Australia supports the exploration of online decision-making processes to support, facilitate and complement face to face services, recognising barriers created by the digital divide and other barriers, such as inadequate access to fast, reliable and private online services, illiteracy, cultural considerations and poverty.<sup>145</sup> While it can be expected that some of these barriers will diminish over time, there will – for the foreseeable future - be a cohort of people for whom online services is not a practical way of interacting with service providers. It is vital for social welfare and social justice that the disadvantages suffered by those in that cohort are not compounded by exclusion from services to support resolution of family conflict.

It has been argued that the introduction of interactive, automated, user-pays systems using artificial intelligence would enable and empower users to negotiate separation arrangements (including parenting plans and division of property) in their own time and in a safe space, with transparent and capped costs. It is suggested that, as ODR services mature, increasingly integrated services could be made available, with links to other systems (such as family courts and the Child Support Agency), services and referral pathways. The system could allow users to 'buy in' additional services to assist with resolution. Some systems proposed would include the cost of a lawyer to review the final agreement to ensure that the outcome is fair and equitable, and has not been compromised by a power imbalance. If acceptable, the agreement could then be formalised by final orders by a court.

Relationships Australia understands that similar systems are being used in the United Kingdom, the Netherlands and Canada. The design, flow and content follow the behaviour, needs and emotions of people looking for enduring outcomes.

While the further development of ODR would be a welcome complement to face to face services, there are additional factors which require consideration, beyond the barriers to online participation noted above. There can be great therapeutic benefit in face to face contact with clients, especially when dealing with high emotions – connection with a person can be one way of getting through a difficult situation and moving away from the loneliness or isolation that can be experienced, while also creating a safeguard against trauma. It would be necessary to ensure that people accessing online services could also access needed therapeutic services.

In addition, the confidentiality, reliability of technology and thorough training for those involved in providing this service would need to be considered, as would capital investment. In this respect, Relationships Australia respectfully suggests that the ALRC undertake consultation with the Department of Communications and the Department of Industry, Innovation of Science. Such consultation could usefully explore the Government's expectations of emerging capabilities, as well as informing recommendations about capability-building in the family services professions to enable them to best harness innovation to serve their constituencies.

<sup>145</sup> Relationships Australia cautions against conflating telephony and internet based services, and also notes that privacy issues are likely to arise from the use of Cloud technology: see our comments on the KPMG final report, p 10, Appendix E. Relationships Australia offers technology-enabled services including the FRAL and the Telephone Dispute Resolution Service. The current pilot by Relationships Australia Victoria, of a Family Safety Navigation Model, makes heavy use of telephone-based consultations.

## Case study – evaluating and developing online capabilities

This case study demonstrates the imperative for ongoing evaluation and development of innovative service delivery methods.

In 2011, Relationships Australia Queensland published its final report, commissioned by AGD, on the *Development and Evaluation of Online Family Dispute Resolution Capabilities*.<sup>146</sup> Following its publication, the Telephone Dispute Resolution Service, operated by Relationships Australia Queensland as a component of the Family Relationship Advice Line, has offered an online service delivery platform to clients. That platform includes the capacity for document sharing, video conferencing and the capacity to host individual and joint sessions with FDRPs. The service offered is case-managed and directed by the FDRP to ensure client confidentiality and safety. There has been high demand for individual intake sessions on this platform. However, despite significant research (including client consultation and user testing), there has been limited uptake of this service for joint FDR sessions.

Relationships Australia Queensland offers the following observations:

- process design must incorporate client choice and self-determination
- providers must offer multiple platforms and different modalities of access to cater for client accessibility and choice throughout the process (eg online, telephony, face to face, hard copy)
- as noted throughout this submission, case management is vital on any platform (online or otherwise), to ensure that all family members are supported to engage safely and effectively with available support services. There is a role for self-directed support, but only within a case-managed framework.<sup>147</sup>

See also the case study included in the response to Question 3.

<sup>146</sup> Available at <https://www.ag.gov.au/Publications/Pages/OnlineFamilyDisputeResolutionEvaluation.aspx>.

<sup>147</sup> See the continuum model of navigation/case management referred to in Appendix A.



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

Relationships Australia considers that the use of child-inclusive practice should pervade the practice of family law, and family law service provisions, to better enable the needs of children to be expressed and heard.

There is evidence to suggest that the application of the Less Adversarial Trial provisions is inconsistent, which is concerning given the value they could add to supporting families with safety concerns. In the absence of transformational reform, it would be helpful if judicial training and practices could focus on consistent use of the Division 12A provisions, which would represent solid progress in supporting families while not exacerbating or further entrenching dynamics of conflict and opposition. In addition, families often express concern that family consultants are unable to spend sufficient time with them, and the time spent with children too often occurs in an environment which is unwelcoming and foreign to children. One possibility might be to consider outreach models, where children can be observed in environments with which they are familiar.

Another option could be a funded process that includes coaching / counselling before FDR, with an option to include a child mental health specialist in the joint mediation session - particularly when there are children/young people with significant mental health issues. This would enable a collaborative discussion on what the child's needs are, and how they are going to be met. An increasing number of young people and children are presenting with significant mental health issues, derived from a history of entrenched parental hatred and conflict.

Further, access to parenting co-ordination services<sup>148</sup> could form a useful tool in containing family disputes, allowing participants to be heard, protecting and hearing from children, and supporting participants by equipping them to cope with family separation.

<sup>148</sup> See the response to Question 10 (especially 10.3), and Appendix I, for more detail).

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

Relationships Australia supports incorporating family inclusive decision-making processes as a mainstream service. While the Family Law Council recently recommended use of FGC<sup>149</sup> for Indigenous families, Relationships Australia sees merit in FGC for families regardless of ethnicity.<sup>150</sup> Relationships Australia is of the view that by 'front-loading' investment in family support, solutions are more likely to be workable and enduring, as well as empowering families through capacity-building. It is vital that FGC outcomes be supported by decision-makers (eg if an agreement goes to court to be registered as a consent order). Consequently, 'back end' costs to Government and taxpayers are minimised.

As with other models described in this submission, Relationships Australia supports taking flexible approaches to meet the needs of particular families. For example, a particular family might do best with co-facilitators including a mediator, counsellors and a cultural advisor.

Relationships Australia Canberra and Region has been using principles of restorative practice for several years, including in child protection work, to reduce the risk of child removals. At the core of this work is FGC.

Care does need to be taken to ensure that children are not placed in the middle of parents' conflict. Research on child inclusive practice shows that asking children to comment on decisions that parents should be making places the children in a no-win situation where they are having to comment on or choose sides between warring parents.

<sup>149</sup> Which may, potentially, also include members of the child's broader network, such as teachers, adults with whom they have contact in extra-curricular activities, health care providers, or neighbours.

<sup>150</sup> FGC is well-known in child protection and juvenile justice, and is offered as an adjunct to family law services by some providers: see, for example: <http://www.lsc.sa.gov.au/resources/FamilyLawConferencing.pdf>; <http://www.supportingcarers.snaicc.org.au/rights-of-the-child/family-group-conferencing/>; [http://www.dhhs.tas.gov.au/children/child\\_protection\\_services/family\\_group\\_conferencing/what\\_happens\\_at\\_a\\_family\\_group\\_conference](http://www.dhhs.tas.gov.au/children/child_protection_services/family_group_conferencing/what_happens_at_a_family_group_conference); <https://www.dss.gov.au/sites/default/files/files/about-fahcsia/publication-articles/foi/Document%201.PDF>. The family courts can order that a Child Inclusive Conference occur: see, for example: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/child-inclusive-conferences>.

## Integration and collaboration

Relationships Australia notes the extreme fragmentation of relevant services, and the obstacles it places in help-seeking behaviours and the resolution of family conflict. This fragmentation can be characterised as follows:

- Commonwealth Constitutional power, and its relationship with State powers to legislate
- separation of powers in the Commonwealth Constitution
- interacting legal frameworks, including:
  - child protection and welfare
  - criminal law – family violence
  - criminal law – other
  - adult guardianship law
  - mental health
  - succession law
- disciplinary, including:
  - social sciences
  - medical sciences and allied therapies
  - law
  - law enforcement
- bureaucratic structures at all levels of government
- budgetary – funding grants are often structured in alignment with bureaucratic divisions, so that one service provider can, in relation to even a single family, be administering funding for overlapping services from several different government departments, at different levels of government, which imposes substantial administrative burdens and costs
- competition between services, driven by questionable assumptions that competitive tendering is a necessary and sufficient pre-condition of innovation and efficiency; typically, however, grants of funding also call on services to act collaboratively – artificially creating a competitive dynamic that can undermine achievement of the policy objectives<sup>151</sup>
- corresponding to life span phases - rather than focusing on the duration of the family dynamic, and supporting the well-being of families throughout life span (eg intergenerational conflict, elder abuse, conflict among adult siblings).

Relationships Australia further notes the 2015 and 2016 reports by the Family Law Council, a fundamental theme of which was the impact of this kind of fragmentation on families. Relationships Australia draws to the ALRC's attention its comments on the impact of fragmentation on the experience of someone affected by family violence, who may potentially deal with: child protection services, police, domestic violence advocates, legal services, family court consultants, ICLs, hospital and medical staff, child health services, counsellors, school teachers, day care staff, school and private psychologists, chaplains, CCSs, and Centrelink.<sup>152</sup>

<sup>151</sup> We note, in this connection, our comments on the KPMG final report, at Appendix E, to the effect that collaboration is not the only, or always the best or most efficient approach, or something that can be imposed in grant agreements post-tender.

<sup>152</sup> See our submission to the SPLA Inquiry, at Appendix D. See also the submission of the Law Council of Australia on the Family Law Amendment (Parenting Management Hearings) Bill 2017, 7 February 2018, paragraph 18.

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

In its evaluation of the 2012 family violence reforms, AIFS found that the proportion of contested family law cases involving complex psycho-social needs, relating to circumstances including family violence, child abuse, substance addition and serious mental illness, had substantially increased, placing great pressure on a system which had not been conceived of, or designed, to deal with such issues.<sup>153</sup> The 2015 and 2016 reports of the Family Law Council also focused on the issues caused and/or exacerbated by multiple jurisdictions and services which do not operate in an integrated way.

Yet from its commencement, the Act itself contemplated the provision of therapeutic services, to operate *in partnership* with the legal structures it created. The Act provided for a Court Counselling Service, with an emphasis on reconciliation counselling, especially where a separating couple had children.<sup>154</sup> There was also, as noted by former Senior Judge the Hon John Fogarty AM, ‘an early realisation that children’s cases involved multi-professional skills.’<sup>155</sup> This recognition has informed many Government reforms focusing on services, including the establishment of the FRCs and FLPNs, the previously-mentioned pilot of Co-Ordinated FDR, and the more recently established Health Justice Partnerships, as well as pilots of Family Advocacy Support Services (FASS) and specialist domestic violence services. Significant work has been done on the cultural and systemic barriers to access, and there are theoretical frameworks available to support professional groups to come together and collaborate effectively. Nevertheless, multi-disciplinary collaboration, for the benefit of families, seems still to be far in the distance, leading to families ‘falling through the cracks’, and to missed opportunities for timely, positive interventions.

#### **Case study – involvement with the FASS pilot**

Relationships Australia New South Wales provides the FASS for men in Wollongong, Sydney, Parramatta and Newcastle family court registries. Initial feedback is that this service has been very useful and effective in supporting men through the provision of an interdisciplinary service which also includes assistance in navigating the family law processes. In particular, FASS staff have been able to work with men to reduce their emotional valence and support attendance at courses to reduce their potential to use family violence – and have it used against them. However, the capacity to offer services to men is confined, in the Pilot, to one day per week (in contrast to the women’s FASS, which is available throughout the week).

Information sharing, and both the real and perceived conflicts with rules around privacy, confidentiality, admissibility and privilege, remain a real barrier to people being able to received integrated services. In this regard, Relationships Australia notes the

<sup>153</sup> See Kaspiew et al, *Experience of Separated Families Study – Evaluation of the 2012 Family Violence Amendments*, AIFS, 2015.

<sup>154</sup> Evatt, 4, 11, arguing for an expansion of the counselling service, as being ‘more effective and less costly than the appointment of more Judges’.

<sup>155</sup> The Hon John Fogarty AM, ‘Thirty years of Change’, (2006) 18(4) *Australian Family Lawyer* 4, 10.

recommendations at Chapter 6 of the 2015 Interim Report of the Family Law Council. These issues exacerbate risks around re-traumatisation, disrupt effective therapeutic and legal responses to peoples' needs, and allow for the continued perpetration of abuse. The governing principle should be, as has been argued in the past, that safety trumps privilege; but even in the absence of safety considerations, the practical imperatives for users of the system to receive coherent services remain regrettably unmet.

Relationships Australia Northern Territory staff agree with the issues and concerns canvassed in paragraphs 228-9 of the Issues Paper. An increasing number of FDR clients in the Northern Territory presents each year with multiple complex issues. They are unable to access all the siloed services they require without the clinical assistance of a social worker. FDRPs make referrals, but often clients need further help navigating the services. Such assistance is not funded in the FDR programmes.

One option, mentioned in the responses to Questions 14 and 22, is the New Ways for Mediation model, being offered by Relationships Australia Northern Territory in Alice Springs. This model provides conflict coaching to separated couples in Alice Springs as part of their preparation for attending FDR. Clients each have two sessions of two hours each with a counsellor. At these sessions, they learn skills to enable them to think flexibly, to manage their emotions, to look forward not back, and to write proposals. These skills are then used in the FDR session, with the FDRP adapting the traditional mediation model to be based on the individuals' making proposals, asking questions about the proposals being put to them, and offering responses of 'yes, no, or I'll think about it'. The model works well, in our experience, with high conflict families, but of course can be useful for all families. The skills learned through the program can also be used by families after the completion of FDR, when negotiating future decisions.

Another option is the New Ways For Families model (currently used in some jurisdictions in Canada and the United States of America). This model involves parents learning from trained counsellors the New Ways skills, teaching their children, and then returning to court to report on their progress. It makes parents accountable to use flexible thinking, manage their emotions, and provides a way to shift entrenched high conflict cases.

Further, there needs to be more funding of early intervention measures, such as counselling and mandatory parent education sessions to give parents the information and skills to equip them to:

- manage their emotions
- acknowledge the impact of conflict on their children
- develop strategies to resolve conflict, and
- work on their own issues that affect their ability to separate the needs of their children from their own needs.

If services were funded – even within the existing funding envelope - to work with families using a case management model – eg to work with counsellors supporting parents, and then organise a joint mediation – this would provide a basis to work from in mediation and perhaps plant some seeds about the impact of conflict, in the hope that families do not end up going through the legal system for many years.

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

Relationships Australia notes the reports of the Family Law Council on its reference concerning families with complex needs. In these reports, Council comprehensively canvassed existing concerns and hurdles, and offered salient suggestions to improve the connectivity of services, and thus improve children's safety.

Relationships Australia also supports initiatives to empower and facilitate State and Territory judges to make orders to help families already before them on other matters (eg protection order applications and child welfare matters). This includes providing necessary training not only in the applicable law, but also to provide a foundational understanding of relevant social science knowledge and practice. In the absence of specialist courts exercising the full array of jurisdictions, there needs to be better information sharing between jurisdictions, and options to fast track matters between different courts.

The suggestions outlined in paragraph 246 of the Issues Paper warrant consideration and exploration. However, Relationships Australia notes that negotiation and implementation of a national family and child protection system is unlikely to be politically achievable. The current family law system has been in place for more than 40 years, and does not extend nationally (Western Australia continues to maintain a separate system, and there is no indication that this will change in the foreseeable future). Development of any national norms, or even national interoperability of systems such as databases, is slow, painstaking and resource-intensive. While a national system may, from a user's perspective, be ideal – even a matter of common sense – experience suggests to Relationships Australia that a national system is an unattainable goal. This forms a large part of the reasoning that States and Territories, with their responsibilities for child protection and welfare, health systems and criminal justice, should be better equipped to make decisions within the framework of a national Act.

Relationships Australia supports digital hearing processes, as suggested in paragraph 246,<sup>156</sup> and as canvassed in its response to Question 13.

<sup>156</sup> Note the Link Virtual Outreach project ([http://womenslegal.org.au/impact\\_report/projects/project-two/](http://womenslegal.org.au/impact_report/projects/project-two/)). This is a service established by Women's Legal Service Victoria which '... brings specialist legal advice and representation to women experiencing family violence across Victoria. Using Skype and other internet-based tools, the project coordinates a virtual legal practice, allowing WLSV lawyers to meet with clients from multiple locations around the state during any one day. Link provides assistance to some of the most disadvantaged and isolated women in Victoria, partnering with regional social services agencies across Victoria including health centres, family violence refuges and community legal centres (CLCs).

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

Significant efforts have been made, over the past few years, to improve collaboration and information sharing between the family courts and state and territory child protection and family violence systems. In 2012, for example, AGD worked with Professor Richard Chisolm AM to develop a best practice framework to improve information flows. An initial report was published in March 2013, after which a taskforce was established to undertake further consideration of the issue. The outcomes of this work can be found on the AGD website.<sup>157</sup>

Relationships Australia notes that the Family Law Council recently recommended the development of a national database of court orders, to include orders from all family courts, State and Territory children's courts, State and Territory magistrates courts and (possibly) State and Territory mental health tribunals.<sup>158</sup> Such a database would enable courts to better informed of the broader legal context in which a particular matter has arisen, and avoid situations where there are – inadvertently – conflicting orders. This could build on the work of the Australian Criminal Intelligence Commission, which is establishing the National Domestic Violence Order scheme, to share DVO information between police and courts in Australia. There has also been advocacy for registration of documents such as enduring powers of attorney and advance health care directives;<sup>159</sup> if this is progressed, then it would be highly desirable, from the outset, to build in interoperability between State and Territory systems (rather than needing to retrofit this capability at some yet to be determined time). This could be in conjunction with work being done to implement recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, in terms of States and Territories sharing information on working with children checks.<sup>160</sup>

In response to the suggestions at paragraph 249 of the Issues Paper, Relationships Australia supports:

- the development of a national database of court orders
- co-located services, where practical. However, if the systems and structures of family services were to be completely re-thought using a paradigm other than the law, then it may be more appropriate to have courts located in other service centres or hubs, as described in Appendix A. Short of a transformational change, then more services, including child protection services, should be co-located with courts
- increased circuiting of first instance family law judges and locating registry staff in state and territory courts (including magistrates' courts and specialist domestic violence courts)
- the development of continuing joint professional development programs
- the recommendation of the Victorian family violence Royal Commission to provide that breach of a personal protection injunction made under federal legislation is a criminal offence.<sup>161</sup>

In addition, and to respond to concerns alluded to in our response to Question 31, Relationships Australia supports the provision of information and training on the scope of obligations of confidentiality and privacy.

<sup>157</sup> See <https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/Familylawandchildprotectioncollaboration.aspx>.

<sup>158</sup> See the 2015 interim report of the Family Law Council; in particular, recommendation 5. See also chapters 5 and 9 of the 2016 final report.

<sup>159</sup> See ALRC Report 131, *Elder Abuse – A National Legal Response*, especially recommendation 5-3 (establishment of a national online register of enduring documents and court and tribunal appointments of guardians and financial administrators).

<sup>160</sup> See recommendations made in the report on *Working with Children Checks* by the Royal Commission into Institutional Responses to Child Sexual Abuse, 2015.

<sup>161</sup> Relationships Australia notes that legislation to implement this recommendation is currently before Parliament, and urges expedited passage of this amendment: Family Law Amendment (Family Violence and Other Measures) Bill 2017.

Relationships Australia gave evidence to the SPLA Inquiry (at Appendix D) noting the administrative demand and costs associated with delivering family law services for people affected by violence. To an appreciable extent, these costs are driven by the need to share information across jurisdictions and sectors (eg through responding to subpoenas issued by State and Territory courts and, increasingly, the Family Court).



## Children's experiences and perspectives

### Question 34 How can children's experiences of participation in court processes be improved?

#### 34.1 Historical context

From its commencement, the *Family Law Act* has always accorded the best interests of children paramount importance, at least in a formal sense.<sup>162</sup> However, 'the system' has not always been good at finding the safest and most effective ways of hearing children's voices, as indicated by the AIFS evaluation of Independent Children's Lawyers,<sup>163</sup> and recognised in the work of officeholders such as the former Chief Justice of the Family Court, the Hon Diana Bryant AO QC, and the National Children's Commissioner, Megan Mitchell.<sup>164</sup> Relationships Australia also acknowledges earlier work done by the ALRC in its 'Seen and heard' reference, in which it collaborated with the then Human Rights and Equal Opportunity Commission,<sup>165</sup> and the 'For the Sake of the Kids' report.<sup>166</sup>

Children - their voices, fears, questions and interests – were largely absent from the debate on the Family Law Bill in the 1970s. Argument was very much centred around the process of divorce, and how it was experienced by the adult parties to the marriage, in isolation from their roles as parents. This reflected the social attitudes and expectations of the time; including expectations around gender roles. Sensibilities around children's views and voices (independent from those of their parents), and the effects on them of family conflict, are relatively recent. This means that the Act has been 'retrofitted', in an *ad hoc* way, to attempt to bring real substance to protection of children's views and interests in separation and family dispute resolution, as well as to recognise child protection/welfare concerns. The result is the cumbersome, clunky and confusing Part VII.<sup>167</sup> Any new system, legislation or process must *start with and be designed around* the best interests of the children and, in particular, assume hearing from children as the default position in service provision and court processes. Arguments for exceptions must be made out. Opportunities to hear from children should be afforded from first presentation of the family, and throughout any related court-proceeding and service provision. Mechanisms to achieve this need to be adequately funded.

In its 2016 final report, the Family Law Council made a series of recommendations aimed at giving children and young people a voice in the family law system. Council observed that

In Council's view the development of client centred services must incorporate input from children and young people with experience of the family law system. Council notes in this regard the recommendation by the COAG Advisory Panel [on family violence] that all governments 'work with children and young people to design services that can best support them to report violence'. Council supports this recommendation.<sup>168</sup>

Council recommended that

<sup>162</sup> Note the Second Reading Speech of the Bill (Commonwealth, Parliamentary Debates, Senate, 3 April 1974, 640, 642).

<sup>163</sup> Kaspiw et al, *Independent Children's Lawyers Study*, Final Report, 2<sup>nd</sup> edition, 2014. The Report noted that the role filled by ICLs is an important one, to comply with Australia's obligations under a range of instruments. The overall conclusion was that judges were the only cohort of respondents which valued the presence of ICLs. This is because the ICL can often be the only lawyer involved in proceedings, and can assist the Court by identifying and presenting evidence which is both admissible and probative. Parents and children, on the hand, were more critical, asserting bias on the part of ICLs, a lack of training in engaging with children, and criticised a perceived reluctance to directly talk to children.

<sup>164</sup> See, for example, the Commissioner's 2015 *Children's Rights Report*, Chapter 4 of which focused on the effect on children of exposure to family violence; Chapter 2 looked at children's rights under legislation and in court proceedings.

<sup>165</sup> *Seen and heard: priority for children in the legal process*, ALRC Report 84, 1997.

<sup>166</sup> *For the Sake of the Kids: Complex Contact Cases and the Family Court*, ALRC Report 73, 1995.

<sup>167</sup> See the response to Question 14.

<sup>168</sup> See Chapter 9, pp 141-2.

1) The Australian Government establish a young person advisory panel to assist in the design of child-focused family law services that build on an understanding of children's and young people's views and experiences of the family law system's services.

2) The Australian Government consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings.<sup>169</sup>

### 34.2 *The modern imperative to hear children's voices*

Relationships Australia urges the development, and consistent use of, mechanisms to hear children's voices. Independent Children's Lawyers, in their current mandated form, do not necessarily achieve this. Relationships Australia suggest that children have access to advocates who are appropriately trained and supervised to engage proactively with children in ways that are appropriate to the child's development.<sup>170</sup> Literature suggests that individual ICLs vary widely in their practices for engaging with children, and in their understanding of children's best interests.

Further, Australian judges could be encouraged – or perhaps required – and supported to meet with children affected by parental separation, to gain an understanding of the impact of parental conflict and separation. This is common practice in other family law jurisdictions.

For example, in the German family law system, judges are obliged to hear personally from the child if the feelings, ties or will of the child are thought to be significant to the decision. These child hearings take different formats, depending on the age and development of the particular child. Evaluation of this approach, between 2007-2010, demonstrated that it achieves very positive results for all participants, including the children.<sup>171</sup> The central question for the most recent evaluation concerned the effect on children, and their family relationships, of being interviewed by a judge in child custody and access matters.

The evaluation found that 'Altogether the observable signs of stress in children accompanying the judicial interviews can be seen as very moderate'.<sup>172</sup> Karle and Gathmann conclude that

Neither in the current study nor in the previous study by Lempp et al (1987) was there any sign of major or lasting stress for the children. The multiple measurement times were able to show that before the hearing, reactions to tension at various levels can be measured and subscribed to the concept of examination anxiety.

Immediately before the interview, the tension increases in intensity, but directly after the hearing and four weeks later, tension falls to below the initial level measured.<sup>173</sup>

Parents, unanimously, supported the judicial child interviews, and the involvement of child advocates.<sup>174</sup>

Judges noted advantages such as probing how the child is coping, getting to know the child, enhancing evaluation of 'best interests', and enhancing the prospect of parents reaching agreement. Judges experienced in interacting with children were less likely to refrain from

<sup>169</sup> See recommendation 13.

<sup>170</sup> See report from the SPLA committee, at 6.119.

<sup>171</sup> See Michael Karle and Sandra Gathmann, 'Hearing the Voice of the Child – The State of the Art of Child Hearings in Germany. Results of a Nationwide Representative Study in German Courts,' (2016) 54(2) *Family Court Review* 167-185. This article also refers to earlier evaluation of the German approach to hearing from children: see p 180.

<sup>172</sup> See Karle and Gathmann, at 179.

<sup>173</sup> Karle and Gathmann, at 181.

<sup>174</sup> Karle and Gathmann, at 182.

engaging with children on the basis of children's ages or concerns about exposing children to stress; Karle and Gathmann concluded that

...there should be no reason to refuse the obligation for hearing all children as far as their interests are concerned, as declared in Article 12 of UNCROC unless specific circumstances in a given case warrant otherwise. This applies particularly to the two arguments most frequently brought up by judges:

1. "Children are too young to be heard"....
2. "Children are placed under too much stress in child hearings".....<sup>175</sup>

Australian Judges would, of course, need significant support, training and resources to shift practice in this way. In the most recent German evaluation, judges nominated useful professional development courses in the following areas:

- questioning techniques
- communication psychology (including questioning and interviewing techniques for various age groups, registration of non-verbal signals)
- signs of child stress
- developmental psychology, including steps in motor, cognitive, psychological, language competency and social development
- role play, and
- psychological and pedagogical insight into effects of separation.

Relationships Australia notes the barriers to requiring Chapter III judges to undertake training. In view of this, it would be helpful if family courts adopted processes in which parenting matters could only be listed before judges with appropriate training in child inclusive practice, and the other domains described in this submission as relevant in engaging with children and hearing their voices (see also the answer to Question 41).

### 34.3 *Children's voices in the system*

Relationships Australia notes that a youth advisory council is part of the framework for headspace, the national youth mental health foundation.<sup>176</sup> It provides direct input into development of relevant services. A similar council, composed of people who have lived experience of the system as a child or young person, could be of great value in supporting the development of user-driven services. Another example of such a body is the Young Peoples Family Law Advisory Group consumer voice pilot in Adelaide, being run through the South Australian Family Law Pathways Network.<sup>177</sup> The YPFLAG website explains that:

The Young Peoples Family Law Advisory Group (YPFLAG) is a new project being run through the South Australian Family Law Pathways Network, a not-for-profit program funded by the Federal Government.

The YPFLAG is a pilot project of the first of its kind held in Australia.

The object of the YPFLAG project is to enable a group of selected young people who have experienced family separation [to have] the opportunity to voice their experiences about their interactions within the family law system, such as contact with the Courts, Family Consultants, counselling, mediation or any other experiences they have had since.

<sup>175</sup> Karle and Gathmann, at 182. At 183-184, Karle and Gathmann do recommend further evaluation which includes the measurement of neurophysiological stress markers.

<sup>176</sup> <https://www.headspace.org.au>.

<sup>177</sup> For more information, see <https://www.pathwaysnetworksa.com.au/ypflag/>.

We hope to make the YPFLAG project into a national program to assist the family law sector now and in the future.

The YPFLAG involves a group of selected young people meeting approximately 4 times a year to discuss their experiences about being involved in the family law system. It is an opportunity for young people to be able to tell their experience of the family law system in a safe and transparent environment.

Finally, Relationships Australia notes that child inclusive practice does not require – and would discourage – children being asked or required to comment on decisions that parents should be making.

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

Relationships Australia supports the ALRC's emphasis on exploring children's experiences and perspectives, and on giving children a voice. This review is an opportunity to encourage various professionals in the system to overcome some of the fear about talking with children.

Relationships Australia notes provisions currently being considered by Parliament to clarify the circumstances in which the outcome of court processes must be explained to children. Relationships Australia understands that the intention is to avoid inappropriate exposure of children to parental conflict and to avoid the imposition of information that the child will find difficult to understand, and would support specialist child advocates assuming that role (see the response to Question 34).

**Question 36 What mechanisms are best adapted to ensure children's views are heard in court proceedings?<sup>178</sup>**

Relationships Australia notes the concerns reported at paragraph 259 about the role of Independent Children's Lawyers. Certainly, we are of the view that ICLs have not, to date, provided a mechanism by which to consistently ensure that children's voices are heard in proceedings affected them; indeed, that is not their statutory role. As noted in the evaluation by AIFS, there is wide variation in the practice of ICLs, and a large disconnect between lawyers' and courts' understanding of their role (which derives from the terms of the Act) and the public's understanding. The term 'Independent Children's Lawyer' has proved to be misleading, encouraging expectations such as that the ICL acts on the child's instruction (or at least expresses the child's views to the court), and that the ICL will meet with the child.

Like all professionals, lawyers need to be trained to be able to identify their capacities and limitations, and when they need to engage with skilled clinicians. Lawyers also need to be trained around self-care and reflective practices and have access to clinical supervision. Compulsory CPD in these skills, and leadership in reinforcing expectations of less adversarial approaches, would also be useful.

Relationships Australia considers that any reform underpinned by principles of child-inclusive practice should include mechanisms by which children's views and voices are sought and taken into account. In line with the principles described at the outset of this submission, Relationships Australia considers that the adoption of a well-resourced multi-disciplinary team, accessible as early as possible<sup>179</sup> should form the central plank of child-oriented services, making use of tools such as the Scottish F9 form as means to elicit and report on children's views, from an early point in any decision-making process. Perhaps a pilot could be run from one registry, linked to an appropriate research capacity. Relationships Australia Tasmania has suggested that Hobart, with its diverse yet relatively small population, could be an appropriate pilot site.

Relationships Australia Canberra and Region (Riverina) currently uses the 'Meeting with Children' model of child informed practice, which offers a structured framework for meeting with children and a structure for giving feedback to the parents.

The possibility of judges interviewing children (see the response to Question 34) is a powerful mechanism by which to ensure that children's views are heard by Courts. Such a mechanism could work well with a more inquisitorial model.

<sup>178</sup> See also the response to Question 34.

<sup>179</sup> The Cafcass facility in the United Kingdom is only accessible to families that have entered the court system.

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

Relationships Australia considers that reforms should be aimed at normalising the participation of children, and hearing children's voices. Appendix B offers some suggestions how this might be achieved.

Relationships Australia is committed to child inclusive practice as offering the best possibilities for outcomes that are in children's best interests.<sup>180</sup> Child inclusive practice is a way of actively including children in the FDR process. One example of how it can be undertaken is that a child consultant, independent of the mediator, meets with the child to talk to them about their experience of the separation. The child consultant then attends the joint session to talk with parents and caregivers about the child's experience, providing information on the child's perspectives of the separation. Through this process, parents are assisted in focussing on the needs of the child and are encouraged to work towards the best possible parenting arrangements for their children.<sup>181</sup>

It is acknowledged that supporting children's participation can be resource intensive and, at present, providers bear the cost of this (in the Northern Territory, for example, many clients would not themselves have the resources to pay for this service). During the intake process and following sessions, FDRPs use child-focused materials in preparing adult participants to undertake FDR and, in discussion with the adult participants, reinforce the need to be child-focused throughout the process. In some Relationships Australia organisations, there are case managers who ensure that all practitioners engaging with the family know what is happening, and are able to ensure that all components of the process remain consistently focused on the child.

Relationships Australia also acknowledges that Parenting Co-ordination offers children a safe mechanism to express their views in a non-adversarial context.<sup>182</sup>

If recommendations for child inclusive practice are made by the ALRC, and accepted by the Government, then the funding for training and services should reflect this.

<sup>180</sup> For more information on how child inclusive practice is undertaken in South Australia, please see the separate submission from Relationships Australia South Australia. Relationships Australia New South Wales is moving toward an 'opt out' system of child-inclusive practice, away from the current 'opt in' approach. This is intended to normalise the participation of children in FDR.

<sup>181</sup> For further information, see Mieke Brandon and Linda Fisher, *Mediating with Families*, third edition, 96-7, 539-42; J E McIntosh and CM Long, *Children Beyond Dispute - A Prospective Study of Outcomes from Child focused and Child Inclusive Post-Separation Family Dispute Resolution*, Final Report, Attorney-General's Department, 2006. Note that training is available to become a qualified child consultant; eg through Family Transitions. Relationships Australia Northern Territory, for example, requires its child consultants to undertake this training as a prerequisite to practising as a child consultant.

<sup>182</sup> See the response to Question 10 (especially 10.3), and Appendix I, for more detail on parenting co-ordination.

## **Case study – engaging parents in child inclusive practice**

Mary initially contacted Relationships Australia for mediation with her former partner regarding the children. The couple had previously been together for 24 years and had been separated for 8 months when the mediation process was initiated.

Nigel, aged 11, was living with Doug, and Kaitlyn, aged 8, had week about with both parents. Kaitlyn has accessed the school counsellor for psychological support. Mary and Doug each had an intake and second session appointment prior to starting mediation sessions. During this time, the practitioner discussed the child inclusive practitioner and the role that they could play in mediation. Both parents agreed for the children to be part of the mediation process.

Before the child inclusive practice sessions with the children, the parents attended two mediation sessions, to be clear on what they each wanted; this included the establishment of a parenting plan.

The child inclusive practice sessions demonstrated to both parents how much the conflict between them had affected the children. Based on this, the parents reached consensus to change the way they communicated with each other and the children. Both parents were also referred to the counselling after separation program for additional individual support and skill development.

For this family, the process has been significant, with sessions beginning with the initial intake and the final mediation session occurring just over 12 months apart. The child inclusive practice process does extend the timeline but has proven to have worthwhile outcomes for children.



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

See the response to Question 34.

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

See responses to previous questions, including Questions 5-10.

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

Relationships Australia suggests that adults who went through the family law system as children be invited to be interviewed to provide their opinions, and their recommendations should be noted. A formal research project of this nature would provide valuable information and insights to inform current practices and future policy development.

See also the response to Question 34, and proposals at Appendix B, in relation to establishment of an advisory body to give children a voice in considering systemic reform.

## Professional skills and wellbeing

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

National standards of competency, across all professional groups, are necessary to ensure consistency and accountability.

Relationships Australia also draws to the attention of the ALRC the cost of ensuring ongoing training, accreditation and certification across multiple professional bodies.

### *Relevant competencies*

Professionals in any family services should undertake training in the following areas:

- cultural safety training – noting that recommendations from the *Bringing them Home* report, the *Little Children are Sacred* report and, most recently, the report of the Royal Commission into the *Protection and Detention of Children in the Northern Territory*, offer valuable insights into working in a culturally appropriate manner that are relevant to the Northern Territory
- trauma-informed practice
- vicarious trauma training
- child safe accreditation
- family violence (see the submission by Relationships Australia to the SPLA Inquiry, at Appendix D, response to the Term of Reference concerning the making of consent orders)
- legislative and case law developments
- LGBTIQA+ literacy
- disability competency
- strengths-based training
- child inclusive practice, and
- child informed training.

*Additional* areas of training for FDRP's might include:

- child development
- attachment theory
- family violence (including technology facilitated abuse and image based abuse)
- family dynamics
- high conflict

- parental alienation
- signs and symptoms of mental health issues (suicidal ideation, depression etc), and
- understanding of drug and alcohol addiction.

The recent increase in practice hours to complete FDRP qualifications goes some way in improving competency for emerging FDRPs.

### *Judges*

Relationships Australia acknowledges AGD's efforts to support ongoing training and skills development for professionals working in family law, notably including the *National Domestic and Family Violence Bench Book*, and the judicial training programme intended to complement it. Financial support has been provided to the National Judicial College of Australia to develop training packages for judicial officers, on the nature and dynamics of family violence, and the specific matters judges should consider in dealing with matters involving family violence.

Relationships Australia notes the Constitutional impediments to requiring judges to undergo ongoing training after receiving their commissions.

### *Family violence*

AIFS has found that previous reforms to family law have had limited effects on professionals' (especially lawyers') responses to disclosures of family violence and safety concerns. AIFS found that where parents relied on lawyers and courts for making parenting arrangements against a background of family violence or safety concerns, they were, on average, just as likely after reform as before reform to indicate that they did not consider the professionals' responses to their concerns to be adequate. It is widely acknowledged that there is a need to strengthen the skills of all family system professionals in identifying and understanding the dynamics of family violence.

Relationships Australia supports decision-makers taking an active role in protecting vulnerable witnesses; this would include protections from being personally cross-examined (or having to personally cross-examine) a perpetrator of family violence. Judges should receive training on incorporating into their court craft trauma-informed practice and family violence dynamics to enable them to provide effective protection. Ideally, individuals should not receive judicial commissions unless they have already demonstrated, in their prior practice, an understanding of these issues.

### *Family consultants*

Family Consultants can spend only a tiny window of time with the family and run the risk of shallow observations and conclusions based on assumptions and speculation. This is not a slight on Family Consultants; it is the limitation of the timeframes within which they work. Further, they are often involved quite late in any court process, and are placed in the invidious position of having to work from a set of weighty assumptions based on limited information, to provide advice with far-reaching implications.

### *FDRPs and FLPNs*

FLPN's often host professional development events for FDRPs across Australia. The FLPN encourages organisations and legal professionals who assist families experiencing separation to network, share ideas and information and also to collaborate around training and common issues which our clients are experiencing. At a time when clients may be

accessing multiple services, this can prove invaluable. FLPNs have particular value in regional and remote communities, offering training which otherwise might be inaccessible, due to location and prohibitive costs of travel and accommodation.

FDRPs should be recognised and compensated for the complex work that they do through increases in salary (ie more funding for FRC's to pay at a higher level), and consideration for how FDRPs have ongoing professional development. In regional areas, it is difficult to recruit FDRPs, particularly when NGOs are not able to match government salaries.

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

See the answers to Questions 34 and 41.

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

Relationships Australia considers that the proposals outlined at paragraph 283 merit consideration by government. However, attention needs to be paid, in developing funding envelopes, to the cost burden on service providers of providing training and maintaining accreditation.

Relationships Australia considers that increased use of inquisitorial, rather than adversarial, processes would go a considerable way to remove institutional and systemic incentives to prolong and exacerbate conflict.



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

It is important to acknowledge the high potential for burnout and vicarious trauma for those working in conflict situations every day.

Clinical supervision is at the core of supporting staff of Relationships Australia to provide services in a safe and appropriate way in their communities. Effective supervision relies on an honest reflection on practice and an opportunity to learn from successes and challenges. Relationships Australia New South Wales also offers to its clinical staff training in how to most benefit from supervision. Trauma-informed practice training, as well as staff well-being days, are offered to staff in Relationships Australia New South Wales. Relationships Australia considers that legal professionals should also be required to participate in clinical supervision, to ensure that the development of their practice meets contemporary standards.

Relationships Australia Northern Territory, for example, provides staff with an annual Wellbeing Allowance to encourage healthy work/life balance. Vicarious Trauma training is also given to pertinent staff with recognition that Aboriginal staff may receive additional benefit through techniques such as connecting to country.

## Governance and accountability

**Question 45 Should s 121 of the *Family Law Act* be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?**

A principal assumption underlying the 1975 Act was that divorce should be treated as a private matter (remembering that, at the time, divorce proceedings were covered in the media, which could and – particularly with public figures – did, identify the parties). Advocates for change took the view that conducting divorces in the public gaze, and requiring proof of fault on one of the adult parties, was unedifying for the community and demeaning to the families concerned. However, an increasing appreciation of the very real public interest in preventing family violence, ‘calling it out’ when it occurs and addressing it as a public matter, raises the question of whether section 121 is a measure which provides reasonable protection of privacy, balanced with appropriate accountability and, where necessary, law enforcement.

Relationships Australia considers that there needs to be legislative protection – which is properly enforced – for the privacy of families, especially children. In the absence of such protection, traditional and social media will exploit intensely private matters for public consumption, as the *Courier Mail* did in 2012, in its coverage of an international parental child abduction matter. The paper’s coverage of that case included a front page displaying photographs and names of the children. In a rare instance of enforcement, the *Courier Mail* was prosecuted and fined for its conduct.<sup>183</sup> The case reinforces the point that the confidentiality and privacy which the 1975 Act sought to bring to bear cannot be taken for granted as a fixed social parameter.

Nevertheless, Relationships Australia would support proposals to enhance transparency of how family disputes are dealt with in the court system, provided that there were rigorous and readily enforceable safeguards.

<sup>183</sup> See correspondence from the then Chief Justice of the Family Court, the Hon Diana Bryant AO, to the Committee Secretary of the Senate Legal and Constitutional Affairs References Committee, 28 March 2014, in relation to its inquiry into the current investigative processes and powers of the Australian Federal Police in relation to non-criminal offences. Available at [www.aph.gov.au](http://www.aph.gov.au).

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

Relationships Australia considers that current governance and regulatory processes which apply to various professional groups in the family law system do not enjoy sufficient public confidence or support. Often, regulatory bodies are seen as being resistant to hearing, or effectively investigating, complaints against members and as reluctant to impose effective sanctions. Should the recommendations around multi-disciplinary and co-located services be adopted, it would be of value to establish an overarching independent regulatory body with oversight of all participating professionals.

Further, Relationships Australia strongly supports the re-establishment of the Family Law Council, perhaps as a standing body with statutory responsibilities for providing governance mechanisms, or at least regular advice to Government on the efficacy of governance mechanisms.

## B.5 Other issues

### B.5.1 Research and data – generation, funding, use, and public education and awareness

In his consideration of whether the 1975 Act had achieved the aim of ‘dignified divorce’ aimed for by Lionel Murphy, Moloney notes that, in the 1970s, ‘virtually no data existed’ on a range of indicators, including the efficacy of support services<sup>184</sup> or the characteristics of separating couples.<sup>185</sup> Undoubtedly, the position in 2018 is much improved on this front; family law is extensively researched, benefiting from the attention of researchers from diverse disciplines.

Yet it is also the most extensively mythologised in popular thought, partly due to persistent polarisation around fault lines such as gender and conservatism / progressive politics, as well as increased exposure and credence given through social media to advocates who reject the legitimacy of research methodologies and the ‘cult of the expert’. As noted by Professor Chisolm,

The glimpses we get from reported cases suggest that many cases that are agreed between the parties might well be the result of bargaining in the shadow of a misunderstood law.<sup>186</sup>

With a law of such fundamental importance to people’s daily lives, this is of serious concern.

A particularly pressing research need is for longitudinal research that evaluates all pathways followed by families through the family law system. Only real data can answer the misinformation and partisan agendas that circulate in the community. Extreme case examples are too often elevated to the status of truth, ‘common sense’, or received wisdom when in fact they are used simply to support a particular biased agenda. A prospective study could usefully follow a cohort through the separation process and measure impact and outcomes – and, invaluable, comment on the long-term outcomes for children.

### B.5.2 Intergenerational conflict and elder abuse

The report by the ALRC, *Elder Abuse – A National Legal Response*,<sup>187</sup> was launched on 15 June 2017, and made 43 recommendations.

Relationships Australia is of the view that intergenerational family relationships, and disputes emerging from them, need to be part of the design of a new system to support Australian families. As noted throughout this submission, the interests and voices of children were not considered part of the system in the 1970s, and this has led to 30 years of retrofitting, with variable success, the Act and the constellation of services and programmes orbiting around it, to rectify this failure of foresight.

Australia should not repeat such a failure. We know that elder abuse is a significant issue in our society. We know it is unacceptable. We know that housing pressures, ‘inheritance greed’, the problem of longer lives with (sometimes) diminishing capacities, and the availability of superannuation in inheritance, will drive intergenerational conflict. We are also aware that violence against older family members can be a manifestation of decades-old family violence dynamics. There are disputes, too, among adult siblings about the care arrangements for older family members. As a nation, we have a responsibility, in designing new structures, from scratch, to ensure that we are equipped to support families to deal with

<sup>184</sup> Such as the counselling services contemplated by the Act from its passage.

<sup>185</sup> Moloney, 247.

<sup>186</sup> Chisolm, 2015, 25.

<sup>187</sup> ALRC Report 131, *Elder Abuse – A National Legal Response*.

the pressures and conflicts of which we are increasingly aware, and which can cause such ongoing harm and distress.

Relationships Australia is currently providing FDR services to families where there are disputes as to care arrangements for older family members, and to assist developing financial agreements. Relationships Australia has recently run a pilot of Elder Relationships Services, the evaluation of which will be published shortly. In brief, the pilot offered services including:

- counselling
- capacity building and support
- information
- education
- supported referral to police or other specialist legal services.

Where appropriate, the Program supported family meetings, often co-facilitated with a counsellor and a mediator.

# **PART C APPENDICES**

## **APPENDIX A**

### **THE 'FAMILY AXIS' APPROACH**

#### **BEYOND THE *FAMILY LAW ACT 1975* –SAFE, TIMELY, SUSTAINABLE SUPPORTS FOR FAMILIES IN CONFLICT**

As noted in our response to Question 1, modern Australian families experiencing conflict should have access to a system which supports:

- healthy whole of family relationships (including intergenerational and adult sibling relationships) throughout the life span
- families to stay together or separate in a way that focuses primarily on the safety, development, and other needs of children, including the establishment of safe and healthy co-parenting relationships, with functional communication and conflict prevention/resolution skills
- financial and economic recovery and stability of separating adults (including ongoing social and economic participation as well as an appropriate division of resources and debt), and
- an appropriately trained and equipped professional workforce.

In our response to Question 2, Relationships Australia expressed its support for the idea of overarching principles to guide reforms; in particular, Relationships Australia endorses:

- giving the widest possible protection and assistance to family relationships
- affording safety to those affected by family conflict and violence
- assisting families to resolve conflict safely and in a way that preserves meaningful relationships, and
- supporting the principles outlined at paragraphs 43 and 44 of the Issues Paper.

In addition, Relationships Australia argued that a contemporary system designed to support family relationships, and support families when those relationships are breaking down, should be designed according to the following principles:

- holistic and integrated design from and around the needs of families, not around existing legal, jurisprudential, administrative, funding or single-disciplinary structures, distinctions and hierarchies; Relationships Australia respectfully suggests that the ALRC refer to expertise in industrial design and 'user-based' design for advice on how this might be approached
- that services (including decision-making mechanisms) be therapeutic in their aim and effect, and accommodate and respond to the enduring, rather than 'one off' nature of many family conflicts
- that services, especially decision-making mechanisms, be non-adversarial
- as a corollary of the preceding point, that families are supported before, during, and after separation
- 'front-loading' costs through prevention, early intervention, capacity-building within families, and follow up
- offering pathways and services proportionate to families' needs and resources (ie not a 'one size fits all' journey with court as the ultimate and most highly valued destination and vindication)

- that there be no wrong door and one door only and, as an enabler of this principle, that service integration and collaboration happen at the organisational level<sup>188</sup>
- that services be available on the basis of universal service and accessibility,<sup>189</sup> and
- above all, that the well-being and healthy development of children remains paramount (and, as a corollary, will prevail over the rights and interests of adults).

With these considerations in mind, Relationships Australia advocates the establishment of a new and radically different suite of arrangements, called the Family Axis approach, in which therapeutic services and decision-making mechanisms would stand as co-equal pillars to support families to stay together or to separate safely and healthily. These notions are by no means novel; as argued elsewhere in this submission, they could fairly be said to have underpinned not only the conception, over a decade ago, of FRCs, but also to have underpinned the Act as originally formulated in the 1970s.

Therapeutic services would operate collaboratively across disciplines, and be integrated seamlessly and invisibly to the end users, who could be assisted by a continuum of intervention from referrals and the provision of information to navigation assistance to full case management, depending on their needs and capacities. Child-inclusive practice would be assumed, and child safety and healthy development the prevailing consideration. Families would be offered preventative, crisis and ongoing services, and providers would be expected to offer support and education to build families' capacities. In addition, users would be able to choose the medium by which they engage with services: online, offline or a combination.

Decision-making mechanisms would no longer be tied to, or based on, an adversarial justice approach. This may require a fundamental shift in responsibility from federal to state courts, to overcome Chapter III issues. While this would be a radical change, to the extent that constraints flowing from Chapter III inhibit safe, timely and integrated responses to vulnerable families (particularly children), then Relationships Australia considers that it is merited.

## **The Family Axis approach**

The Family Axis approach advocated by Relationships Australia in this submission is comprised of:

1. integrated, multi-disciplinary services, and
2. decision-making services (including existing decision-making pathways and, wherever possible, accessing inquisitorial rather than adversarial mechanisms).

The Family Axis approach would be supported by legislative amendment, court reforms and a national, integrated funding model.

Family Axis Services would be multi-disciplinary, incorporating features of existing FRCs, health justice partnerships and domestic violence units and delivered through service delivery hubs. In this submission, the 'hub concept' of service is flexible and deliberately non-prescriptive - hubs must take a range of forms to meet the needs, circumstances and exigencies of the communities which they serve. They could be housed in bricks and mortar premises; they may be online; they may exist by virtue of robust and effective cross-

<sup>188</sup> See Council's recommendations in its 2016 report, especially recommendation 1.

<sup>189</sup> In this connection, the comments by Relationships Australia on the KPMG final report, see out at Appendix E, especially at page 9, noting that '...FL [Family Law] services have successfully provided services to clients with high rates of disadvantage within a universal framework....Without universal access, a proportion of higher income clients will end up in court, and many of these families will end up disadvantaged by the end of this process.' This would undermine policies focused on encouraging timely decision-making.

professional collaboration, or they may combine any or all of these. The essential parameters of the 'hub', for the purposes of this submission, are:

1. one door only/no wrong door
2. ease of access, physically, online or in combination
3. continuum of navigation assistance, from simply providing information, through navigation to intensive case management, and
4. integration and collaboration between services dealing with the family in a way that is seamless for, and invisible to, the family.

### *Physical hubs*

The physical Hubs could incorporate space which could, on a visiting basis, host court hearings, along the lines of the Collingwood Neighbourhood Justice Centre. That is, the court would be an ancillary service located in a therapeutic space. They could be totally or partially co-located with existing services, such as FRCs or CLCs, or be within or adjacent to places of social significance and ease of access, such as schools, hospitals and health centres, or shopping precincts. The Hubs should be designed with regard to the features noted in the response to Question 13. Like the Collingwood Neighbourhood Justice Centre,<sup>190</sup> physical Hubs could also offer space after hours for community activities, enhancing their utility and image as community resources.

### *Virtual hubs*

For some communities, a physical Hub may not be practical, resource-efficient or helpful to serve the community, and its purposes will be better achieved by virtual and online services, or other flexible means of collaboration. For example, in some smaller communities, people will often need a choice of services to counteract actual or perceived conflicts of interest and to offer appropriate assurance as to privacy and confidentiality. Recruitment of specialised professionals to live and work in particular areas can also pose significant challenges. To varying extents, these considerations are currently addressed through the ways in which various FRCs and FLPNs provide means for collaboration, joint training and service provision. Other models are also being explored.<sup>191</sup>

### *What kinds of services could the Hubs deliver?*

The services offered at and through particular Hubs should reflect the needs of the people who live in the community. Potentially, they could include:

- universal risk screening, based on an 'all hazards' approach, and identification, triage, warm referrals and safety planning
- children's advocacy centre (CAC) or Barnahus-type facilities for children who have been affected by violence or sexual abuse<sup>192</sup>
- case-management for families with co-occurring needs
- Aboriginal and Torres Strait Islander workers

<sup>190</sup> Or, in the context of multicultural services, Access Gateway in Queensland: [https://www.accesscommunity.org.au/the\\_gateway](https://www.accesscommunity.org.au/the_gateway).

<sup>191</sup> See, for example, the recently-announced New South Wales trial in which family violence survivors will be housed in purpose-built units with access to on-site support where providers can come to them, as well as access to other social amenities: Anna Caldwell, 'Female domestic violence victims given two-bedroom units to live in', Daily Telegraph, 1 May 2018, quoting the New South Wales Minister for the Prevention of Domestic Violence, the Hon Pru Goward MP.

<sup>192</sup> For more information, go to: <http://www.dcac.org/>. Of particular note in the CAC model is (a) the one-time interview of children who may have been abused, which interview is witnessed and recorded from a secure site, and (b) the wraparound services. Potentially, this aspect could also have an investigative capacity, provided by co-located child protection workers. A common complaint about the family courts, from members of the public, is that they do not carry out investigations; however, Ch III courts are unable to carry out such functions. For more information on the Barnhus model, adapted from the US children's advocacy models which developed from the 1980s, see for example <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Barnahus-Improving-the-response-to-child-sexual-abuse-in-England.pdf>; and <https://childcircle.eu/2018/02/27/launch-of-renewed-action-to-promote-the-barnahus-model-in-europe/>.



- CALD workers
- mental health services
- legal practitioners to provide early advice and urgent legal/safety responses
- social workers
- child development professionals
- psychologists
- financial counsellors<sup>193</sup>
- addiction counselling
- behavioural change programmes
- housing assistance
- an embedded Centrelink presence
- existing FRC services (including FDRPs and FGC)
- police services
- space for supervised contact and parenting capacity building
- space for relationships and personal education programmes to be conducted
- space for circuiting courts – courts visiting the hubs should be in a position to exercise multiple jurisdictions, including: federal family law; State/Territory child protection and welfare law; drugs courts and criminal law,<sup>194</sup> children’s court jurisdictions and adult guardianship and mental health jurisdictions<sup>195</sup>
- space for circle courts
- facilities for service users to access, in safety and privacy, online information and online services (including online services).
- information-sharing databases for professionals, allowing them real time access to relevant information, especially about safety, from any Australian jurisdictions.

### *Ongoing rather than one-off service delivery*

Research increasingly identifies the need to use a multiple session approach with families who are participating in FDR. However, legal systems tend to be based around a single point in time service – the dispute is adjudicated on, remedies granted or denied, and the parties move on. This is not the case with family disputes, particularly in the context of modern expectations of ongoing co-parenting. The services offered and the performance measures applied should be premised on models which allow engagement with services in non-linear ways, reflecting the non-linear emotional and psychological experience of family conflict. Examples of this kind of practice are already at work – in existing multiple session models, clients are given the opportunity to trial an agreement which may span only a few weeks, or a month, before attempting to extend the agreement beyond that timeframe. This, in turn, affords the opportunity to re-establish safe and respectful communication, and to acknowledge the important role that the other parent may play in their children’s lives. Where possible, a multiple session approach also enhances opportunities for children to have a say in how they are managing the separation of their caregivers.

### *Measuring outcomes*

<sup>193</sup> In 2015, Women’s Legal Service Victoria completed a pilot in which financial counsellors were involved in the support of family violence survivors, from the initial contact with the service. The pilot, described in the ‘Stepping Stones’ report, demonstrated that early access to financial counselling can markedly improve the speed and degree by which survivors can recover, financially and psychologically, following separation from abusers.

<sup>194</sup> An example of a useful jurisdiction to exercise when making a personal protection order might be victims of crime compensation legislation, to provide a person leaving a violent situation with an amount of money to establish themselves (eg cover a rental bond). Other examples might be to deal with breaches of a personal protection order.

<sup>195</sup> All of these courts would still exist in their current forms. However, courts could visit physical hubs because that is where people with complex needs, only one subset of which is legal need, can go for their services. Where practicable for the community in question, this is an example of client-centred system design.

The success of interventions in this context should not be measured by whether an agreement was reached in particular families; other measures must be considered, such as whether the family could be referred to another service to assist them (for example, coaching for one or problem-solving for one). Outcomes for family law services are inherently difficult to define and measure, due to the complexity and diversity of family circumstances, the nature of why families seek these services, and how they interact with services over time (given the non-linear nature of how family members experience and process family separation).<sup>196</sup> The conceptual framework for measurements could be one of well-being. As noted in our submission to the KPMG Report (see Appendix E), Relationships Australia does not support an approach that ties funding to outcomes that KPMG acknowledges are difficult to measure.

### *Reform of the Act to support the Family Axis approach - a therapeutic/social services-centred paradigm*

Relationships Australia recommends the introduction and passage of a new Act of Parliament, not to be called the Family Law Act, but to have a title reflecting that legislation and judicial decisions are pillars of an overall network of support for families, separating and intact, and thus sit alongside an array of services and decision-making pathways. A new Act would be drafted with provisions to achieve the objectives described in the response to Question 1 and informed by the principles canvassed in the response to Question 2. The legislation should include simplified decision-making pathways that are proportionate to families' needs and resources, and that accord safety, and children's voices, central importance.

### *Reform of the family courts*

Reform of the family courts<sup>197</sup> is a necessary precondition to effective transformation from the current family law system to a family services system, if family disputes remain in the federal jurisdiction. Elements of better court service delivery include:<sup>198</sup>

- at a minimum - better resourcing state and territory courts to exercise family law jurisdiction when dealing with families in relation to state or territory matters, using inquisitorial, rather than adversarial, processes
- enhanced judicial training across a range of domains, identified in the responses to Questions 41-44, and including training in hearing children's voices
- conferring on the Federal Court a concurrent jurisdiction in high value property disputes, especially those involving companies, trusts and substantial third party interests (or conferring a dual commission on selected Federal Court judges)
- improved supports for vulnerable witnesses, and
- consequences for misuse of the court system.

## **Conclusion**

Proposals to reform laws affecting families will always elicit strong, polarised reactions. Often, these are around gender or political fault-lines with insufficient focus on the overarching needs for families in dispute to access services which are safe, simple, timely, resource-proportionate and, most important, child-focused. Those critiques have regrettably and for too long stifled constructive discussion and reform, at the expense of the well-being of Australian children and their families.

<sup>196</sup> Cf Appendix E.

<sup>197</sup> Other than the Family Court of Western Australia.

<sup>198</sup> See also section 10.2.

Other objections to reforms of family law are based on (1) the misleading conflation of co-occurring economic, psycho-social and medical needs with legal complexity, and (2) the assumption that a system to deal with familial conflict must, *a priori*, be a system which has as its central job the adjudication of relative rights and responsibilities. In that paradigm, lawyers must, necessarily, be the key advisors and judges must, necessarily, be the key decision-makers. If, however, an alternative paradigm (such as the Family Axis approach) is recognised, and new systems built around it, then the legal perspective ceases to be the central and defining lens. It becomes, rather, an important – but not central – adjunct and enabler that sits beside clinical and social services as a pillar to support families to make decisions while intact, and before, during and after separation. Further, if child safety and healthy development is treated as the primary consideration, questions about justice as between adult parties, and provision of the necessary procedural accoutrements to provide that, lessen in significance relative to facilities to identify risks to children's safety and healthy development, to respond to those risks, and to hear children's voices.

Modifications and amendments of the existing arrangements, however well-intentioned and even if fully funded without offsets, are unlikely to meet the community's needs and expectations. The system is already at crisis point; merely altering its parameters won't fix that. Merely injecting money into the court system, legal assistance providers and other service providers, won't be adequate. Families are suffering and in despair. A new paradigm is urgently needed, one with families at the centre and which accords substantive paramountcy to the well-being and healthy development of children.

## APPENDIX B

### MISCELLANEOUS SHORT AND MEDIUM TERM REFORMS

#### *Family dispute resolution services*<sup>199</sup>

- amend regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* to clarify that the intake and assessment processes undertaken by an FDRP form part of the confidentiality and inadmissibility protections provided under s10H and s10J of the Family Law Act. This amendment would address the comments made by Reithmuller J in *Rastall and Ball* [2010] FMCA Fam 1290, and more recently by Harman J in *McDougall & McDougall* [2017] FCCA 2907, to the effect that the FDR intake processes do not fall under the protection of these sections. A fundamental element of the FDR process is to undertake an intake process, including an assessment as to whether the matter will be suitable for a joint session, and/or whether there would be benefit from participating in therapeutic programs before attending the joint session. The suggestion that this part of the process does not fall under the confidentiality and inadmissibility provisions of the Act poses an anomaly where potentially parts of an FDRP's file could be subpoenaed while other parts of the file would be inadmissible
- amend the Act to put interdisciplinary collaborative practice on equal statutory footing as FDR (perhaps through piloting a subsidised scheme)
- roll out FASS, with particular reference to including investment for men's programmes
- amend the Act to require families to undergo FDR for property matters, with exemptions and funding provisions analogous to FDR for parenting matters.

#### *The courts*

- include misuse of process as a form of abuse in family law matters.<sup>200</sup>
- re-invigorate the consistent and national use of the Less Adversarial Trial provisions
- develop a national database of court orders<sup>201</sup>
- co-locate child safety services, and other therapeutic services, with courts and other services
- increase circuiting of first instance family law judges and locating registry staff in state and territory courts (including magistrates' courts and specialist domestic violence courts)
- develop continuing joint professional development programs, bringing together judges, lawyers, and service professionals
- confer on the Federal Court a concurrent jurisdiction in high value property disputes, especially those involving companies, trusts and substantial third party interests (or conferring a dual commission on selected Federal Court judges)
- improve supports for vulnerable witnesses, and
- amend the Act to provide for consequences for misuse of the court system
- improve enforcement mechanisms and funding for enforcement<sup>202</sup>
- fund the courts to employ family consultants who would be subject to accountability measures relating to training, ongoing professional development, and complaint-handling. The Act should also provide for family consultants to be involved from as early a stage as possible in families' engagement with the courts

<sup>199</sup> See also the response to Question 15.

<sup>200</sup> See also the response to Question 25.

<sup>201</sup> See also the response to Question 33.

<sup>202</sup> Relationships Australia notes the submission from the then Chief Justice of the Family Court of Australia, the Hon Diana Bryant AO, to the Senate Legal and Constitutional Affairs References Committee, 28 March 2014, in relation to responses from the Australian Federal Police to referrals made by the Court when a possible breach of a Commonwealth law is suspected.

### *Children and young people*<sup>203</sup>

- as recommended by the Family Law Council, establish a young person's advisory panel to assist in the design of child-focused family law services that build on an understanding of children's and young people's views and experiences of the family law system's services.
- also as recommended by the Family Law Council, consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings
- amend the Act to require that decision-makers 'hear the child's voice'
- amend the Act to establish child advocates to provide more holistic and child-inclusive services than are currently provided by ICLs (eg to prepare the child to engage with decision-making processes in a culturally safe and developmentally appropriate way, to explain the outcomes of the decision-making processes, and to co-ordinate ongoing services for the child)
- establish an accreditation scheme for child consultants, similar to the FDRP accreditation scheme
- regulate children's contact services and develop them to offer to families an array of capacity-building services
- continue research on child-inclusive practice

### *Family violence*

- secure passage of the Family Law Amendment (Family Violence and Other Measures) Bill 2017
- amend the definition of family violence in the Family Law Act to expressly include technology facilitated abuse and image based abuse.<sup>204</sup>

<sup>203</sup> See also answers to Question 34, 35, 36, 37.

<sup>204</sup> See also the response to Question 14.

## **APPENDIX C**

### **ABBREVIATIONS**

*AGD* means the Commonwealth Attorney-General's Department

*AIFS* means the Australian Institute of Family Studies

*CCS* means Children's Contact Service

*CFDR* means Co-ordinated Family Dispute Resolution

*CLC* means community legal centre

*DSS* means the Department of Social Services

*Family courts* means the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia

*FRAL* means the Family Relationships Advice Line, a service run by Relationships Australia Queensland and culshaw miller lawyers, a member of the hunt & hunt legal group

*FDR* means Family Dispute Resolution

*FDRP* means Family Dispute Resolution Practitioner

*FGC* means family group conferencing

*FLPN* means Family Law Pathways Network

*FRC* means Family Relationship Centre

*FRSA* means Family and Relationships Services Australia

*ICL* means Independent Children's Lawyer

*KPMG report* means the 2016 report by KPMG to AGD about the future focus of family law services

*LACA FDR* means the pilot of legally assisted and culturally appropriate FDR

*PMH* means Parenting Management Hearings

*SPLA inquiry* means the 2017 inquiry by the Social Policy and Legal Affairs Committee of the House of Representatives into a better family law system to support and protect those affected by family violence

APPENDIX D  
RELATIONSHIPS AUSTRALIA SUBMISSION TO SPLA INQUIRY



A better family law system to support and protect  
those affected by family violence

Relationships Australia's response to the Parliamentary  
Inquiry

The work of Relationships Australia

This submission is written on behalf of Relationships Australia's eight member organisations. It complements submissions provided by Relationships Australia State and Territory organisations.

We are a community-based, not-for-profit Australian organisation with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of family support services to Australian families, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to achieve positive and respectful relationships. We also believe that people have the capacity to change their behaviour and how they relate to others.

Relationships Australia has been a provider of family relationships support services for more than 60 years. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 65 Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the Family Relationships Advice Line.

The core of our work is relationships – through our programs we aim to enhance and improve relationships in the family, whether or not the family is together, with friends and colleagues and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable in family relationships. We respect the rights of all people in all their diversity to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

Relationships Australia supports integrated cross sector, multi-disciplinary responses to family and domestic violence which focus foremost on the safety of the victim. Violence in the family is a human rights issue and Relationships Australia supports a legal framework to respond to inequality, coercion and control, and the use of violence in families, including amendments to the *Family Law Act 1975* that protect victims of family violence.

Relationships Australia is committed to:

- Transparency with clients. Violence is named for what it is and there are no excuses for it. Our practitioners make reports of concern to child protection agencies. Unless there is a safety concern, clients are informed about what is happening, encouraged to self-report, given explanations and supported through the reporting process.
- Supporting children affected by family and domestic violence, recognising the harm it does to them, regardless of whether they are the direct or indirect victims.
- Working with people who have experienced violence to ensure they are safe, and supporting them to take control of their lives.
- Working with people who have been violent in their family relationships to keep their family members safe and with the belief that they can, and do, change existing patterns of behaviour.
- Respecting cultural differences, but not accepting them as an excuse for family violence.
- Working in rural and remote areas, recognizing that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early intervention and tertiary intervention programs with men, women, young people and children. We recognize that often a complex suite of services (for example, drug and alcohol services, family support programs, mental health services and public housing) is needed by people affected by family violence.
- Enriching family relationships and encouraging good and respectful communication.
- Ensuring that social and financial disadvantage is not a barrier to accessing services.
- Contributing its practice evidence and skills to research projects, to the development of public policy and to the provision of effective programs.



In preparing this response we have drawn upon:

- our direct service delivery experience across urban, regional, rural and remote locations;
- our experience in delivering programs in a range of communities, including culturally and linguistically diverse and Indigenous communities;
- evidence-based programs and research;
- our leadership and policy development experience;
- the voices of our practitioners; and
- the experiences and voices of men, women and children to bring to attention to a range of issues affecting the adequacy of policy and community responses to family violence.

This response represents the context from which we work whereby (in most cases) the male is the perpetrator of violence and the mother and child(ren) are the victims of violence. In some locations we also deliver services to male victims of family violence. For example, Relationships Australia provides case management and representation for male victims in 21 locations across NSW.

We work with women and children affected by family violence through a range of services, including:

- Men's Behaviour Change Programs (MBCP)
- Targeted women's support programs
- Specialist family violence counselling
- Family therapy
- Parenting and child groups
- Women's support and recovery groups
- Children and adolescent groups, including respectful relationship programs in schools
- Relationship education groups
- Family Dispute Resolution (FDR)
- Royal Commission into Institutional Responses to Child Sexual Abuse support service
- We also work closely with local and state crisis services to refer women and children who require emergency accommodation and services
- Family Relationships Advice Line

We work with male perpetrators specifically through our MBCPs. These programs includes a vital 'partner contact' component which enables women to articulate their experiences, recognise family violence in their relationships, develop safety plans for themselves and their children, and become empowered to make their own decisions for their future. Programs also include services for adolescents and children.

## Response to the terms of Inquiry:

### Introduction

Family violence is the most prevalent issue affecting clients attending our services. It is well known in the literature that relationship breakdown is the highest risk time for women and children who are, or have recently been living in violent households. Of the total domestic violence homicides, for example, about 75% of victims were killed as they attempted to leave the relationship or after the relationship had ended. During long waiting periods for legal and non-legal services, the safety of children is also significantly compromised.

A recent stocktake identified that, of the 160,000 clients accessing our services in 2014-15, around 67,000 people were directly and significantly impacted by family violence. This is considered a highly conservative view of the prevalence of family violence in our services, not necessarily capturing the full extent of violence such as emotional abuse and coercive control. Additionally, children in families where violence is present account for another portion of our work, where we provide services directly for their experience of violence in a range of children's support programs (see below for more detail).

The high prevalence of family violence has created increasing demand for services and long waiting lists. For the 2014-15 financial year, for example, we estimated that there were in excess of 1,000 men throughout Australia waiting to attend our men's behaviour change programs. These waiting lists continue to grow with increasing policy discourse around family violence, and recognition of the improved outcomes for men, women and children that can be achieved through these programs.

The administrative demand and costs associated with delivering family law services for people affected by violence are also increasing. For example, family law services are seeing a significant increase in subpoenas and requests for information from the Family Court, and in our experience the State and Territory courts are even more likely to seek this type of information from services. Training, recruitment and support for specialist family violence practitioners also increases the costs of providing these services in comparison with traditional family law and family support services, but also greatly improve outcomes for clients and ensures the safety of practitioners.

1. how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:
  - a. facilitating the early identification of and response to family violence; and
  - b. considering the legal and non-legal support services required to support the early identification of and response to family violence;

Our current methods for identifying and responding to family violence are based on our long history and experience in delivering family support and law services, including specialised family violence services. As a professional organisation, Relationships Australia is continually improving and developing our policies and processes to ensure the safety of clients and staff who are affected by family violence.

Our existing services are well placed to identify, respond to, and assess risk. One of these services is the Family Relationship Advice Line (FRAL), an important part of a holistic and integrated family law system. FRAL is currently being reviewed to further improve its efficiency and effectiveness but continues to provide a first point of contact for people across Australia, including those who may not be willing to approach, or are unable to access, a face-to-face service. The FRAL is also constantly improving on its ability to screen, assess and warm refer clients affected by family violence to other support services, including family counselling, mediation, legal and specialist family violence services.

### *Identification of family violence*

Early identification of family violence at Relationships Australia is facilitated at intake and assessment through a range of mechanisms, including:

- Family violence training for all staff, including administrative staff.
- Screening of clients using evidence based tools such as the Detection of Overall Risk Screen (DOORS) and/or in-house tools developed using the skills and experience of trained practitioners. Evidence based screening tools can be used by appropriately trained, cross disciplinary staff across different service types. Where violence is identified, referrals can be made to specialist staff for risk assessment and response.
- DOORS is an evidence-based risk screen that identifies parenting stress, developmental risks for children, substance misuse, psychological distress, social isolation and family violence. The DOORS uniquely screens for perpetration as well as victimisation making it a universal family violence and wellbeing risk screening process. By focusing on the patterns of risk, and not isolating family violence from its associated and contributing risk factors, it is possible to come alongside perpetrators as well as victims, with realistic and relevant de-escalation strategies including safety planning.
- Universal screening processes and tools used by services supporting individuals and families, such as DOORS, are of considerable value in effectively identifying family violence and of greatest benefit when used in conjunction with whole of system responses. On their own and without opportunities for legal and non-legal services to collaborate on strategies to manage identified risks of harm they are not sufficient to identify all cases of domestic violence or be accurate enough to predict the reoccurrence or severity of violence. Benchmarks for quality practice should be used to inform a national approach.

We note that the ability to identify and respond to family violence varies across the family law system, and legal and non-legal services and consistent training and processes are needed. We would like to suggest that common training for legal professionals includes awareness of the entire family law system, including alternative dispute resolution services, counselling and targeted family supports such as specialised family violence services (for example, men's behavioural change programs and victim and perpetrator support) and parenting programs. This would further assist in integrating the legal and community sectors and increase access to support services for men, women and children.

Training for judicial officers might usefully include screening, risk assessment and response to increase the overall ability of courts to identify and respond to family violence. Training should cover common tools and understandings across the legal and non-legal parts of the family law

system. It should also aim to increase awareness of the needs of particular vulnerable groups, including people from culturally and linguistically diverse and Indigenous backgrounds.

#### *Response to family violence*

The increasingly complex needs of clients and/or need to support clients for extended periods of time have placed a significant burden on family law services and impacted on our ability to respond to demand. The high prevalence of clients with family violence issues increases the time needed to respond, and in turn reduce the number of clients a practitioner can support. Along with the impact of family violence on waiting lists, and the increasing need for trained specialists to respond to complex and ongoing needs, there is an additional burden on services to increase the supervision requirements for practitioners who are at risk of vicarious trauma due to the high percentage of their clients with family violence issues.

Relationships Australia believes that isolating family violence from the matrix of behaviours and stressors that contribute to, and result from, family violence significantly limits the effectiveness of prevention strategies. Family violence prevention and service responses are often limited by: the failure to identify the patterns of risk that co-exist with and often amplify family violence; a reluctance to engage with perpetrators of violence because offering support for change is often seen as collusion rather than an opportunity to enable de-escalation of violence; and the tendency to overlook the developmental harm to children resulting from parenting that is compromised by relationship conflict, including violence and other stressors.

In our experience, many perpetrators of violence have experienced historical incidences of violence themselves and relationships difficulties are a context of loss that can trigger historical shame and trauma. This does not justify or excuse violent behaviour but nonetheless these experiences require acknowledgement if behaviour change is to occur and be maintained. De-escalating stress and offering support can be a crucial step in preventing future harm and research suggests that timely interventions can create opportunities for behaviour change. This includes fathers' desires to maintain and improve relationships with their children which can be a significant leverage point through which the impact of their violent behaviour can be realised and confronted. Our current footprint of family law services are well-placed to support these families.

We consider that responses to family violence could be improved by embedding a family safety specialist in family dispute resolution (FDR) and FRC services. One such model is discussed below:

#### *The Family Safety Model*

A high proportion of clients who enter the family law system have experienced family violence in the past and/or are experiencing family violence at the time they engage with the system. Research conducted by the Australian Institute of Family Studies (AIFS) found that 60% of separated parents report a history emotional and/or physical abuse before or during separation (Kaspiew et al, 2015a). The same research found that over 70% of clients attending family dispute resolution (FDR) services reported experiencing emotional abuse and around 30% reported physical abuse. The FDR sample also disclosed multiple other concurrent issues, including mental health issues (46%), alcohol and drug use (27%) and gambling (9%), with 20% of these FDR clients reporting four or more issues. In sum, those who are separating have high levels of family violence, while those attending FDR services have an even higher concentration of family violence, often coinciding with multiple additional issues.

As would be expected, the prevalence of emotional and physical abuse in those attending the family court to resolve their separation disputes are even higher at 85% and 54% respectively. This would suggest that the structural and legislative mechanisms for funnelling such cases directly into the court are effective, even though the ongoing support needs of these clients are not necessarily being met by the courts.

Traditionally family dispute resolution practitioners (FDRP's) are tasked with assessing the presence of family violence to ascertain safety and capacity to participate in FDR and to refer those cases judged to be unsafe or unable to effectively participate due to family violence to alternate processes (eg to the Court). As part of that assessment, FDRP's would normally ascertain if there had been any child abuse and assess the current safety of adults and children. If concerns and risks arose the FDRP would then normally refer the clients to appropriate support services and/or in the case of child abuse notify the appropriate authorities. However, the main task of the FDRP remains to assess whether FDR is appropriate and if necessary issue a non-appropriate certificate so the clients can take their issues to court. FDRP's are trained to carry out the difficult and challenging task of mediation. Assessment of family violence is a core component of this work but it is not their main skill set.

Recent AIFS research has found that an unacceptable number of family law clients who have experienced family violence are not being assessed as family violence affected (Kaspiew et al., 2015a). Some are not being asked while others are choosing not to disclose when asked. For example, of those who had experienced emotional abuse, 53% were not asked about emotional abuse by their lawyers or the court, whereas 31% and 23% were not asked by FDR and FRC services respectively. A further 38% of clients who reported that they had experienced family violence revealed in the research that they had chosen not to disclose their family violence. Both these reasons for failure to assess for family violence point to inadequate assessment processes across the family law system. Clearly all practitioners must assess for family violence as a routine standard component of practice. The evidence is clear that, in the separating population most people have experienced family violence. Therefore, practitioners must assume it is present until they have evidence it is not.

Eliciting full and accurate disclosure of family violence requires careful and skilled interventions from an experienced and knowledgeable specialist. Research and practice evidence confirms that a client's willingness to disclose is impacted by feelings of trauma, fear, shame and self-doubt. Family violence specialists have the skills to select and use the most appropriate assessment tools, simultaneously using their professional skills to respond appropriately to the presenting client.

In the United Kingdom, a model has been designed whereby anyone seeking a parenting order is immediately required to be assessed by a central agency called Cafcass (Children and Family Court Advisory and Support Service). This agency undertakes a comprehensive risk assessment and safety check. The safety checks are statutorily supported and do not require the parent's consent. Cafcass also has statutory authority to carry out any other checks it considers necessary based on the information provided by the parties and has wide powers to prescribe, monitor and report on remedial actions.

This model is apparently working effectively within the UK system. However, the UK family law system does not have a well-developed mediation framework diverting disputes away from the

litigation pathway. In Australia, most separating parents are required to attend FRC's or FDR services in the first instance. This presents an early opportunity to detect and provide an appropriate response to family violence affected clients.

What is needed is a family focussed whole of family response by a practitioner whose focus is not on assessment for FDR at all, but rather is able to effectively assess and respond to the presenting family violence issues. One option is to scaffold around the existing FDR and FRC services a specialist family violence assessment and response that complements the existing FDR service. One proposed model is a Family Safety Model. This model has been designed to support Men's Behaviour Change Programs, but is also being trialled in FDR services. Essentially the model requires all clients assessed as family violence-affected to be referred to a specialist family violence case coordinator (family safety practitioner) who proactively prioritises the safety of partners/children/former partners/family members of clients presenting to FRC's and FDR services who have experienced family violence.

Clearly the AIFS research indicates that FDRPs (and other family law practitioners) are not currently effectively assessing for family violence. Training is needed to ensure that FDRPs ask all FDR clients about family violence and that they do so in a way that is likely to elicit disclosure. There is research that can be used to improve FDRP assessment practices (Bingham et al, 2014; Bailey and Bickerdike, 2005; McIntosh and Ralfs, 2012; Pokman et al, 2014; Cleak et al, 2016; Cleak and Bickerdike, 2016). FDRPs will not have the full repertoire of skills and knowledge to deal appropriately with family violence presentations, but they must at a minimum be able to effectively assess for, and make decisions about, consequent capacity and safety to participate in FDR.

#### *The role of the Family Safety Practitioner*

Once a case is assessed as family violence-affected and an assessment of FDR appropriateness is completed, the client (or clients) are transferred to a Family Safety Practitioner (FSP). With a strong emphasis on assertive engagement, the FSP ensures that a comprehensive service entry is undertaken that targets needs and includes a thorough safety, risk and psycho-social assessment for all family members. This assessment is holistic and incorporates a range of psychological, relational and structural domains that inform a collaborative case plan. Some clients will be identified as not needing further assistance; others will require some level of support to ensure they access the appropriate services. Some will require a comprehensive and ongoing support. The knowledge obtained from this assessment is revised and shaped throughout the period of support, in collaboration with family members, including former partners.

The FSP co-ordinates services by providing key elements such as risk and needs assessment, joint planning of interventions, and facilitation of service delivery by a range of agencies or practitioners. The case plan is developed in consultation with clients and service and support options decided upon. These elements are provided as part of an overall plan, and case tracking and formal case closure processes. The FSP facilitates a warm referral to suitable internal or external services, and proactively supports transitions between services as this is often where people 'fall through the gaps'.

The assessment process also explicitly documents the family's history of legal interventions and breaches. The FSP has the knowledge and skills to assess and coordinate the various legal and protective services (child protection, police, family law, magistrate courts etc). The FSP also

coordinates and tracks the different components of the therapeutic work within a service, and the work with external agencies and legal systems. If embedded in each FRC, the FSPs could provide a first point of contact network across Australia and would be a readily identifiable resource that the courts, community sector and the Family Relationships Advice Line could refer.

In sum, the FSP is able to fully attend to the safety and treatment of family violence affected families and to offer services that track the history of family violence, assess current risks, provide coordinated responses and monitor ongoing needs.

## 2. the making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures

We note the significant gains that have been made in policy and processes in the family law system, including the courts in identifying and responding to family violence. The following discussion provides some examples where victims of family violence have not been well supported by the current family law system and where further improvements can be made (see also the opinion piece at Attachment B). Many of the issues identified below could be addressed by improved training, processes and standards for identifying and responding to family violence, and have a national footprint of family violence specialists located in existing services across Australia.

Contemporary definitions and the language around family violence and how this relates to legal, policy and service delivery frameworks often does not adequately capture the effects of violence on children. It is common to reference children as “witnesses” of and as being “exposed to” violence and abuse. These terms inadequately describe the child’s personal experience of family violence as we consider that if a child has seen or heard any form of abuse, then they have directly experienced that abuse.

This language has the effect of minimising the child’s experience and furthermore plays into what we often hear as perpetrator’s justification and rationalisation of abuse. For example, “the (child) was in the other room so didn’t hear it” and “I would never hurt my kids” (but is violent to their mother). Minimisation of violence through language positions the child separately from abuse being perpetrated within the family, and often results in the child not being considered as impacted by the abuse of their mother. This contrasts with contemporary research evidence confirming that to abuse a child’s mother is to abuse the child<sup>i</sup> and consent orders should reflect this.

Measure to protect children should also capture the risk of emotional manipulation of children by perpetrators of family violence, including that the violence can be perpetrated after separation covertly through contact with children. This includes a child’s experience of continued violence—emotional abuse and control—by being intentionally isolated from other family members and friends (eg mother’s family and friends) or not being able to socialise with their school friends because of the perpetrator’s controlling behaviour.

Children attending our services report they feel embroiled in family conflict, unsafe in expressing their own feelings, and feel a sense of responsibility for managing the influence of their father's behaviour on the wider family unit<sup>ii</sup>. Whilst we acknowledge that resources are stretched, we need greater responses to children by the Family Court to protect children who are being emotionally abused, but are deemed by services (including Child Protection) as not at risk of harm.

There is a comprehensive list of professionals who could, at differing points in time, be engaged with the child and mother including but not restricted to child protection services, police, domestic violence advocates, legal services, family court consultants, independent children's lawyers, hospital and medical staff, child health services, counsellors, school teachers, day care staff, school and private psychologists, chaplains, child contact services, financial services such as Centrelink. Under the current fragmented system, this extensive list of potential contacts represents an exhaustive list of assessments and correspondingly represents an exhaustive amount of time that a mother and/or her child have to tell and re-tell their history and experience of violence and abuse. All the skills and resources of these professionals could be better utilised to reduce the impact of family violence on women and children if there were shared best practice models and case management such as described in the Family Safety model. FRCs could assist in improving outcomes for adult and child victims therapeutically and have a key role in assessing and monitoring risk during court processes, especially where there are long waiting lists for the court services.

Outcomes for children and their mothers are poor if their lived experience of abuse and violence is minimised, not believed, ignored or not responded to in a timely and consistent manner in court processes and orders, and most importantly if the perpetrator of abuse is not held to account legally for their violence towards the family. As such, we would like to advocate for the improved transparency of family violence in court processes. Family court consultants, independent children's lawyers and single expert witnesses are responsible for taking the history of domestic violence into account when they deliberate over custody decisions and arrangements, and a history of family violence should have greater weight when determining unsupervised access with the perpetrator.

The Family Court may order children to attend unsupervised visits with the father, when there is family violence identified. This also interferes with the mother-child relationship whereby the child has trusted the mother by telling her that they feel unsafe with their father and/or that their father has hurt them emotionally or physically. Too often we find that decisions made in the Family Court that allow unsupervised visits and handovers of children are a court mandated gateway for ongoing abuse of children and mothers.

The courts could be better informed through training in relation to research that documents the negative impacts on children who have witnessed family violence spending time with the perpetrator. Perpetrator assessment should always include the risks to the child of access at the time of access being granted, and it should not automatically be granted when a family violence order expires; the expiry of an order does not mean the behaviour of the perpetrator has changed.

Family violence court processes could be more child-focussed. For example, children may be not be included in Violence Restraining Orders (VRO), as if they didn't experience or were not impacted by the violence as per the discussion above. If a mother has taken out a VRO she is often deemed as "protective" so no further action by way of support is taken by child protection services. We



understand this to be a resource issue, but it also reflects flawed ideology in which family violence is only taken seriously if it results in physical abuse.

Men's intentional failure to present at court also needs to be recognised as an ongoing form of abuse and subsequent risk to the safety of children. While often necessary, there is a need for increased understanding that court adjournments lengthen the period that the child is at risk of harm. The allowance of sustained and lengthy periods by men engaging child protection services, legal and Family Court systems needs to be recognised as ongoing abuse in the form of harassment, emotional abuse, control and the financial disadvantage of women and children (due to the legal costs for women to engage lawyers resulting in less money to provide for children and often leading to poverty). Further, men who use violence towards mothers and children often fail to attend court ordered counselling/men's behavioural change groups, urinalysis and/or parenting groups and are not legally held to account for their non-attendance. Despite non-attendance and non-compliance with court orders they may be granted custody and/or unsupervised visitation with their children. In effect these orders privilege the rights of the father over the safety of the child from emotional and physical abuse.

Mandated program attendance and program outcomes can also be disconnected. For example, while the courts, government and legal practitioners frequently request attendance and participation reports for men who attend MBCPs, this information is often an inadequate indication of whether the perpetrator has made significant changes in both his attitude and behaviour toward his partner and children. However, by attending the services he can be deemed as having fulfilled his court ordered service. Clearer guidelines and systems must be established to demonstrate what constitutes adequate change by the perpetrator, and who is responsible for assessing this change, to adequately ensure the safety of the victims. Family violence specialists located in the non-government sector could assist the court by undertaking this assessment.

We have often noted substantial discrepancy between our own risk assessments of women, whom we would collaboratively assess as high risk, and the legal response to VRO applications and breaches of VRO's, where VRO applications are denied and breaches of the VRO are at times not taken seriously. This results in unresolved and often heightened and serious risk concerns based on a protracted and severe history of domestic violence though we note the recent proposed amendments are a positive step forward in making perpetrators more accountable.

Similarly, our programs have noted a significant increase in Family Court referrals. In some cases women are reporting negative, inappropriate and blaming responses from magistrates in the criminal and family law systems. Examples include women report being required to attend programs that are not relevant to their needs and render them feeling blamed for their own victimisation, for instance parenting programs, thus implying "because we have experienced family violence we are not good enough mothers." Other examples include family violence victims being required to attend "psychiatric/psychological evaluations". This places increased and unnecessary burden on the already over-burdened services sector and does not improve outcomes for families affected by violence.

The family violence sector may give mothers and children, and men who use violence mixed messages and responses. On one hand as a sector it has insisted that women leave the relationship with her partner because of the abuse (even if it is not yet safe to do so), children are encouraged to

report abuse to police (and then they are later court ordered by the Family Court to have unsupervised visits with the father who was violent to them), women/mothers are encouraged and expected to take out a Violence Restraining Order, (despite them having knowledge that if they do so it will put them at more risk). Women are sent to parenting programs by child protection services for no other reason other than that they have experienced family violence - hence the mother gets a message that she is to blame for the violence that was perpetrated against her, the same message she may have received from the perpetrator.

Programs, orders and interventions need to be culturally appropriate and responsive. Culturally specific services and education campaigns, including involving local Aboriginal communities in the design of supports for families will be required if we are to successfully address family violence in Aboriginal communities. This has been recognised in several Family Law Council reports that have found Aboriginal and Torres Strait Islanders under-utilise the family law system because of a lack of understanding about the system and a resistance to engagement with, and even fear of, family law system services.

### 3. the effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self-represented, and where there are allegations or findings of family violence

There are currently no arrangements that enable family law services to support families before the courts as their interaction with the family often ceases once a section 60 (i) certificate is issued. The service may continue to support the family through referral to family support or targeted programs but there is no clear mandate or guidelines. Some people will come back through the family law services if they are accessing Children's Contact Centres, Men's Behavioural Change, Supporting Children and Parents Post Separation, and Parenting Orders Programs.

There are opportunities to provide ongoing support and risk assessment through family law services with a holistic case management model as discussed above. Under the Family Safety Model all cases that go to the Family Court that are judged by the court, lawyers or clients as family violence affected could be assessed by a FRC prior to the court appearance and a report made to the court.

### 4. how the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders

In our experience, financial stress and control are significant issues for victims of family violence. More often than not, the victims of family violence suffer greater financial disadvantage than perpetrators, through and after court processes, with victims commonly losing access to the family home and joint resources, especially while court processes evolve. Victims may also continue to

suffer financial disadvantage after separation due to the perpetrator continuing to financially abuse victims by hiding income, failing to provide adequate child support and retaining the family home.

However, in acknowledging this very real situation, we are adverse to creating policy silos for people in different situations and would prefer the system to holistically support families to recover from separation and violence, whatever their financial situation.

For example, families who have experienced the drug addiction or gambling of their partner but no other co-morbidity may also be financially disadvantaged but may not benefit from provisions that only apply to families affected by violence. There are also many examples in the child support system where payers hide income and assets from payees which negatively impacts on the payee's ability to recover financially from the separation. Many of these systems fail to identify this as continued financial abuse of victims due to the family violence system's current orientation towards responding (mainly) to physical violence.

Despite this, we have long been concerned that victims of family violence are more likely to make financial concessions when leaving an abusive relationship and may have had their capacity to earn an income post separation significantly compromised by the controlling nature of the relationship pre-separation.

While we recognise that it is extremely difficult to quantify how these circumstances should influence the property settlements, one option could be to allow a review of property division agreements if a party can substantiate that a settlement was unfair due to psychological trauma at the time of settlement. This trauma could extend beyond family violence related trauma—e.g. to severe depression—where the victim could show that their consent did not meet the standards required by law due to family violence or another factor that impacted on their mental wellbeing and objective decision-making. While this solution may open up a Pandora's box of potential reviews, we support policies that will address the injustice of victims of family violence trading immediate safety for future financial security.

## 5. how the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence

We have discussed above the need for training, collaboration, and common policies and procedures across the sector. However, we note that the success of any reform is dependent on whether there are sufficient resources to adequately train judicial officers and build the capacity of family law professionals.

With respect to training, our current training policies at Relationships Australia may provide some insight into what might be needed. Relationships Australia staff, regardless of their role, are offered at least introductory training in family violence. To attend to the complexity and intensity of family violence, we recognise practitioners require deeper levels of understanding and skill, and as a result this work is allocated to highly trained and experienced practitioners. Staff working in client services

receive specialist clinical support and supervision and have ready access to supervisors and managers in critical situations or following serious incidents. Practitioners require a wide range of personal qualities and skills: counselling and group leadership skills; knowledge across a broad range of subject areas; breadth of outlook; an understanding of gender; and the capacity to see the potential for change and good in the people they work with. Experienced practitioners identify that the work can throw up personal challenges about how they think, and how they view their own relationships. Staff often have to respond to distressing stories and there is some risk of vicarious trauma, unless they are well supported and supervised.

Under the more holistic model of support proposed above under the Family Safety Model, family law professionals could also benefit from skills transfer, learning and evidence based reports emanating from family violence professionals working in FRCs.

## 6. the potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.

Relationships Australia supports a national approach.

## Final observations

Rigorous evaluation and research is required to assess the outcomes of current and/or proposed policy and program changes. While evidence and practice confirm that funding is well-spent in delivering improved outcomes for people impacted by family violence, we urge the Government to continue to focus on a co-ordinated, national policy approach together with the provision of adequate direct funding for programs which provide holistic services to perpetrators and victims of family violence, their children, families and communities.

Thank you for the opportunity to provide a response to the Inquiry: *A better family law system to support and protect those affected by family violence*. Should you require any further clarification of any aspect of this submission or need information about the services Relationships Australia provides, please contact myself or Paula Mance, National Policy Manager, Relationships Australia.

Yours sincerely,



Alison Brook  
National Executive Officer

4 May 2017

## Appendix A – A selection of reports, evaluations and descriptions of family violence support services

### Success Works (2009) Review of the Integrated Response to Family Violence: Final Report, Department of Justice, Tasmania

In this report, a review of the literature identified the following key principles of best practice in family violence policy frameworks:

- Agencies (including police, courts, services for victims, health services etc.) should collaborate to ensure an integrated response to family violence
- The system should acknowledge and treat family violence as a criminal act
- The safety of victims and children must be the primary consideration of everyone concerned
- Service should seek to empower the victim
- Services should be responsive to the experiences and needs of children
- Services should demonstrate cultural competence when dealing with individuals from Indigenous and culturally and linguistically diverse backgrounds
- Offenders should be held responsible for their violence
- Prevention and early intervention strategies should be part of the response
- Service providers should be committed to ongoing family violence training and education of their staff.

### Pursuit of Respectful Relationships (IPRR)

IPRR is a 12 week group program for men conducted by Relationships Australia in the Northern Territory. The group emphasises a careful examination of the thoughts and beliefs that underlie behaviour which may be real or perceived by partners and children as violent or abusive. This involves detailed exploration of the concept of ‘dangerous ideas’ and the link between these dangerous ideas and some of the cultural understandings about being a man. Men in the group are encouraged to move towards respectful ways of thinking and behaving.

Programs targeting men’s violence vary in their context and their form. This program works from an assumption that participants joining the program are seeking loving and respectful relationships but are constrained by some of their beliefs and actions. Participation in the program is voluntary. The model of program heightens the importance of screening. It is important that only men who are genuinely concerned about their actions and wishing to work on changing some of their behaviours are nominated for the program. It is also important that the program is not used as “a soft option” by men who would otherwise be mandated to attend a stopping violence program.

A program evaluation was conducted in 2012<sup>iii</sup> and included the following findings:

- Female partners reported:
  - The most common abusive behaviours they experienced in their relationship were primarily psychological or emotional.
  - An overall decrease in the frequency of abusive behaviours immediately following the IPRR course. The greatest reduction was in relation to psychological / emotional abuse.

- Reductions in the frequency of: physical violence against property (for example, damaging household items, damaging or destroying possessions, or throwing, smashing, hitting or kicking an object); psychological / emotional abuse; threats of violence; the exposure of children to abusive behaviours (for example, through witnessing of abuse, or being used as 'pawns' in disputes); and their partners becoming abusive after using drugs or alcohol.
- In the three-month follow-up interviews, female partners reported:
  - reduced levels of abuse in their relationship;
  - a greater feeling of safety, both for themselves for their children; and
  - that their relationships had become more respectful.
- In the three-month follow-up interviews, some female partners qualified their positive views of the course by:
  - noting that other factors (counselling, the desire of the men to change) were also significant in leading to positive changes in their relationship; and
  - expressing concerns about the durability of the changes.
- The majority of women interviewed thought that improved communication within their relationship was the most beneficial outcome of the IPRR course.
- While agreeing that the IPRR course was positive overall, a minority of women also identified some negative outcomes, including detrimental effects on their partner's feeling of self-worth, and paradoxically, with their increased feeling of safety, an increased tendency to express their own anger.
- Male IPRR course participants rated the IPRR course highly in terms of its perceived effect on their knowledge, attitudes and behaviours in relation to abusive behaviour.
- Participants identified the most useful aspects of the IPRR course as:
  - the concept of 'dangerous ideas';
  - a greater understanding of abuse and its effect on others;
  - the sharing of experiences as a group of men; and
  - the learning of strategies to deal with their own negative emotions.
- Course facilitators felt that the readiness of the participants for change and their attendance at individual counselling sessions outside the IPRR course are significant factors in course effectiveness.
- Additional IPRR course facilitators were trained during the evaluation period. However, course sustainability continues to be challenged by the shortage of appropriately qualified facilitators (particularly men).
- IPRR facilitators identified two key aspects of course content and process which supported engagement of participants:
  - course flexibility and the innovation this enabled; and
  - the male / female facilitation team and the relationship modelling they provide.
- Female partners offered some suggestions for some improvement in the IPRR course including:
  - companion courses for female partners;
  - IPRR courses specifically for young men; follow-on or refresher courses to assist men with continuing reflection and behaviour change; and
  - more counselling after the course.

## Taking Responsibility

Recent evaluation of the Taking Responsibility<sup>iv</sup> program in NSW made the following recommendations:

- Focus on attitudes to gender in the men's group
- Conduct more research on the therapeutic alliances developed in the group
- Continue to provide psycho-education and cognitive-behavioural material
- The process (discussion) section of the group was also valued by male respondents
- Monitor men's accounts of a lack of empathy or contempt for their partners, it suggests a lack of change
- Time and cost continue to be significant barriers for male clients
- The other clients helped men overcome their fear at the start of the program
- The individual counselling sessions complemented the group work
- The women still describe a sense that their and their children's needs are not being adequately addressed
- It is recommended that phone contact with the partners and former partners continues to be prioritised
- There needs to be a review of how and when we offer support for these women
- Counselling and groups for women were described as beneficial by respondents
- Undertaking domestic violence groups meant these women were less tolerant of abuse in their relationships
- The increased knowledge had repercussions in their relationship, which needs to be managed
- Retain a focus on those affected by violence and abuse
- Phone contact is vital for verifying the male clients' accounts of change
- Monitor couples who are referred by child protection services
- Client engagement does not indicate client change
- Practitioners are advised to monitor the effect of mental health issues
- Seek contact from the new partner, especially when there is no contact between the male client and his former partner.



## The Monash Longitudinal Study on the Impact of Men's Behaviour Change Programs (MBCP) on Men and Partners: Selected Findings

Relationships Australia NSW also participated in the broader Monash Longitudinal Study on the Impact of Men's Behaviour Change Programs on Men and Partners<sup>v</sup>.

Selected findings included:

- Program provider staff see program difficulties of: providing MBCPs on current funding, lengthy waiting times, areas not covered with MBCPs, using so many PT staff, problems of rewarding staff, supporting staff, obtaining and maintaining staff, determining and negotiating best training levels for staff, linking with training organisations, developing and documenting innovations, finding a forum inside and outside the agency for discussion of common issues and development needs, linking with local network, especially courts (Children's Courts, Magistrate Courts, Family Law Courts)
- Courts report similar linkage difficulties
- All men believe their violence has reduced (65% considerably, 23% moderately)
- Some 22% report cessation of all violence in the broadest sense; all the rest reductions in frequency and modes
- Areas of greatest improvement reported were : physical violence with injury, making partner afraid, controlling money, criticising sexual behaviours, breaking furniture, stopping partner seeing friends and family
- Physical violence with injury and making partner afraid showed change with greatest statistical reliability
- Little differences in changes in violent behaviour between court ordered men and non-court ordered men except initially more court ordered men reported making their partner afraid for their children and more reported improvement in this area
- One additional problem was reported as improved: substance abuse
- No- court ordered men report greater improvements in additional problems
- Some additional problems were reported as worse: physical health, mental health, finance, employment, housing and gambling
- Some additional problems worsened more for court ordered men: mental health, employment, physical health
- Men in 2009 study showed little understanding of the impact their violence had on their own or their partner's parenting
- In this study 36% of men reported severity of impact of their behaviour on their children as not serious; court ordered men a little less (7%) likely to report any serious impact
- This finding contrasts with reporting impact on partners as fewer men (15%) reported impact as not serious; again court ordered men a little less (7%) likely to report any serious impact
- While men reported improvements in impact some men wrote in that they did not understand impact at the beginning and now did, thus raising questions over attempting to measure this factor
- Partners are considered a motivating factor for change

## Overview of Longitudinal Research Study into the Outcomes of Men's Behaviour Change Programs.

Full report available at <https://violencefreefamilies.org.au/overview-longitudinal-research-study-outcomes-mens-behaviour-change-programs/>

### 1. Headlines

The programs work, they work well and they work in the long term.

They show a sharp reduction in the nature and severity of violence over the duration of the programs and that this reduction is maintained and improved upon in subsequent months and years. Most of the men become violence free or almost violence free two years after their program.

This continued reduction in violence is not without effort. Men fear relapsing and often seek further help. This does not negate the value of the programs, which set them on this path.

There is no evidence that one type of violence is transferred to another, eg, physical to psychological. All types reduce together.

Mandated men have significantly better results than non-mandated men. This may be due to motivation and the role of Corrections in managing the men and possibly also to the lower incidence of mental health problems among mandated men.

A critical factor in the quality of programs, as viewed by the men, is the quality of the facilitators. The group dynamics are frequently cited as another vital factor. Program design did not seem to play a great part.

### 2. Reliability

The questionnaire responses showed a lower reduction in the men's perceptions of the seriousness of their behaviour than did the more objective response to numbers and types of incidents. This probably reflects the improved perception of the consequences of their behaviour and this view was supported by phone interview responses, which reinforced and expanded on the questionnaire information overall.

### 3. Partner Views

Partners who were in a current relationship with the man, original or new, were positive. Partners who had separated felt it had not protected them or had come too late.

### 4. Other Factors

*Substance abuse*

Approx 27% reported problems with alcohol. This had improved to about 14% in later surveys.

#### *Mental illness*

Approx 34% reported mental illness and it might be speculated that this is an underestimate. The most frequent problem reported was depression. This rate did not change.

#### *Parenting*

A high percentage of men (nearly 80%) were in contact with children, including about 7% who were sole parents. The programs do not deal with parenting issues in an adequate way and this is a need that should be addressed more fully.

#### Women

For a woman who has experienced abusive behaviours from a man we initially meet one to one.

She may then attend our 'Honouring Wisdom' group programme where the aim is to confirm the wisdom that she may have come to doubt. This will be done by:

- Having her experience validated in a safe inclusive environment
- Exposing the beliefs that underpin a man's abusive actions
- Naming these actions by a man as a deliberate choice
- Confirming that she is not responsible for his abuse
- Acknowledging the impacts of a man's abuse on herself and children
- Exposing abuse as more than physical - sexual, financial, verbal and social isolation
- Acknowledging how she has stood up for herself in resisting abuse and her efforts to keep herself and her children safe
- Unearthing the ways she has held onto hope for a better life
- Confirming that she has always known how she wants to be treated by a man.

#### Men

For a man who has been hurtful and intimidating towards his partner and/or children we initially meet one to one.

If motivated to change a man may then join our 24 week 'Preferred Ways' group programme. In a group with other men who prefer not to be abusive he will be invited to:

- Name his good intentions for relationship with a woman and children
- Recognise the gap between his good intentions and his actions
- Come 'face to face' with the impact of hurtful and intimidating actions
- Expose and resist the attitudes that encourage him to hurt and intimidate
- Accept responsibility for all his actions and all his words - no more excuses
- Consider an intimate relationship as the place to demonstrate equality and partnership
- Reflect on the importance of safety and respect as the foundation of an enduring relationship.

#### Children and Teenagers

For children and teenagers who have experienced abuse from their father/man.

Initially we meet one to one. Then in the school holidays we offer a day long programme. This provides the children with the opportunity to:

- Express their hurts, worries and fears
- Acknowledge their skills, interests and hopes
- Understand they are not to blame for how Dad has treated them or Mum
- Identify steps they have taken to keep themselves and others safe
- Join other children in naming what is acceptable and not acceptable from a Dad
- Enjoy the company of other children.

# FAIR

## Family Abuse Integrated Response

### What is FAIR?

We help men, women, young people and children where there has been abuse in their families or relationships.

### Who are we?

FAIR is staffed by experienced counsellors with qualifications in psychology, social work and/or counselling.

### Do you have to pay?

No. These Relationships Australia (WA) services are free of charge.

### Where are we?

We run these programs in four locations:

If you would like to  
know more, please  
contact us on  
6164 0270

#### FREMANTLE

1 Ord Street

#### GOSNELLS

Lotteries House  
2232C Albany Highway

#### MIDLAND

27 The Crescent

#### WEST LEEDERVILLE

22 Southport Street

*Relationships Australia.*

## **Appendix B** – Opinion piece published in the West Australian Newspaper, April 10, 2017

Available at <https://thewest.com.au/news/wa/victims-of-domestic-violence-deserve-better-ng-b88440369z>

### **Victims of domestic violence deserve better**

Right now in WA there is a window of opportunity for a new approach to family and domestic violence.

A change of government and the announcement of a new minister with responsibility for family and domestic violence means a co-ordinated and integrated response across government agencies and community organisations is possible.

Until now the response from various government departments and services has been fragmented and has resulted, too often, in doing more harm than good.

The police, the courts, corrective services, child protection, health and mental health and a host of community based organisations each play important parts. However, for victims this has meant having to navigate their way around a fragmented service and justice system and having to retell their story to each service provider whose responses have often been inconsistent and even contradictory.

The result has been that the safety of women and children has been put at risk and the men who have perpetrated violence against them have often not been held accountable. Take Mary (not her real name), for example, one of those “one in four Australian women” who has experienced physical or sexual violence by a partner and who knows all too well a fragmented domestic violence system that has re-victimised her and her children.

Police are called to an incident at Mary’s house. Mary has been beaten by her partner again after a long history of abuse and this time he’s charged. The magistrate puts him on a community-based order. One of the conditions is that he attends a men’s domestic violence group. Mary takes out a violence restraining order. He breaches it several times but the police don’t charge him as there’s “not enough evidence”.

Child protection workers are supporting Mary as her kids have experienced the violence too. The housing provider evicts her because of three strikes of disturbing the peace (neighbours). Mary and her kids are now homeless and her kids are taken into care. The child protection worker tells Mary she needs to find accommodation so she can get her kids back. Mary also must do parenting courses.

The perpetrator goes to court seeking custody of the kids and he is living with his parents. Mary goes to the court seeking a no-contact order as she is concerned for her kids’ welfare. Mary must prove she is not alienating the children from their father and at the same time answer questions about why she was not a more protective mother.

Mary’s story is not unusual. Though it is a compilation of several cases, it is an accurate portrayal of the many ways victims of domestic violence currently experience the system set up to help them. The example illustrates the need for effective case management and communication of essential information across the domestic violence system.

So what would an integrated system look like? The new minister's role would provide leadership, oversight and accountability as well as ensuring the implementation of best practice across the family violence system that is sustainable in the long term and immune to changing political agendas. However no one minister can do it alone. There needs to be a multi-agency integrated approach with community-based services responding to victims and perpetrators.

There is strong support for an integrated approach to domestic violence. Positive steps are already under way. Currently there are national outcome standards for perpetrator interventions being developed for how governments and community organisations respond to male perpetrators. A new peak body that consists of representatives from Men's Behaviour Change Program providers has been established. There are other projects happening in other parts of the system.

The community services sector looks forward to engaging with the new minister in this important opportunity to oversee the development of a truly integrated and consistent domestic violence service system, to monitor and evaluate its operation and effectiveness, and to advise government and other stakeholders.

This would be a seamless system that Mary needed but didn't experience. It would also mean hope for numerous other women and children — that their safety will not be jeopardised and their abusers will be held to account.

**Terri Reilly is chief executive of Relationships Australia WA**

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<sup>i</sup> Ravi K. Thiara & Cathy Humphreys (2015) Absent presence: the ongoing impact of men's violence on the mother-child relationship. *Child & Family Social Work*

Humphreys, C. and Absler, D. (2011), History repeating: child protection responses to domestic violence. *Child & Family Social Work*, 16: 464-473

<sup>ii</sup> Staf, A. G. and Almqist K. (2015). How children with experiences of intimate partner violence towards the mother understand and related to their father. *Clinical Child Psychology and Psychiatry* 20(1): 148-163.

<sup>iii</sup> J. Devitt and E. Tilton.

<sup>iv</sup> Broady, T., Gray, R. and Gaffney, I. (2014) Taking Responsibility: Evaluating the extent to which male perpetrators of family violence change their attitudes through group work intervention, *Journal of Interpersonal Violence*. Available online: DOI: 10.1177/0886260513517300.

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<sup>v</sup> Brown, T., (2014) Overcoming Domestic Violence, presentation given to the Australian Institute for Relationship Studies, Relationships Australia, Sydney, August 2014 (*unpublished*).



## House of Representatives Standing Committee on Social Policy And Legal Affairs

### A better family law system to support and protect those affected by family violence

#### Relationships Australia's response to questions taken on notice, Tuesday 8 August 2017

Thank you for the opportunity to provide further input into your review. The first part of our response relates to the following questions:

- 1. The estimated number or percentage of clients who present with family violence who do not need a 60(i) certificate (ie where RA can assist them all the way through the process).**
- 2. The estimated number or percentage of clients who present with family violence whose cases lead to the issuing of a 60(i) certificate.**

The estimated percentages of clients in the information below vary between Relationships Australia venues, due to the demographics of the local population and a range of other local factors, including the types of data that is recorded. We estimate that, across the country, around 25% of clients who presented to a Family Relationship Centre (FRC) have experienced family and domestic violence, relating to approximately 50% of cases.

#### Issuing of certificates for clients who present with family violence

In order to understand the information provided in response to this question, we have firstly provided some context.

1. Approximately 25% to 30% of clients who present with family violence (the majority of which are women) are seeking information and referral. For many of these clients their case does not proceed beyond initial intake, and their case rarely proceeds beyond an assessment.
2. Approximately 20% to 30% of clients who present with family violence impacting their situation have AVO's in place that either make contacting the other party inappropriate or

dangerous, and as a result they may request a S60(i)(b) certificate. Approximately half of these presentations receive referrals to other services, but do not request a certificate.

3. The other 50% of clients where family violence impacts their situation may progress to mediation using a number of measures including, shuttle mediation, support people, or client coaching with a counselling service.
4. The issuing of a 60i certificate can occur at any stage in a case, be it assessment or completion of mediation, and the majority of cases where there is family violence that have progressed beyond an initial assessment will have had a section 60i certificate issued. Therefore we estimate around half of clients presenting with family violence get a S60(i) certificate.

Clients without family violence are more likely to reach agreement and are less likely to receive a certificate. For example, a number of our services report the following:

- An estimated 40% of clients presenting without family violence reach agreement, 40% receive a certificate and 20% something else (information and referral).
- For clients with family violence, 10% to 25% reach agreement and 35% to 50% receive a certificate, and around 25% something else (information and referral).

The outcomes of mediation are broadly similar for those clients identifying emotional impacts versus behavioural impacts (see info graphic at **Attachment C** for a breakdown for one of our State members).

Identification of family violence does not translate to an 'instant certificate'. Even with family violence, some clients can still be assisted with the process (see box below). In general, we find that situational violence has a better prognosis for successful outcomes in family dispute resolution than other types of violence. Physical violence does not necessarily preclude family dispute resolution, whereas emotional, psychological and power and control issues almost always mean that it is unsuccessful, even where it may not necessarily initially have been assessed as inappropriate for mediation. Also, it should be noted that certificates can be issued at any stage where there is family violence, but they are not all necessarily due to the violence.

**Attachment B** details some of the complexities in pathways for clients accessing FRCs/family dispute resolution.

**Case study: Family dispute resolution where family violence is a risk.** *"Dad had a previous history of drug/alcohol misuse. His post separation violence meant Mum was protected by an IO but the kids could see dad. Mum stopped their contact after concerns of drug abuse. The IO allowed for FDR. In single issue mediation, dad said he was clean and had ongoing drug counselling. Mum wanted drug tests before every contact between the children and Dad. The parents agreed to use a child contact centre with drug testing at each changeover."*

### 3. Information on the extent to which DOORS has been successfully used across the RA network.

Family and Relationship Services Australia recently commissioned a review of intake and screening methods in use across the community services sector (Toumbourou et al. 2017). The review recommended adopting a common framework for intake and assessment across the family life stage. However usage of any universal screening framework like DOORS depends on both:

- 1) support, such as funders providing training or agencies providing encouragement and supervision; and,
- 2) challenge, such as legislation or agency policies which demand actively detecting family violence and other risks with both universal screening and other methods.

Where there is both support and challenge then use of tools like DOORS is near universal, such as at Relationships Australia Tasmania and Relationships Australia South Australia. For example, a recent anonymous survey of DOORS users at Relationships Australia South Australia found 97% 'always or almost always used DOORS', with file audits revealing that early in 2017, the 10,000th DOOR 1 was completed at Relationships Australia South Australia. Relationships Australia Tasmania has recently implemented Universal Screening (DOORS and C-DOORS for Counselling) and note improved responses to detecting and responding to risk while Relationships Australia NSW has implemented DOORS only in their Children's Contact Services at this stage.

However, we must also be clear no tool such as DOORS can alone detect all risks in all families. For example, we asked Relationships Australia South Australia DOORS users to indicate anonymously if they had ever discovered family violence after clients had initially denied it on their self-report DOOR 1. We found 63% of Relationships Australia South Australia DOORS users had found family violence in at least one case in the last ten which would otherwise have gone undetected. Clearly, there remains a significant role for practitioner wisdom and intuition in addition to universal screening like DOOR 1, even among committed DOORS users.

In other states and territories, Relationships Australia uses a different process for screening for family violence. Relationships Australia Canberra and Region, for example, has looked at implementing DOORS and this project has not yet moved into the client trial phase. They note that DOORS is used much later in the process (on the same day as the client assessment) than is considered safe for clients. As a result many members of the Relationships Australia Family Dispute Resolution Network conduct a brief screening for clients at first contact, and at intake.

As each State and Territory has a unique response to family violence, any tools and systems that are put into place need to be adaptable to those responses. Currently in Relationships Australia Canberra and Region – Riverina, for example, answering yes to the family violence screening questions triggers the use of the NSW DVSAT (see Attachment A) which is the pathway used in NSW for people who experience violence to be included in the Safety Action Meetings.

For the purposes of demonstration Attachment A contains the initial safety screening process for all people making contact with Relationships Australia Canberra and Region and the safety screening questions that have been extracted from the comprehensive intake form conducted by Family Advisors.

Relationships Australia Western Australia uses the Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (CRARMF) which was released in 2011.

It is now included alongside service specifications for community sector service contracts managed by the WA Department for Child Protection and Family Support and has been progressively incorporated into the policy and practices of legal and statutory agencies/authorities and is increasingly being used by a range of mainstream service providers in WA.

The implementation of the Framework was evaluated in 2013 which showed a positive impact on practice in relation to screening, risk assessment and improved knowledge and confidence when responding to family and domestic violence. The evaluation also highlighted the increased awareness and understanding, among service providers, of the importance of the CRARMF as the central element in the integrated response to family and domestic violence across Western Australia.

#### *References (DOORS and screening):*

- Australian Institute of Family Studies (AIFS) found that 60% of separated parents report a history emotional and/or physical abuse before or during separation; and an unacceptable number of family law clients who have experienced family violence are not being assessed as family violence affected due to both not being asked, but also not disclosing (Kaspiew et al, 2015a).
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#### 4. Research to support the statement that abuse to a child's mother is an abuse to the child

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- Definitional issues: minimisation of the child's experience
  - Ravi K. Thiara & Cathy Humphreys (2015) Absent presence: the ongoing impact of men's violence on the mother–child relationship. *Child & Family Social Work*;
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- Opinion piece published in the West Australian Newspaper, April 10, 2017, describes how the fragmented nature of the system puts the safety of women and children at risk. Available at <https://thewest.com.au/news/wa/victims-of-domestic-violence-deserve-better-ng-b88440369z>
- The abuse of children by definition should also be recognised in the prenatal context: ABS (2006) Personal Safety Survey. ABS Cat No 4906.0. Canberra: Australian Bureau of Statistics.

- Evaluation from Relationships Australia's Men's Behavioural Change Programs shows that 36 per cent of men reported the severity of impact of their behaviour on their children as not serious; court ordered men a little less (7%) likely to report any serious impact.
- Broady, T., Gray, R. and Gaffney, I. (2014) Taking Responsibility: Evaluating the extent to which male perpetrators of family violence change their attitudes through group work intervention, *Journal of Interpersonal Violence*. Available online: DOI: 10.1177/0886260513517300. Broady, T., Gray, R., Gaffney, I. and Lewis, P. (in review) Taking Responsibility: Psychological and attitudinal change through a domestic violence intervention program in New South Wales, Australia. *Journal of Interpersonal Violence*.
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- Brown, T., (2014) Overcoming Domestic Violence, presentation given to the Australian Institute for Relationship Studies, Relationships Australia, Sydney, August 2014 (unpublished).

## 5. Research which follows up on longer-term client outcomes for Relationships Australia clients that have received a family law service

The below information details some of the research undertaken at Relationships Australia:

Dobinson, S. & Gray, R.M. (RANSW). A review of literature of family dispute resolution and family violence: identifying best practice and research objectives for the next ten years. *Australian Journal of Family Law* (2016), 30, 180-204.

Broady, T.R. & Gray, R.M. (RANSW). Symposium: When hate takes hold after parental separation: Reflections from research and practice. Entrenched parenting disputes: working with high conflict and parental hatred. Family Relationships Services Australia (FRSA) Annual Conference, Measuring success in the family and relationship sector, Canberra. November 2016.

Broady, T.R. & Gray, R.M. (RANSW). Parenting After Separation: Hatred between parents and the welfare of their children. Association of Children's Welfare Agencies (ACWA) Conference: Pathways to protection and permanency: Getting it right for children, young people and families, Sydney. August 2016.

Broady, T.R. & Gray, R.M. (RANSW). Parenting after separation: Dealing with passionate hate. Poster Presentation at the Australian Institute of Family Studies Biennial Conference: Research to results: Using evidence to improve outcomes for families. Melbourne. August 2016.

Gray, R.M., Wheeler, A. & Hewlett, B. (RANSW). The parental regard approach to post separation family dispute resolution. Poster Presentation at the Australian Institute of Family Studies Biennial Conference, Melbourne. August 2016.

Elkington, L. (RANSW). The Parental Regard Project: Findings from a research based evaluation on the use of the relational approach to post-separation family dispute resolution. National Mediation Conference, Gold Coast. September 2016.

Morris, Halford, Petch & Hardwick, 2016; Predictors of Engagement in Family Mediation and Outcomes for Families that Fail to Engage, Fam Process. doi: 10.1111/famp.12270.

Morris, Halford & Petch, in press . A Randomised Controlled Trial Comparing Family Mediation with and without Motivational Interviewing.

See also, Attachment B.

We note that no single study currently holds 'the truth' because studies must trade off key issues including sample size, representativeness and study duration. For example, the Relationships Australia National Research Network has a mediation outcomes study currently in field. This voluntary study tracks clients up to 12 months after mediation intake. However, attrition ('drop out') may affect sample size and representativeness. Alternatively, other studies use data given to funders by service providers on outcomes after mediation file closures. These have large representative samples, but do rely on compliance in data entry, often with uncertain information, with no longer term follow up. (In our data, even with strict coding and manual file reviews, up to a quarter of 'hard' client outcomes are unclear, missing or even contradictory from the parties.)

## **6. Further information on the Family Safety model is at Attachment D.**

## **Attachment A**

### **Relationships Australia Canberra and Region immediate risk screening, conducted at first contact**

#### **Standard Safety Screening**

We have a standard safety question we ask everyone who makes contact with us. Please answer yes or no to the following.

Q 1. Do you have any immediate concerns about risk to your own safety, to your children's safety or the safety of anyone else?

If **'NO'**: Follow standard process:

Finalise pre-enrolment list

Advise that the Family Advisor will call them back as soon as possible to arrange an appointment.

If **'YES'**: Put through to the Family Adviser if available. If a Family Adviser is not available put through to a Manager

Finalise the pre-enrolment list (ensure you have the phone number and address as indicated earlier).

Mark as Urgent

Check the safety concerns box in Penelope (triggering yellow safety triangle)

### **Relationships Australia Canberra and Region brief screening tool, conducted at intake normally within 5 days of first contact.**

- 1- Have there been any situations in which the police have been called, a criminal charge has been laid or restraining order taken out against either of you?
- 2- In the past year or so have you been in any way frightened, or concerned for your own safety because of the other party?
- 3- If the other party is disappointed with the outcome of this process are you afraid s/he would try to harm someone or harm him/herself?
- 4- Do you now or have you ever had concerns about your child(rens) safety when they were with the other party? Or in the care of any other adult?
- 5- Have any of the incidents that you have described happened in the last 4 weeks?



## Appendix B

Relationships Australia surveyed one FRC with 314 clients, representing nearly 75% of 2016 clients, contacting only those clients who:

- a) Received a Parenting Plan (PP) from our service;
- b) Received any kind of certificate from our service.

This does not capture any information about those clients who resolved their issues after coming to mediation and did not receive a certificate or PP and those clients who did not come to mediation and the Other Party (OP) did not request a certificate. We looked at how many Certificate B's we gave out and how many of those certificates related to clients with VRO's or FDV assessed by the FDRP.

### Certificate B's

- There were 39 Certificate B's (unsuitable to mediate) issued out of 314 clients, representing 13% of that figure.
- 9 Certificate B's were issued due to VRO or FDV having been assessed by an FDRP, representing 23% of the 39.
- 12 Certificate B's were issued to be clients who could not be contacted for survey purposes, representing 30% of the 39.
- 13 Certificate B's were issued to clients who went to the Family Court and had orders made, representing 33% of the 39.
- 2 Certificate B's were issued to clients who resolved the issues w/o the Family Court, representing 5% of 39.
- 10 Certificate B's were issued to people who have still unresolved their issues, representing 26% of 39.

### Parenting Plans

- 99 Parenting Plans were agreed issued out of 314 client files, representing 31% of our clients with PP's.
- 54 Parenting Plans went to people who were either very happy with the PP (all the issues resolved, things vastly improved, mediation very successful), representing 54% of clients being happy with the PP and where no further family law services were required by these clients.
- 26 clients were unable to be contacted, representing 26% of the 99 clients.
- 18 clients were unhappy with the PP or it did not resolve all of their issues and were going or had been to the Family Court, representing approximately 18% of the 99 clients.
- 2 clients were coming back to mediation, representing approximately 2% of the 99 clients.

### Certificate A's

- 108 Certificate A's were issued out of 314 clients, representing 34%.

- 50 clients could not be contacted for the survey, representing 46% of the 108.
- 22 clients took their certificate to the Family Court and commenced proceedings, representing 20% of the 108.
- 14 clients resolved their issues either w/o lawyers, with lawyers, or through coming back to Perth FRC for mediation or other mediation services, representing 13% of the 108.
- 6 clients came back to mediation because things are still unresolved, representing 5% of the 108.
- 17 clients have not resolved their issues and have either sought further legal advice, are negotiating or have decided not to take any further action, representing 16% of the 108.

#### Certificate C's

- 68 Certificate C's were issued out of 314 clients, representing 20%.
- 20 clients could not be contacted for the survey, representing 29% of the 68.
- 19 clients took their certificate to the Family Court and commenced proceedings, representing 27% of the 68.
- 10 clients resolved their issues, representing 14% of the 68.
- 18 clients have not resolved their issues, representing 26% of the 68.
- 3 clients have come back to mediation, representing 4% of the 68.

## APPENDIX E

### RELATIONSHIPS AUSTRALIA SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT ON THE KPMG SERVICE DELIVERY REPORT



## Future Focus of the Family Law Services

### Comments on the Final Report

#### The work of Relationships Australia

This submission is written on behalf of Relationships Australia's eight member organisations

We are a federation of community-based, not-for-profit Australian organisations with no religious affiliation. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia has provided a range of family support services to families for more than 60 years. These include counselling, dispute resolution, children's services, relationship and professional education, and specialist services targeted at reducing family violence. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 65 Family Relationship Centres across the country. In addition, Relationships Australia Queensland is funded to operate the Family Relationships Advice Line.

We respect the rights of all people in all their diversity to live life fully within their families and communities with dignity and safety. We help people to achieve positive, healthy and respectful relationships with members of their families, whether or not the family is together, and with friends, colleagues, and the communities in which they live.

In preparing this response we have drawn upon:

- our direct service delivery experience in providing family law services across urban, regional, rural and remote locations;
- our experience in delivering programs in diverse communities, including culturally and linguistically diverse and Indigenous communities;
- evidence-based programs and research;
- our leadership and policy development experience;
- the voices of our practitioners;

- our understanding about what works for children; and
- the experiences and voices of our clients to bring attention to a range of issues affecting the adequacy of policy and community responses to the needs of families.

## Introduction

Firstly we would like to acknowledge the significant effort and investment of the Attorney-General's Department and KMPG in preparing a report to inform future decision making.

We welcome the analysis of client and ABS data, and appreciate the availability of this data to inform future planning decisions in Family Law Services (FL Services). We also support the recommendation that the Department make the Tableau Model software available to interested service providers. We envisage a range of uses for the Model, including exploring if population data would indicate a potential need to offer or increase services from other outlets.

We commend the report's acknowledgement of data quality issues, its emphasis on the need to improve the evidence base, the complexity of client circumstances and the difficulties in measuring success.

Our comments on the report generally relate to our different view on how this data should be interpreted. We have provided additional information and examples where gaps are identified and further evidence to contribute to the analysis with the aim of improving FL Services into the future. We note consultations to inform the report were limited and didn't include all states, and therefore we welcome the opportunity to be involved in ongoing consultations and discussions.

## Overall

- In general we are concerned that the report has an unnecessarily negative tone that disproportionately identifies problems with FL Services and does not always acknowledge advantages and benefits. For example, we would like to bring attention to the significant experience and skills developed over the past decade, the history of collaboration and relationship building, and the strong knowledge and network of referral pathways.
- The report could highlight the strengths of the current system and where things are working well and shouldn't be changed. Whilst many of the issues identified in the report are valid, and improvements to the current system can be made, we would like to acknowledge that our FL services are held up as the gold standard in many other developed nations. We would like to identify opportunities for exploring how the current funding model could be maximised to achieve the goals that are outlined in the alternative funding models, rather than focussing exclusively on creating totally new ways of working.
- We understand that the project aim was not to recommend change and innovation only when this could be achieved with no additional funding. Implicit in many of the observations in the report are restrictions associated with the costs of policy and service provision changes, yet we would argue that sustainability does not necessarily equate to zero increased cost, and at this early planning stage we should be open to all realistic possibilities. We believe that some of the policy observations in the report around funding are already givens and this should be the basis on which we set future policy direction. For example, we know the population is growing and demand will increase; and we know there are increased costs associated with specialised care and complex clients. These can be quantified as we are already providing services to these clients.
- The discussion of data matching is not well integrated into the theme of the report. There could be a more meaningful discussion of the purposes and advantages of data matching, and

significant limitations and privacy barriers in practice and legislation, including the Social Security Act.

- There are three significant elements to the demographics focussed upon in this report. The first is the age range of 25 to 49. The second is the prediction of population growth corridors and the assumption that service locations should be placed where they are or are going to be. The third is identifying Statistical Divisions where there is significant disadvantage and the assumption that services should be targeted to these areas. We agree that the majority of FL Services clients are in this age range and our services should be accessible to them, that we should think about future growth in client numbers, and disadvantage. However these three demographics are neither coterminous nor co-located i.e. a growth corridor will not be necessarily be populated with disadvantaged 25 to 49 year old parents. There is also a significant minority of clients who currently access services who are not in one of these three groups.
- Whilst the report suggests that services need to be aligned to future demographic needs, we would welcome some contextual analysis relating to the original decisions around the location of FRCs and other new FL Services (for example, how they were aligned to demographic and disadvantaged data at the time funding decisions were made). In its current form, any change in service location proposed in the report is simply building on an existing approach by AGD that adjusts for the next 10 years of population projections.
- The report often accurately describes data as ‘undesirable’, ‘not representative’ or ‘not comparable’, and we would like to caution against some of the observations that flow from this data. Family violence statistics could include rates of violence in people accessing FL Services that can be up to 4 times the rates of violence in the general population.
- We feel that the report has a few underpinning assumptions that are not supported by the evidence. For example, the report contends that unless funding is linked to outcomes (and thus able to be removed) then organisations will not perform and not be committed to achieving outcomes. We wholeheartedly support a framework that focuses on outcomes and would argue that many of the currently funded organisations have similar, well demonstrated commitments to improving evidence and measuring success.

We do not support an approach that ties funding to outcomes that the report itself acknowledges are difficult to measure. This is also recognised by the current outcomes data development project being undertaken by DSS that is struggling with the complexity and difficulty in collecting reliable and high quality data to measure program outcomes. For example, to use the example of FDR, an outcome could be a parenting agreement, the continued adherence of the parents to the agreement over time, the quality of the post-separation relationship, the level of violence, the mental wellbeing of members of the family, or the outcomes for children. In addition to the difficult in developing measures for these outcomes, many of these outcomes require a significant period of time to measure and client follow up.

- We would like to acknowledge the initiatives that have been taken by DSS and AGD and the commitment by both these Government Departments and existing service providers to outcomes evaluation. Significant effort and commitment has already been expended in focussing on outcomes and the evidence base. FL services have been part of the DSS Performance Framework for many years and there have been several more recent initiatives in this area such as the SCORE system. In

addition the introduction of the DEX data system is a substantial step forward in ensuring accountability.

- The report could explore the significant risk that FL services face in providing services to families and there have been many tragedies, including suicide, homicide and familicide. Moving to alternative market based funding models places clients at further risk of falling through service gaps and increases the risk of fatalities, including for these client's children.
- We support the report's discussion of collaboration, but would like to note that collaboration isn't the only, or always the best or most efficient approach, or is always something that can be imposed successfully in grant agreements following competitive tendering. We would welcome further discussion of the features or factors that lead to good collaboration and/or recommendations for further analysis to identify the necessary elements for good collaboration. There could also be some discussion of systemic barriers to collaboration, for example, in the child protection system. This analysis could discuss the specific implications to family law work regarding confidentiality, admissibility and privilege in collaborative work.
- The focus on the need for funding and exploration of digital technology could explore the strengths and weaknesses of past and existing technology-based mediation models as the basis for recommendations about the future.

## Options for change

- The following criteria are supported:
  - Future focused
  - Adaptive
  - Outcomes focused
  - Sustainable and efficient.
- Criteria 1 - access to justice. Whilst we acknowledge the importance of access to justice, we do not support an approach that restricts access to FL Services to low income groups. There is no doubt that vulnerable groups who are least able to purchase services should be a priority for FL Services. However a focus on disadvantaged groups is being successfully achieved through the current model of universal services and is well demonstrated in the data contained in the report. In addition, the current approach has the benefit of not labelling people and creating stigma for people who wish to access services.
- Criteria 4 - innovation. While we support improving technological solutions to allow improved access and efficiency, we would like to suggest that the discussion of innovation include non-technological solutions. Support for innovation could cover a broad range of innovative approaches such as innovative service models, screening and assessment, administration, measurement, technology etc.

## Future options

### A1 Improve data integrity Support

- We support this option and welcome policies and processes that improve data integrity. Relationships Australia has invested heavily in improving the collection and use of data for internal and external purposes. We acknowledge the importance of ensuring that agencies and providers are confident that data is robust and accurately/fairly reflects services and clients.
- We suggest further discussions acknowledge the current work of DSS in developing the Data Exchange and the participation of services in achieving better quality data for improved service decision making.

### A2 Analysis of outliers in data Support

- We support clarification and further investigation of the DSS data used in the report, specifically regarding the numbers of unregistered clients and utilisation rates. For example, it is noted in the report (p 72) that service utilisation rates of services in Tasmania vary widely from the Australian average and some other jurisdictions. Our members would be supportive of further discussions to understand the causes of these results.

### A3 Realign catchment areas Support

- We support the alignment of boundaries to ABS data

### A4 Service distribution analysis Support

- We support local, collaborative and phased in changes

### B1 ATSI mediation models Support



- We support mediation models that better meet the needs of ATSI clients, noting the role of ALOs and encouraging their input into further work.
- We would also encourage the investigation of models targeted to other vulnerable groups such as CALD and older people.

## B2 Funding to support pilots and collaboration Limited support

- While we support collaboration and pilots we would like to raise the following points:
  - Consortiums have been in place in FL services for some time, but our experience has been that they have not necessarily delivered anything favourable for clients and in most cases they have been wound up.
  - We have invested in pilot programs in the past and, even if successful, they have not resulted in continued funding. This will be even less the case if there is no additional funding anticipated for FL Services. Thus our preference is that the funding allows for and expects innovation as per our current contracts. In this way, continuous improvement can occur using 'no cost' options.
  - FL Services already have pathways as well as service networks, plus a collaboration model is been developed within DEX.
- 'Competition drives innovation' is an observation noted a number of times in the procurement of services, and in our experience there is no evidence that this is the case in FL Services. Current contracts allow services to allocate up to 10% of funding to innovation, but this is always at the cost of existing services and wait times. The report does not provide evidence as to the benefits of providing funding to support collaboration as against other innovative pilots. We would prefer to lend our support to funding pilots based on the merits of the project. Relationships Australia members would be supportive of advising on potential future pilot programs that aim to encourage collaboration, as well as other innovative pilot programs.

B3 Encourage efficient client pathways Support

B4 Greater collaboration with courts Support

B5 Greater collaboration with child protection Support

C1 & C2 Use of technology Limited support

- Limited agreement - see comments elsewhere in this report

C3 Share Tableau Support

C4 Merge Service types Limited support

- We support the further exploration of funding type mergers, noting that sufficient analysis and consultation has not yet been undertaken to properly inform this decision. At this early stage we recognise there are some advantages, but also many disadvantages.

- Advantages include:
  - Increased flexibility
  - Removes people having to fit into service boxes
  - Removes siloed funding and siloed services
  - Could promote integrated outcomes

- Disadvantages
  - Risk of loss of focus of some programs, e.g. on needs of children
  - FDR has an acceptance of fees
  - Increased potential for confusion and overlapping of services between providers.

## Comments on specific elements of the report

Funding: We welcome the analysis of larger providers and would like similar analysis of the smaller providers. Our comments on some of the reports policy observations are as follows:

- The report seems to support a reduction in service providers, but it appears to warn against the risk of being dependent on one provider in an area. We would like to see more evidence and analysis that supports one view or the other.
- We would argue, contrary to the report, that larger providers have greater resources for innovation and are lower risk. The benefits of larger providers include:
  - High levels of specialist knowledge
  - Capacity to deal with complex clients through internal referrals
  - Efficiencies in investing in the necessary networks for effective services
  - Staff stability, skills and promotion opportunities
  - Efficiencies and with this a capacity to innovate and focus on research and outcomes
  - Lower risk due to multiple funding streams
- The rationale for funding small providers to minimise risk to government is questionable. In the unlikely event that a large provider failed, it would be difficult to imagine a smaller provider simply stepping into the space. The benefits of smaller providers should be recognised on their merits, for example, performance record, specialist skills or their ability to deliver a targeted service that meets the specific needs of their location.

### Parallel reforms:

- The report does not present evidence that competitive tendering will produce more efficient FL services for government, despite assuming this is a given throughout the body of the report. It is complex and difficult to measure efficiency in FL Services and we would support further discussion on the parameters of these measures. Our experience suggests, in the absence of measuring long-term outcomes, measures of short term efficiency, for example the numbers of clients serviced, could actually result in long term inefficiency where clients return time and time again to access services. While we wholeheartedly support the measurement of outcomes, these measures must be carefully chosen and sufficient resources invested in collecting, analysing and interpreting results.

- The report correctly reports that competitive processes reduce collaboration between services competing for the same funding, yet in other places argues in favour of competitive tendering. We would like to acknowledge the high level of collaboration that currently exists in the sector, most of which developed in the absence of contractual incentives. We also note that for the first time in a decade our 5 year contracts have given us and our clients certainty and stability, and allowed us to focus on delivering services to people, rather than important resources being consumed by tendering processes.
- We do not support the observation that legally-framed parenting agreements are more durable.

Registered Clients: The report identifies a high proportion of unregistered clients but was unable to provide any commentary or context. We would support further analysis of unregistered clients. In the absence of evidence it should not be automatically judged as a bad thing and our members have indicated the following information that may be useful in understanding this client base:

- A significant proportion of these clients are receiving information and advice (a key role of FRCs).
- We support further analysis of CALD and Aboriginal client demographics, noting that population estimates do not necessarily equate to client need and/or the resource requirements of servicing.
- There may be issues with the reliability of the data, for example, the data set in table 5 on page 20 appears inaccurate and appears to confuse individual clients with sessions. FRAL data from Relationships Australia Queensland (2013-14) indicates that 39,182 individuals were provided a service, not as cited in the report, 2376 registered and 820 unregistered. Relationships Australia Tasmania has also suggested this data is not accurate for their state.
- Our experience suggests that unregistered clients are disproportionately 'Party B' who have not/are unlikely to ever provide consent to provide data. They are also likely to include people attending community events. Therefore strategies to increase reporting for unregistered clients may not necessarily result in improved data.

Access to Justice:

- We support the prioritising of access to justice, but disagree with the interpretation of the evidence and policy observations. The report suggests that universal services mean that resources will not be directed to those most in need. However the reports own evidence, and our practice experience, indicates that this is not the case with 68.6% of clients earning less than \$50,000 per annum. Section 3.2 clearly shows that FL Services are being directed to low income clients and pages 51 to 54 show complexity and other issues. If we were to add in other criteria such as violence, abuse and poor mental health we would see even higher rates of disadvantage. These figures support the view that FL services have successfully provided services to clients with high rates of disadvantage within a universal framework. Therefore the current approach achieves the best of both worlds.
- Our experience suggests that it is often women (commonly those leaving violent relationships) that are financially disadvantaged at the point of separation, and that everyone's

financial situation at the point of separation is in a state of flux and greater pressure and therefore a strict criteria based on annual income is too blunt to identify disadvantage.

- Without universal access, a proportion of higher income clients will end up in court, and many of these families will end up disadvantaged by the end of this process. The report could acknowledge that this would undermine the original intention of the policy to encourage non-adversarial and early dispute resolution, designed to divert family disputes from the court system.
- Under the current system, courts look to FL Services to provide information and support to clients, recognising that parental involvement in court processes rarely mean improved outcomes for children. The report could acknowledge that FL Services are located in a service delivery context which achieves many benefits for complex FL clients. i.e. referral to other support services, being part of a social service (as well as law) system, improved knowledge and capacity to respond to client complexity etc.
- More analysis could focus on the access to FL Services for vulnerable groups, including people from CALD backgrounds. We support the report's attention to ATSI and CALD service models and encourage this analysis to continue, noting the report struggles with consistency in defining CALD groups.
- When developing models it must be recognised that often one parent is from ATSI background rather than both, and the process often includes extended family members such as aunts, uncles and grandparents. There are currently a range of FDR models that could be explored and it might be possible to develop a principle-based system rather than inflexible prescriptive models. There are also a number of models currently operating that have been developed for ATSI clients that could inform future thinking and we would welcome the opportunity to discuss these in more detail.

#### Technology trends

- We support work that increases client access and support through technology. Many services, for example use telephone supported mediation and video conferencing from FRCs (as distinct from TDRS), but this is not universal and further training and tools could be developed. Many of our services are already using and/or exploring the use of technology to improve service delivery.
- Online services in regional and remote areas are often constrained by technological impediments such as bandwidth. With respect to TDRS and OFDR, inaccuracies in the data and a conflation of telephony and internet based systems indicates some lack of understanding in this report of the TDRS service, its funding, its catchment area and its technology.

For example, TDRS is not listed as a service type in the table on page 20 and 21. The average wait time for TDRS listed as 6.3 weeks on page 43 yet on page 81 the report quotes 'anecdotal evidence' of 2 to 3 month wait lists. TDRS currently uses VOIP as it is cheaper than using standard telephone lines, however this is at the point of service delivery. All the client needs is a telephone line and this will not change with NBN. The TDRS is not "digital face to face" as described on page 81, however OFDR is, and Relationships Australia Queensland already provide this service.

- An 'immediate next step' recommended on page 81 is to involve other providers in TDRS service delivery, but there is no evidence provided for this recommendation. The report does not

justify why it would be beneficial to involve other providers under this funded national service and not any other. The report does not provide any cost analysis of organisations reproducing technology in parallel or consideration of quality control in the training and supervision of specialist staff in delivery of these services. We suggest that if there is a need to expand TDRS consideration should be given to increasing the capacity of the current provider who has both the existing systems and specialist staff in place.

- There are significant issues with regard to the cost of developing platforms identified in the report, particularly if each organisation is developing them in parallel. There are also privacy issues in relation to the use of Cloud technology.

#### Future service distribution and locational analysis

- We support the realignment of catchment areas to match ABS locations.
- While the population projections are a useful place to start in determining service location, this needs to be compared to service utilisation and demand data to ensure services are accessible. Services need to be located close to where people live, but also where they work. Therefore, in determining the location of services, the analysis needs to take into account key shopping centres in each catchment area, transport routes and other local and contextual factors. This should include avoiding service duplication. This analysis will be best undertaken at a local level with State Managers and service providers. Analysis of service access by client postcode will also provide information on whether current FLS locations are successfully resulting in access. Changes can then be negotiated using a collaborative approach. Thus we support the conclusion (p 67) that improved data quality and mapping of FLS catchments is required before location analysis can be undertaken in a meaningful way.

#### Service wait times:

- There is currently significant variance in service methodology across the country. There needs to be an agreement between the government, the Courts and service providers on who decides who is appropriate to provide a service to, what the service looks like, whether it is time limited or not, and if FL Services can be collapsed in order to provide a case managed, whole of family approach.
- The report presents evidence of wait times and a case study, but does not discuss the outcomes for children whose parents have restricted access due to CCS waiting times or court imposed restrictions on access to a CCS due to the parent's inability to agree.

#### Client complexity:

- FL Services already support families with complex structures (eg. Multifamily, step-families) and complex needs (family breakdown, mental health, addiction, violence). The issue is that increasing numbers of these clients may increase demand, not that services will need to develop models for a new client group. Our service experience suggests that an increase in complex client presentations disproportionately extends service waiting times. For example, in the case of family violence, families with safety concerns jump to the front of the waiting list meaning lower risk clients are pushed further down the queue. Waiting times are also further compounded by the increased time needed to provide services to these clients and the increased burden on practitioners who deal with case after case involving family violence.

## Analysis of future funding options

### Current funding model

As mentioned above, the report could be significantly enhanced through an analysis of the existing funding model and how we could use the current model of funding and make improvements. It could also draw on learning from past experiences, for example:

- Link between client volume, outcomes and funding levels have existed previously and has not worked well. These links fail to take into account that different clients require different levels of effort and they orient services to clients who are easy to serve in order to achieve client targets.
- The report suggests that accountability can only be achieved if funding is dependent on outputs or outcomes. In fact, organisations are keen to adopt an outcomes focus and have been working towards this for the past few years. With the right performance framework, commitment to adequate resourcing for data collection and tools, and appropriate training and support this can be achieved without making funding dependent on the achievement of outcomes.
- The current model already prioritises vulnerable groups. If models move services from being universal to targeted, and there are no additional funds, there could be difficulty in managing turn aways for those not deemed to be disadvantaged based on high level criteria.
- The report fails to acknowledge that a 'transition' to any of the four funding models under consideration would involve significant costs to organisations who wished to keep operating nor a discussion how this would be funded.
- We note that a change in funding model will result in significant service disruption and cost to Government, as acknowledged in the report.

We contend, that after analysing the models suggested in the report, the current model could in fact achieve the main drivers for change that are being sought:

- New money could enter the system via the current model by changing the approach to fees, especially for FRCs and CCS. The current limitations in place could be removed and these changes could be supported with national policy and guidelines that could also be drivers of cultural change.
- Improved access can be addressed by working with providers in each state to place services where they are needed most, if that is not already occurring. These conversations could be informed by the Tableau, other relevant data sources and the local knowledge of providers.
- Government control over policy and outcomes can be achieved with current initiatives using a collaborative approach.

### Adjusted demographic distribution

This model proposes funding be allocated according to population and thus if the total funding amount remains static, funding needs to be reduced in small states and increased to NSW and Victoria. These observations are made without presenting the policy rationale for the original allocation of funding.

This is a simplistic model that does not recognise that a core amount of funding is required for each state/location. It is also at odds with needs based funding based on population disadvantage. It should also be noted that those states that they claim have an oversupply of funding are the states with higher utilisation rates.

An 'adjusted demographic distribution' model would require, in some cases, the closure of some centres and the opening of new centres but does not discuss how this would be managed or funded. A competitive re-tendering process would involve a significant quantum of cost to the sector and government. The report provides no evidence that re-tendering would lead to increased efficiency, better outcomes for clients or more targeted services.

Another option could be to slightly increase the total funding allocation and increase funding to NSW and Victoria without decreasing the other states. An alternative would be to work with existing providers to develop costed strategies to provide service delivery in projected growth areas and in areas of disadvantage. It should also be determined if services need to be in areas of geographical disadvantage or if they need to be in areas where that population would routinely travel to for other services such as health and employment.

A simplistic population based model is not supported.

## Outcomes based funding

We support a focus on outcomes and improvements to data collection and reporting for FL Services. However, as discussed earlier in this response, we do not support an approach that ties funding to the achievement of outcomes. Our view is that an outcomes framework can be successfully achieved through continuing and building upon the work that is being undertaken through DEX and Score. The report could discuss how DEX, client satisfaction, client outcomes measures and the SCORE approach are already embedded in our FL services.

The analysis in the report could provide discussion of the difficulties in implementing this system and the risks, limitations and deficiencies that are already evident in the work being undertaken by DSS.

We also note the significant costs, timeframe and data development work that would be needed to move FL Services to an outcomes based funding model. Outcomes for FL Services are likely to be more difficult to define or measure than many other outcomes due to the complexity of clients circumstances, the nature of why clients seek these services and how they interact with the service over time, in particular clients who are court ordered or compelled to attend services.

The likely impacts of 'outcomes based funding' as listed in the report fails to identify the disruption that has already occurred in the disability sector with the introduction of the NDIS. Many organisations will fail to survive and the business plan of one large organisation in this sector, which is to double its turnover through acquisition and merger, indicates the potential for this funding model to result in a small number of organisations dominating the market. Small to medium organisations are unable to cash fund their operations up front without significant scale.

This analysis also fails to outline how outcomes are, and can be, part of a contractual requirement within a block funding model. Historically the first FRCs did have a financial incentive associated with outcomes and the report could have benefitted from a discussion of the (lack of) success of this approach.

## Redesign the market through funding packages

As stated above, the benefits described can be achieved with the current model without the enormous upheaval, risk and expense of a new system. There will be many more providers under this model and this may increase the potential for increased arguments between high conflict couples as arguments occur over which provider to go to.

Further, as the provider base broadens, the specialisation involved, and motivation to assess in areas such as family violence is likely to diminish.

It will also be difficult to cap expenditure. The model is likely to require resources being directed to administration including government administration of who should/should not get what level of funding support. We note the reports attention to the fact that this model is challenging and time consuming to implement.

This funding model alternative assumes that clients are not already charged, when many services already charge clients based on their economic circumstances. Spreading choice across providers would make it impossible for providers to train FDRPs, for AGD to authorise or accredit organisations, and for courts and others to know where to refer. It would significantly dilute the expertise and the ability for best practice and service quality.

There are many unresolved issues with this approach, including how you would ensure that complex cases are not screened out, and how the system would preserve the important Family Advisor function.

This model is not supported.



## Other opportunities that could be investigated

- Long term sustainability of services

Most FL Services already have co-payments in place and therefore receive fees from clients. In the biggest area of potential income from co-payments, the FRCs have an imposed fee policy which gives three hours of mediation for free. A simple way to increase revenue to FL Services via co-payments would be remove this policy.

- Staff turnover

The report mentions high staff turnover in this specific area of work, but this is not our experience at Relationships Australia. Our experience in remote areas and attracting FDRP qualified people supports investment in in-house training and mentoring of staff. Attention and resources could be given to supporting services to make this investment.

- We support a revised version of the CFDR trial as a way of encouraging collaboration without increasing competition between services.
- Increased use of technology, for example, digital service delivery, electronic client records, and a mobile workforce.
- Efficient Client Pathways. We support a trial of an Advice and Referral case management service for FLS clients, referring to multiple service providers. There may be benefits of trialling in small jurisdiction.
- Improved systemic changes to state child protection authorities, including protocols to deal with the information sharing issues encountered in this space.
- Trials of new models to address unmet need with ATSI and CALD client groups.
- Regulation of private providers of child contact services as a way of reducing demand and managing risk.
- Greater collaboration with the courts on children's contact orders. We support gathering of data to demonstrate how the CCS Case management model is resulting in similar outcomes to the WA example listed, including working with the courts to extend this to include Legal / Courts systems and possible development of Pro Forma court orders for use of CCS and POP.

## Conclusion

Relationships Australia supports an approach that is focussed on outcomes, but builds on a highly effective existing FL Services system that is responsive to those who most require services.

The current system has the infrastructure and processes in place that form a strong foundation on which service design can look to the future, without the disruption and loss of collaboration that is inevitable with a major change to funding model and the associated competitive re-tendering. The current FL Service system has the capacity to address changes to the geographic distribution of service users, accommodate the introduction of new money into the system, encourage service efficiency, and promote innovation in service design for vulnerable groups and new and expanded technology.

We have already achieved a great deal of success in moving towards an outcomes based framework and are committed, in collaboration with government and other service providers, to continuing to make further improvements in the next few years.

Thank you for the opportunity to provide comment on the Future Focus of the Family Law Services. We hope you find these comments useful and welcome further opportunities for discussion.

Should you require any further clarification of any aspect of this response or need information about the services Relationships Australia provides, please contact me or Alison Brook, National Executive Officer, Relationships Australia.

Yours sincerely,

A handwritten signature in black ink, reading "P Mance," with a stylized, cursive script.

Paula Mance  
Acting National Executive Officer

29 July 2016

## **APPENDIX F**

### **RELATIONSHIPS AUSTRALIA SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT ON THE FAMILY LAW AMENDMENT (PARENTING MANAGEMENT HEARINGS) BILL 2017 AND THE FAMILY LAW AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES) BILL 2017**

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House Canberra ACT 2600

[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

7 February, 2018

Dear Secretary,

Please find attached our submission to the Committee's Family Law Amendment (Parenting Management Hearings) Bill 2017. Relationships Australia Victoria endorses the introduction of an inquisitorial based Panel for arbitrating parenting disputes. As a key provider of family dispute resolution services in Victoria, we support access for parents and carers to non-adversarial processes, leading to improved outcomes for children and families.

In this submission we briefly outline our responses regarding the proposed legislation. We would welcome further opportunities to discuss this new pilot as it progresses.

Yours sincerely,

Dr Andrew Bickerdike  
Chief Executive Officer  
Relationships Australia Victoria

## About Relationships Australia Victoria

Relationships Australia Victoria (RAV) is a specialist and valued provider of family and relationship support services, delivering programs to over 24,000 people across Victoria annually. Our core expertise is in supporting individuals, children and families through adverse and challenging life experiences, including but not limited to family violence, complex trauma, mental health difficulties and highly complicated family law matters.

Since the 2006 Family Law Reforms, Relationships Australia has been at the forefront of the development and delivery of direct client services, research and evaluation in family dispute resolution and accredited professional training - including delivery of the Graduate Diploma in Family Dispute Resolution.

RAV has a strong collaborative presence in the Family Law sector, and are involved in a number of pilot partnerships with community services, funded by the Australian Attorney-General's Department. Our work force is genuinely inter-disciplinary with an increasingly sophisticated capacity to work collaboratively across the family law sector.

In our family dispute resolution services, families often present with past and current histories of family violence, co-occurring issues such as serious mental health difficulties, gambling and drug and alcohol problems. With 12 centres across the state, RAV offers a diverse range of core therapeutic services and programs to provide joined up, systemic and comprehensive support to parents, children and families with complex family law difficulties.

## Submission into the Family Law Amendment (Parenting Management Hearings) Bill 2017

### Overall comments

RAV believes that the Parenting Management Hearings Panel, staffed by members with expertise in family law and co-occurring complex issues, is a constructive and viable option for less adversarial resolution of disputes relating to children. In particular, the alignment with the existing principles and Best Interests of Children contained in the Family Law Act 1975, and the safety provisions detailed in the Bill, could provide vulnerable parents and children with determinations to support safety and well-being.

Additional significant benefits we note include:

- The Parenting Management Hearings Bill (2017) engages human rights principles contained in the UN
- Convention on the Rights of the Child (CRC, 1989)
- The opportunity for carers, including grandparents and significant others to apply
- a pre-Hearing conference can determine factors on a case by case basis, including legal representation,
- suitability, and capacity of parties
- No legal representation without leave of the Panel, thereby promoting the inquisitorial nature of
- proceedings
- The Panel Members will have an expertise in family violence, and co-occurring issues such as mental ill
- health and substance misuse.
- The inquisitorial approach prevents perpetrators of family violence cross-examining victim/survivors
- The inquisitorial approach allows the Panel to control more effectively the process and the evidence
- presented
- Family members will be referred to support services and programs as needed to build family alliance, safety and well being

## Specific comments

### 1. Consent

*Section 11KC —Consent of relevant parties required in relation to applications for parenting determinations*

140. New section 11KC would require relevant parties to consent before the Panel makes a parenting determination in relation to an application. If this requirement is not met, the Panel would be required to dismiss the application under subsection 11NA(1). (Explanatory Memorandum, p. 47)

Relationships Australia Victoria agrees that parties who voluntarily participate in a decision-making process are more likely to agree, to make durable and workable arrangements, and form positive parenting alliances.

Ideally, these are the cases that attend family dispute resolution to resolve any parenting matters.

However, the 2006 Family Law Reforms radically altered a cornerstone of voluntary participation in FDR, with the issuing of 60I certificates whereby refusal to participate could have legal implications, including court costs being awarded against a party. While there are some exceptions to attending, parents now understand (and are advised by lawyers) that attempting family dispute resolution is expected. In spite of, or perhaps because of a more mandated approach to attempting FDR, services generally report high rates of agreements. It is our experience that agreement rates have remained similar pre and post reforms – indicating that those clients who might not have attempted FDR in the past are able to achieve agreements in FDR.

Arguably, it is the more complex cases that have not resulted in agreements, which would be ideally suited for a Parenting Management Hearing. These hearings are designed to resolve disputes in a timely, affordable and fair manner, are overseen by an expert Panel, and would have the added benefit of reducing Federal Circuit Court loads.

But it is unclear why this new Panel should require the written consent of all parties with parental responsibility, when both FDR services and the Court do not.

We *want* parties who are unable to resolve disputes through mediation, and who cannot afford further legal proceedings or are ineligible for Legal Aid, to have access to the Parenting Management Hearings. This is particularly important when family violence victims are often unable to access the Court, and can be retraumatised by the experience of court.

While RAV concurs that the more willing a party, the better for all concerned, we do not agree that referrals to the Panel by the Federal Circuit Court should only occur with consent from both parties (s 13L (3)(b)).

**RAV endorses the expertise of the Panel Members, and believes that they should have the authority to determine the suitability of matters to be decided by the Panel, in cases where one or more parties do not consent to a Hearing.**

**RAV submits that in cases where one party does not consent, that suitability to proceed be determined at a pre-hearing conference. (We note that it would appear that s 11NA (7) would then need to be amended; a party should not be able to circumvent the Panel by issuing in Court.)**

**RAV submits also that the Federal Circuit Court be able to mandate parties to attend a Panel Hearing.**

### a) Family Violence

The Family Law System has unintentionally provided opportunities for some perpetrators to abuse their former partners with repeated requests for mediation, or vexatious applications to the Family Court. Likewise, Family Law Amendment (Parenting Management Hearings) Bill 2017 perpetrators can continue to control their former partners by refusing to participate in family dispute resolution, knowing that the other parent cannot afford to proceed to Court.

**RAV suggests that in cases where one parent does not consent to a Hearing, that this be reviewed on a case by case basis to ensure that a victim/survivor of family violence is not precluded from participating in the Parenting Management Panel Program.**

### b) Grandparents

Difficulties may arise with the requirement for each person with parental responsibility (usually the child's biological parents) to consent in the case where a grandparent or other family member applies for a Hearing. In cases where the relationship between a grandparent and the other parent breaks down, the relationship between a child and their grandparent also suffers. It is not uncommon in family dispute resolution for a parent to decline FDR with the grandparents (parents of their former partner). Currently, grandparents have little recourse apart from taking the matter to court, which is often unaffordable.

**RAV submits that there should be a case- by- case assessment of matters, at the Pre-Hearing stage, where one biological parent does not consent.**

### c) Additional matters

The Bill stipulates that consent must be provided by both biological parents, in writing. We are concerned about cases where a parent or other carer has no contact with the other parent (for example, where there is severe family violence)? If the aim of this Panel is to provide timely, affordable access to arbitration of a dispute, then again, we would encourage a case by case decision about parental consent.

## 2. Complexity of matters

3. The Bill would amend the Act to establish a new forum for resolving less complex family law disputes—the Parenting Management Hearings Panel... (Explanatory Memorandum, p. 4)

Since the family law system reforms in 2006, family dispute resolution services report dealing with increasingly complex matters, including family violence and mental health issues. If the Panel is to be staffed by specialists in a range of complex areas, it is unclear what 'less complex' means.



**RAV submits that given the expertise of the proposed Panel Members, they are able to hear complex matters that would not be suitable for FDR, providing an alternative to the Court system.**

**RAV submits that this Panel is also able to determine matters where parties have attempted FDR but have not been able to resolve a dispute, and would benefit from a more determinist approach.**

## Relocation

### **11NA When Panel must dismiss an application for parenting determination**

*When application is for the relocation of the child*

(2) The Panel must dismiss an application for a parenting determination in relation to a child if the application seeks a change of where the child lives in such a way as to substantially affect the child's ability to live with or spend time with a parent or other person who is significant to the child's care, welfare and development.

Relocation matters are not, in and of themselves, grounds for a case to be assessed as unsuitable for family dispute resolution, and so we query why a relocation matter would not be suitable for the Panel.

**RAV supports assessment at a Pre-Conference Hearing to determine the suitability of a relocation dispute on a case by case basis.**

## 3. Fees

We note that the Panel *must* dismiss an application if the prescribed Panel fees have not been paid (s 11NA (15)). We would submit that this should read “*may* dismiss...” It may be, for example, that one party refuses to pay the fee while the other party pays their fee. A party who suffers real financial hardship should perhaps be able to apply for waiver of the fee.

## 4. Resourcing

In order for this Panel to be fully effective, it is essential that the program be well resourced. If it is properly funded and resourced, RAV believes that the Parenting Management Panel can provide families with improved processes and outcomes. It will be damaging if these Panels are not able to deal with disputes promptly and efficiently – one of the stated Objectives (in s 11TA (1)(a)). It is important to avoid the experience of the Federal Circuit Court in this respect, where the stated intention was to provide a Court process of no more than 6 months; this has blown out considerably. We would submit that a speedy resolution of disputes as a result of determinations by the Panel, will assist parents considerably to reduce the conflict that often escalates during a lengthy wait for Court.

**RAV advocates that this Panel and associated referral services are properly funded to resource this Program.**



## APPENDIX G

### RESTORATIVE PRACTICE

## Restorative Practice: A Summary

### What is Restorative Practice?

Restorative practice is a model that ties together a common set of values and principles across a range of disciplines including human resources, education, social services and justice. The fundamental unifying hypothesis of restorative practice is that “human beings are happier, more cooperative and productive, and more likely to make positive changes in their behaviour when those in positions of authority do things with them, rather than to them or for them (Watchel, 2005).

In the Australian context, restorative practice is most commonly applied in the field of restorative justice relating to juvenile and sexual offending, and in Indigenous focussed circle sentencing courts (for example see the Galambany circle sentencing court in the ACT). Restorative justice is an ideology that recognises the fact that when harm is done, it affects not only the individual victim and offender, but also impacts upon relationships and the wider community. Restorative justice (and practice) aims to repairs harm and heal and restore relationships, encapsulating the values of equity, inclusion, respect, healing, accountability, mutual understanding and social harmony.

According to Braithwaite (2004), restorative justice is:

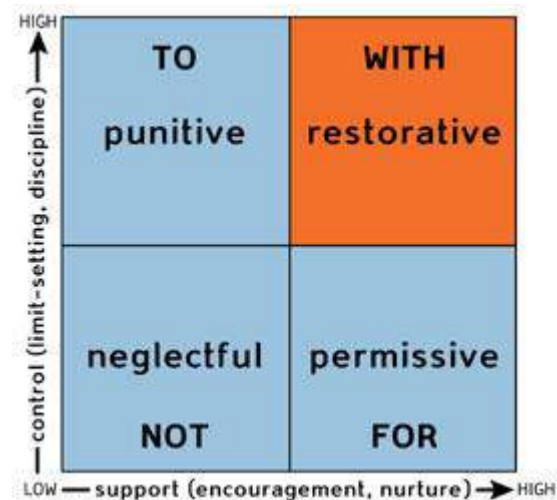
*...a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm.*

There can be many different expressions of restorative processes, including victim-offender mediation, conferencing (such as Family Group Conferencing) and restorative circles. Principles of restorative practice can also be used to embed respectful values in an organisation and improve organisational culture. When applied to social issues, restorative practice provides the scaffolding to teach people to resolve conflict in ways that maintain and improve relationships. A restorative approach can assist families to make arrangements for children who are affected by a range of social issues including separation, violence and

abuse, and help regulators and services to work with people and families by increasing their engagement and supporting them to build their skills and capacity.

Restorative practice offers an approach that brings together individual people, families, communities, services and government through both informal and formal processes. When employing restorative circles, for example, it does this by sitting stakeholders in a circle to ask the questions: What happened? How were people affected? What needs to be done to make things right? It is based on the principle that people, families and communities will be more receptive to change if things are done *with* them, as opposed to being done *to*, or *for* them, or not being done at all.

Figure 1. Social discipline window



Everyone with an authority role in society faces choices in deciding how to maintain social discipline: parents raising children, teachers in classrooms, employers supervising employees, and judges making orders. Until recently, Western societies have relied on punishment, usually perceived as the only effective way to discipline those who misbehave.

The Social Discipline Window (figure 1) is created by combining two continuums: “control,” exercising restraint or directing influence over others, and “support,” nurturing, encouraging or assisting others (Watchel, 2005). Clear limit-setting and diligent enforcement of behavioural standards characterise high social control. Vague or weak behavioural standards and lax or non-existent regulation of behaviour characterise low social control. Active assistance and concern for well-being characterise high social support. Lack of encouragement and minimal provision for physical and emotional needs characterise low social support. By combining a high or low level of control with a high or low level of support the Social Discipline Window defines four approaches to the regulation of behaviour: punitive, permissive, neglectful and restorative.

The punitive approach, with high control and low support, is also called “retributive.” It tends to stigmatise people, indelibly marking them with a negative label. The permissive approach, with low control and high support, is also called “rehabilitative” and tends to protect people from experiencing the consequences of

their wrongdoing. Low control and low support are simply neglectful, an approach characterized by indifference and passivity.

The restorative approach, with high control and high support, confronts and disapproves of wrongdoing while affirming the intrinsic worth of an individual. The essence of restorative practice is collaborative problem-solving. In a justice context, restorative practices provide an opportunity for those who have been most affected by an incident to come together to share their feelings, describe how they were affected and develop a plan to repair the harm done or prevent a reoccurrence. The restorative approach is re-integrative, allowing the offender to make amends and shed the “offender” label.

Four words serve as a shorthand to distinguish the four approaches: NOT, FOR, TO and WITH. If neglectful, one would NOT do anything in response to offending behaviour. If permissive, one would do everything FOR the offender, asking little in return and often making excuses for the wrongdoing. If punitive, one would respond by doing things TO the offender, admonishing and punishing, but asking little thoughtful or active involvement of the offender, and with no opportunity for re-integration of the offender. If restorative, one engages WITH the offender and others, encouraging active and thoughtful involvement from the offender and inviting all others affected by the offense to participate directly in the process of healing and accountability.

As a truly relational approach to problem-solving in social and mental healthcare, education and justice, restorative practice empowers people to be mutually accountable for their behaviour and share responsibility to work together to build and repair relationships. It is a collaborative, strengths-based and child/family centred model. Restorative models can be used with families who have complex problems by providing a ‘high support with high challenge’ environment. It can significantly reduce the exclusion of children from schools, family violence and conflict, custodial sentencing, recidivism rates, numbers of children in care and numbers of families at risk, as well as achieve cost savings (see Leeds model). It can break cycles of intergenerational disadvantage.

## Restorative Practice in a Family Law Context

The ALRC's Issues Paper in the Review of the Family Law System asks whether family inclusive decision-making processes should be incorporated into the family law system and also about the ways in which non-adjudicative or 'problem-solving' dispute resolution processes can better support the management of risk to children. We suggest that, while our current mainstream alternative dispute resolution models can be restorative, in most cases they are focussed on agreement making, rather than the relationships that need to endure to provide the best possible outcomes for individuals and children. These dispute resolution processes often do not see people in the context of their family and community and miss opportunities (or lack appropriate funding) to identify and respond to risk.

An array of appropriate therapeutic dispute resolution services that provide differentiated pathways to meet the diverse needs of contemporary families should make up a pillar of the family relationships system, along with recourse to traditional legal services. Restorative practice has the potential to meet a broad range of needs and deliver better outcomes for children and families as a 'front-loaded' investment in family support services. The restorative practice model is inherently 'child-centred' and 'place-based'. It keeps individual and family voices central to decision-making by allowing parties to tailor their own solutions that are sustainable, and in a way that preserves meaningful relationships, relationships that need to endure for the wellbeing of children. Restorative practice can support families to focus on the needs of the children, establish safe and healthy parenting relationships, improve communication and prevent conflict.

The family group conference (FGC) is one restorative tool that offers an avenue for families to resolve disputes without the ongoing involvement of a court. In a FGC convened to discuss the parenting and care needs of a child, for example, all members of the family network (including, where appropriate, extended family) are afforded the opportunity to be present and provide input and perspective on the particular issues at hand. Children also have a voice in decisions. Families are enabled to participate in creating their own solutions and can support the other parties to keep the agreements that are developed. This process harnesses family support and resources to break down barriers, and enable better communication and dialogue that is focused on the child's best interest and in keeping them safe. Specialists and support people can also contribute to the conference, including mental health support workers and cultural advisors. Further conferences can be convened where necessary, but at each stage families learn how to positively resolve conflict and build their own skills, reducing the need for ongoing intervention from the system. By working restoratively, services can increase the engagement of families and connect them with support services that address other family needs (such as gambling, drug and alcohol, family violence and parenting services).

On their own, FGCs can achieve positive outcomes, but FGCs should sit at the centre of an integrated system where support services assist families to implement their agreements. Unlike the Leeds model, some of the limited successes of FGC models in Australia are due to failure to include children in

conferences, failure to support the family in context, and failure to support families to implement plans (Huntsman, 2006).

Much can be learned from the use of FGCs in the child protection system, where they have contributed to a reduction in child removals, and have facilitated more children being placed within their extended family or in kinship placements as an alternative to going into the formal care system. FGC have been found to result family disputes more quickly and simply, and with less expense and conflict (Huntsman, 2006).

## Case Study: Leeds, UK

In 2009, an OFSTED<sup>1</sup> audit inspection of the safety of Leeds' children found that the city was failing to safeguard its children and young people. Since then, the city of Leeds has undergone a complete systems transformation program to spread a restorative practice model across its social work, education, health, justice and other civic and regulatory systems. Leeds now finds safer and more appropriate family-centred alternatives to taking children in to care – working with the wider family to find a supportive solution. An outcomes based accountability (OBA) model was developed as the means through which Leeds City Council manages and evaluates the effect of the changes.

'Family Valued' is the name of the Leeds City Council cross-agency program which aims to embed a restorative approach as the default theory of practice for all work with children and families. In this approach, state-funded services, not for profit services, volunteers and the wider community work in a coordinated way to identify families at risk, bring isolated families into the mainstream and work on building stronger relationships within the community using a restorative model. A significant investment in skills development and training has enabled people to become skilled in restorative resolution of problems and several years on Leeds Council staff and councillors work restoratively.

Leeds City Council identified where pockets of restorative practice were already taking place and built on those. One key element of the Leeds program has been to expand the family group conference service now commonly applied to children at risk and to families experiencing domestic violence so that a safe and appropriate family-centred solution becomes the first consideration. With well-trained family group conferencing specialists, these conferences are properly resourced and convened using restorative principles with open and transparent commitment to families.

Findings from an evaluation of the program suggested that best practice in system change requires a shared vision and culture with a multi-agency approach, a supportive infrastructure, and an outcomes-based accountability framework (OBA). Funding community-level outcomes through an OBA framework meant that requirements for the delivery of services were less prescriptive about how to deliver a service, and the system supported families to manage the risk. Scorecards were developed on each of Leeds three 'obsessions' (safely and appropriately reducing the need for children to be looked after in OOH; reducing the number of young people who are not in education, employment or training; and improving school attendance) to regularly report progress and track the effectiveness of new initiatives (attached). Data is published weekly on their progress in these areas.

The Leeds approach has resulted in significant benefits to the community in terms of school participation, the reductions in numbers of children in out of home care (OOHC), children at risk of removal and other

<sup>1</sup> Ofsted is the Office for Standards in Education, Children's Services and Skills that inspects and regulates services that care for children and young people, and services providing education and skills for learners of all ages.

targeted areas for improvement. Following the adoption of restorative practices, Leeds City Council reported a significant improvement in an array of social statistics including:

- A safe reduction in 'looked after' children with a decrease of 155 (10.7%) from March 2011 to January 2015.
- Fewer referrals to children's social work services, a decrease of 1,600 or 12% between 2011-12 and 2013-14. The number of referrals resulting in no further action reduced from 21% in 2011-12 to 9.8% in 2013-14.
- A significant increase in school attendance with around 400,000 extra days in school for Leeds students in 2013-14 compared to 2010-11.
- The number of young people not in education employment or training reduced from 2,099 to 1,449 between June 2011 and December 2014, a reduction of 650 or 31%.
- A reduction in numbers of children on child protection plans with 642 children on plan at the end of December 2014, a reduction of 419 (39.5%) since June 2011. The number of children subject to a plan for two years or more reduced to 8 (1.2%) in December 2014 from 38 (6.8%) in March 2011.

Recent unpublished data shows even more significant results.



## Case study

George, 14, lives with his four siblings and parents in public housing and is at risk of removal. The school suspects there is family violence in the home and has made a notification to child protection services. George chronically misbehaves, causes severe disruption at school, is aggressive towards his peers and often is truant. His mother, Eve, suffers from depression and wants to separate from his father John who had been in and out of gaol for a number of offences. She is fearful of John who has his own childhood history of out of home care and is in turn fearful of child protection services removing his children.

Social worker Jackie first approached the family in their home in 2015, where she knew that most of George's family would be able to participate. On the first visit Eve refused to answer the door.

A few days later, Jackie again visited the family at their home. After Jackie convinced Eve that she wasn't visiting to remove the children, Eve let her in the house. Upon her entry, George threw a bicycle down the stairway from the top floor in Jackie's direction. Jackie noticed damaged walls and doors that Eve later admitted were as a result of George's temper tantrums. Jackie stood her ground and suggested that the family come together and talk (in a restorative circle), which George refused to join, instead staying upstairs in the house.

Jackie continued to visit the family each subsequent day and hold circle meetings with the family. During these circles, Jackie asked the other children and their mother what they thought about their family and what needed to be done. Madeleine, 9, disclosed that she could not remember a day when she had been happy. Sam, 13, told Jackie that he wished that his parents would take more of an interest in him and his siblings. The children, who had never been asked to talk about their family life, were encouraged by Jackie to communicate with one another and with their mother.

Eventually John joined the circles. Eve and John were able to see the impact of their behaviour on their children. With each meeting, as Jackie facilitated discussions between George's siblings and his parents, and between Eve and John. George drew closer and closer to the family room where the circles were taking place, and eventually joined the circle himself. With George finally participating in the circle, one of his siblings, Sam, told George that it would be George's fault if their youngest sibling, Tom, was removed from the family by social services because of George's behaviour. This was a breakthrough moment for George and his family, as they were able to recognise that underneath their daily conflict, there was love between the siblings.

Over a period of time Jackie taught the family how to talk to each other and resolve conflict in non-violent ways and the family's trust of Jackie increased. Eve's sister joined the circle to support Eve and agreed to take the children when Eve felt overwhelmed. John admitted he was afraid that his violent behaviour would lead to the removal of his children and agreed to participate in behavioural change program. Eve joined a group that supported women to manage adolescent behaviour. A family wellbeing volunteer attended the house each day and helped Eve get the children ready for school. George returned to school

and was supported in a separate classroom that focussed on respectful behaviour and the teacher helped him to catch up academically with his peers, eventually transitioning back to the mainstream classroom.

The restorative approach had a transformational effect on the family. John and George were able to identify the impact of their behaviour on the rest of his family and see the potential consequences. With increased stability in the home, George had less reason to 'act-out'. It also had an effect on the wider community, in which restorative principles were also being embedded. George's parents started to volunteer at their children's school, taking an active interest in their children's lives. George's school, which itself went through a transformation after embedding restorative practice, employs emotional wellbeing officers, who check on at-risk children to look for signs of abuse, building trusting relationships with students. Parents are enabled to identify when conflict arises in their families and to seek help from the school who supports them in holding restorative circles.

Working restoratively with George and his family exemplifies the benefits of restorative practice's 'whole of family' approach to conflict resolution that built this family's capacity.

"The traditional approach to domestic violence in child welfare cases was to intervene with the mother and children, perhaps finding them a place in a refuge, but most often working with them, and not the perpetrator, in the home (Maynard, 1985). More recently, it has been recognised that simply expecting women to keep themselves and their children safe while doing nothing to make perpetrators accountable, and then, at worst, removing children into care because of their mother's 'failure to protect' was wrong (Featherstone et al, 2010). Three key shifts have occurred in understandings of what constitutes best practice in responding to domestic violence. Firstly, responses need to be planned and delivered on a multi-agency basis and robustly coordinated. Secondly, understandings of the profound effects of domestic violence on children have increased dramatically and it is now firmly established in guidance and training as a child protection issue (Laing et al, 2013). Thirdly, a shift in knowledge: recognition that working with perpetrators has to be central to service responses. Concepts like 'coercive control' (Stark, 2007) and the pioneering Duluth Power and Control Wheel (Pence and Shepard, 1999) have advanced understandings of the centrality of power to how and why men are violent; and the manipulation of, and desire for control over, their partners and children that is at the core of their abuse. There is little literature about the use of FGCs in domestic violence in the UK. Although there is some international material, there is not widespread practice of this type. In part, this is due to the view of many women's and victim's groups of victim-offender mediation as dangerous (Liebmann and Wooton 2010). Much of the literature on restorative approaches is concerned with this kind of mediation practice, rather than the wider networks involved in an FGC. Examples of effective use of FGCs in this context are provided by Pennell and Burford (2000) and Morris (2002). They highlight how the involvement of the wider family exposes the violence so that it is no longer hidden, and increases the opportunity for the perpetrator to be held to account. The principles of effective FGCs remain: in particular, the need for wider services to be aware of, and support, the family plan. Effective, restorative perpetrator services are part of this required network." (Mason et. al. 2017).

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Leeds City Council

## Family Valued

Taking a restorative practice approach to put the family back at the heart of children's social care



### Challenge

Leeds has a clear aim: to safely and appropriately reduce the number of children unnecessarily coming into care. Our challenge is to create safe high-quality packages of support to extended family and kinship carers, working alongside families to prevent children being taken into care. A key part of this goal is changing services' response to domestic violence adopting restorative ways of working with the whole family.

### Innovation

Family Valued is embedding restorative practice across all council services, offering a common theory of practice for the whole workforce, at the same time as developing Family Group Conferencing as a core offer to families in a wide range of circumstances. Our aim is to create the conditions in which families can make decisions, repair relationships and make change for themselves.

### Partners Involved

Family Valued is a cross-agency partnership led by Leeds City Council and including:

- Children's services
- West Yorkshire Police
- NHS Leeds; Leeds Community Healthcare; and public health teams
- Adult mental health
- Local schools
- Drug and alcohol services
- Leeds Safeguarding Children's Board
- Domestic violence services
- Housing
- Probation
- Family Judge for West Yorkshire
- The Leeds Health and Wellbeing Board
- Leeds Community Safety Partnership
- Third sector providers
- Leeds Children's Trust Board

## Our Innovation

November 2016

**A new social contract: restorative practice as the default setting for all work with children and families**



Leeds is using Family Group Conferencing (FGC) at scale, including exploring ways of extending the offer to families affected by domestic violence and commissioning additional support services according to what families say they need. All families who are subject to an Initial Child Protection Conference are now offered an FGC.

#### Targeted whole-family support

A daily multi-agency meeting now takes place at the 'front door' to provide a more co-ordinated response, both in actions and approach, for families experiencing domestic violence.

#### Family Group Conferences

Family Group Conferences are offered to more families, earlier in the lifetime of the issues they are experiencing. In the case of domestic violence, FGCs are conducted in a way that guards against re-victimising the victim. No arrangement is made without their consent, especially including who is invited to attend. The purpose is not necessarily to keep the family together, but to use the wider family to identify conditions of support. The perpetrator is only physically present at the request of the victim if he or she acknowledges the abuse and is willing to address it.

A Family Group Conference acts against the secrecy of the abuse by enhancing knowledge and the number of people who know what has been happening. It draws on the strength of the extended family and friendship network for support, information and resources. It brings together, at one place and at one time, agencies who can offer professional resources.

**A working culture of high support and high challenge, facilitated by action learning**



Leeds has a 75,000 strong workforce involved in lives of children in some way. The new approach to working with families is reflected in new ways of working with one another. Through large-scale training programmes, restorative practice is being embedded as the core ethos of working in Leeds.

#### A common theory of practice across the whole workforce

Since April 2015 the restorative practice training team and expert partners have delivered training to over 6,000 people. We are spreading restorative practice across the children's workforce and beyond. Including frontline professionals across the NHS, police, schools, youth offending teams, housing, social work and in voluntary and community organisations. This ensures a common theory of practice across multiple agencies.

#### Cascading learning

Making sure learning is sustainable means not just looking at training but how it's then embedded as a practice. A network of 'restorative champions' is in place and a comprehensive train the trainer programme is currently being rolled out.

#### Better decision-making between teams

Four FGC teams are linked to their local social work teams, the 'front door' and locality-based early help provision through clusters. This ensures the FGC service is both able to accept referrals and support partners' development and engagement with Family Group Conference.

**An 'obsessive' focus on the things that matter**



Leeds began by setting one clear aim: safely and appropriately reducing the number of children unnecessarily coming into care. Everything stems from this. We use Outcomes Based Accountability to track our progress towards our goals for children and families, and make this data visible to everyone.

#### A clear focus on the outcomes that matter

We want Leeds to be the best city in the UK to be a child. Our five outcomes for children are for them to:

- Be safe from harm
- Do well at all levels of learning and have the skills for life
- Choose healthy lifestyles
- Have fun growing up
- Be active citizens who feel they have voice and influence

These are measured through 14 priorities and 20 indicators, of which three are 'obsessions':

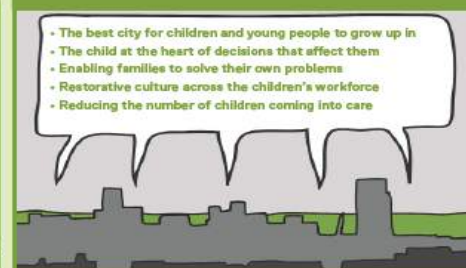
1. The number of looked after children
2. School attendance
3. 16-18 NEET rate

Our Outcomes Based Accountability approach gives us a focus on:

- How much are we doing?
- How well are we doing it?
- Is anyone better off?

Weekly data on how we're progressing is displayed visibly across the council to inspire and motivate staff (not to create performance anxiety).

**A clear vision from a cross-agency leadership team**



The Leeds leadership team has set a clear and strong vision that means everyone understands what we are trying to achieve together. This extends across the cross-agency partnership and includes managers at the most senior level in addition to our elected members.

#### Making leadership visible

Senior level engagement and visible, committed leadership have been a critical factor in gaining engagement from staff across the workforce. Our leadership has set a clear vision for children's services, backed up by a theory of practice and a strong project management capability.

#### Training for leadership

A wide range of senior leaders have had in-depth training in restorative practice, ensuring that this is not just seen as a practitioners' approach but is valued by and embedded through all levels of the organisation.

Training focuses not just on how we work with children and families but also how we work together. There is intensive restorative training in teams, with homework and robust challenge of colleagues regardless of hierarchy. This gives everyone a mandate to make change happen. When you look at the organisation, if what you find is not restorative then change it.

What we're doing

What's changed



## The way we work

### Making connections

Developing quality connections, conversations and relationships with children, families and other professionals is the most important part of everybody's work in children's services.



### Valuing families

Children live in families  
Families create communities  
Communities create cities



### Three mind-sets

Always remember...  
Do the simple things better  
The child is the client  
Safeguard and promote the welfare of children



### Three behaviours

Listening to the voice of the child  
Working restoratively: doing things with families instead of to them, for them or doing nothing  
Using outcomes based accountability to measure our progress and challenge whether anyone is better off



### And a relentless focus on the question...

What is it like to be a child or young person growing up in Leeds and how do we make it better?



## Our city

### About Leeds

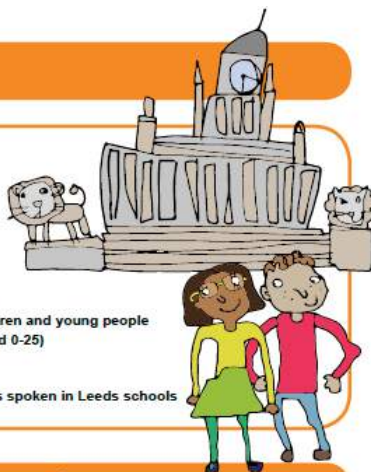
The second largest local authority in the country outside London

Total population: 756,000

Including 183,000 children and young people aged 0-19 (253,000 aged 0-25)

272 schools

185 different languages spoken in Leeds schools



## Working together

We want Leeds to be the best city in the UK for children and young people to grow up in. The Child Friendly Leeds initiative is for everyone who shares this ambition, whether you are an enthusiastic individual or a large organisation, every contribution counts and we all have a part to play in making a difference.

To help us make this happen we have a **Children and Families Trust Board** and a **Leeds Safeguarding Children Board (LSCB)**. They bring senior people together from the main organisations working with children and young people to make sure we are doing what we should to follow our Children and Young People's Plan and keep children safe.

We also have 25 clusters in Leeds, usually organised around schools in a local area. These bring services together to focus on local issues and challenges, and support for the most vulnerable families in their area. Clusters include children's social work service, schools, governors, police, Leeds City Council youth service, Youth Offending Service, children's centres, housing services, third sector, health, and local elected members.



## Find out more

To find out more about our work and lots of helpful information for children, young people and families including the Family Information Service, Youth Information Hub, Leeds Pathways and Breeze visit [www.childfriendlyleeds.co.uk](http://www.childfriendlyleeds.co.uk) and follow us on Twitter @Child\_Leeds

For information about how we work together to keep children and young people safe, visit the Leeds Safeguarding Children website: [www.leedsiscb.org.uk](http://www.leedsiscb.org.uk)

To see our One Minute Guides on all aspects of children's services, please visit [www.leeds.gov.uk](http://www.leeds.gov.uk) and search for One Minute Guides.

If you would like to help by being a Child friendly Leeds supporter, ambassador or partner, please email [childfriendlyleeds@leeds.gov.uk](mailto:childfriendlyleeds@leeds.gov.uk) for more information.

Making Leeds a child friendly city

we are child friendly Leeds



# Leeds Children and Young People's Plan 2015-2019

Our plan brings together the outcomes and priorities that will guide our work, the way we will measure our progress and how we will work to realise our ambitions. It is based on data, evidence and consultation across the city, including the views of children and young people.





# Leeds Children and Young People's Plan 2015-2019

we are  
child  
friendly  
Leeds

## What we'll do

1

### One vision

Our vision is for Leeds to be the best city in the UK and the best city for children and young people to grow up in. We want Leeds to be a child friendly city. Through our vision and obsessions we invest in children and young people to help build a compassionate city with a strong economy.

5

### Five outcomes

Conditions of well-being we want for all our children and young people

- All children and young people are safe from harm
- All children and young people do well at all levels of learning and have skills for life
- All children and young people enjoy healthy lifestyles
- All children and young people have fun growing up
- All children and young people are active citizens who feel they have a voice and influence

14

### Fourteen priorities

1. Help children to live in safe and supportive families
2. Ensure that the most vulnerable are protected
3. Improve achievement and close achievement gaps
4. Increase numbers participating and engaging
5. Improve outcomes for children and young people with special educational needs and/or disability
6. Support children to have the best start in life and be ready for learning
7. Support schools and settings to improve attendance and develop positive behaviour
8. Encourage physical activity and healthy eating
9. Promote sexual health
10. Minimise the misuse of drugs, alcohol and tobacco
11. Provide play, leisure, culture and sporting opportunities.
12. Improve social, emotional and mental health and well being
13. Reduce crime and anti-social behaviour
14. Increase participation, voice and influence

3

### Three obsessions

1. Safely and appropriately reduce the number of children who are looked after.
2. Reduce the number of young people not in education, employment and training
3. Improve school attendance

## Plan on a page

### How we'll do it

#### The best start in life for all children

Before and after birth we will support parents and babies to create the conditions where stress is reduced, positive bonds and attachments can form and language and communications skills develop.

#### A city-wide breakthrough on tackling domestic violence

Leeds will not tolerate domestic violence and will work restoratively with victims, perpetrators and family relations to address the causes and consequences.

#### A life ready for learning

We will place a disproportionate focus on learning and readiness for learning so we narrow the gap between the deprived parts of the city and enable all children and young people to realise their ambitions.

#### Think Family Work Family

When working with a child or young person we will consider their family relationships, the role of adult behaviour and the wider context such as their friends and the local community.

#### Outstanding social work and support for vulnerable children and young people

Building on the Ofsted inspection our Families First programme and our investment in social work we will ensure consistent quality across all our work with vulnerable children and young people.

#### Early help, located in clusters – the right conversations in the right place at the right time

Building on what works well and reorganising more of our services around a locality-based, restorative approach so we can focus help to where it is needed earlier.

#### A stronger offer to improve social, emotional and mental health (SEMH) and well-being

We will redesign the whole system of SEMH support and create simple pathways with clear points of entry to an integrated offer from education, health and social care services which is personalised to individual needs.

A clear budget strategy that priorities spending public money wisely and becoming smaller in size, bigger in influence

### Three behaviours that underpin everything

Listening and responding to the voice of the child

Restorative Practice: doing with, not for or to

Outcomes based accountability: is anyone better off?



## How we'll know if we've made a difference

1. Number of children who need to be looked after
2. Number of children and young people with child protection plans
3. Percentage with good achievement at the end of primary school
4. Percentage gaining 5 good GCSEs including English and maths
5. Level 3 qualifications at 19
6. Achievement gaps at 5, 11, 16 and 19
7. Primary and secondary school attendance
8. Percentage of young people NEET/not known
9. Percentage of new school places in good and outstanding schools
10. Destinations of children and young people with special education needs and disabilities
11. Percentage with good level of development in Early Years
12. Number of exclusions from school
13. Obesity levels at age 11
14. Free school meal uptake in primary/secondary
15. Teenage pregnancy rates
16. Rates of under 18s alcohol related hospital admissions
17. Surveys of children and young people's views: are they having fun growing up?
18. children and young people and parent satisfaction with mental health services
19. Proportion of 10–17 year olds offending
20. Percentage of children and young people who report positive influence in
  - a) school
  - b) the community



## APPENDIX H

### SERVING ABORIGINAL AND TORRES STRAIT ISLANDER FAMILIES



## Enhancing the responsiveness of the Families and Children Activity for Indigenous families and children

Discussion paper – August 2017

### The work of Relationships Australia

This paper is written on behalf of Relationships Australia's eight member organisations. It complements any separate submissions provided by Relationships Australia State and Territory organisations.

We are a community-based, not-for-profit Australian organisation with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Relationships Australia provides a range of support services to Australian families, including counselling, dispute resolution, parenting programs, children's services and relationship and professional education. We aim to support all people in Australia to achieve positive and respectful relationships. We also believe that people have the capacity to change their behaviour and how they relate to others.

Relationships Australia has been a provider of family relationships support services for more than 70 years. Relationships Australia State and Territory organisations—along with our consortium partners—operate one third of the 65 Family Relationship Centres across the country. In addition, Relationships Australia Queensland is funded to operate the Family Relationships Advice Line.

The information in this submission reflects our experience in employing Indigenous people and delivering mainstream and targeted programs to Indigenous clients. It also reflects our experience in collecting, storing and analysing data in our client management systems, and the research and evaluation we have undertaken in the course of supporting children, young people, adults, families and communities. Our comments are informed by the experiences of clients, discussion with Indigenous and non-Indigenous practitioners and support workers, research and reports.

## Introduction

This paper responds to the discussion paper presented to the Community Services Advisory Group: *Enhancing the responsiveness of the Families and Children Activity for Indigenous families and children.*

Thank you for the opportunity to comment on the paper. We hope the information we have provided helps to inform the Department's policy thinking. For enhanced readability we have divided our thoughts into three main themes: workforce issues, client barriers and data issues.

## Workforce issues

### Attracting and retaining Indigenous staff

Mainstream services are not, and cannot be, delivered in the same way to Indigenous and non-Indigenous people. While around 5% of clients across all of our mainstream programs are Indigenous, in reality, 'mainstream' services delivered to Indigenous clients operate almost as a program within a program.

We believe that mainstream services cannot be delivered to Indigenous people without Indigenous workers, and without culturally fit and respected non-Indigenous workers. Relationships Australia has put a great deal of effort into workforce development to increase the percentage of our staff who identify as Indigenous, and we note a direct correlation between the number of Indigenous staff working in a program and the number of Indigenous clients accessing that program.

In order for the service to attract and retain Indigenous staff, the workplace and organisation must also be culturally fit. The engagement with Indigenous people must be authentic and the organisation must truly embrace diversity to attract Indigenous staff. This must be communicated to, and respected by, the communities from which Aboriginal workers come.

Often, recruitment of Indigenous staff relies on personal recommendation. Many Aboriginal workers will not apply for a position at a mainstream organisation unless they have built relationships with staff and the organisation has other Indigenous workers. As such, it is imperative that mainstream organisations build relationships with Indigenous organisations. If the organisation lacks diversity and cultural fitness, Indigenous workers might not be respected when they are working with Indigenous clients, and trainees and cadets will not stay with the organisation; preferring instead to work in Indigenous organisations or within the community. At Relationships Australia, current Aboriginal staff members are integral to successful recruitment, including sitting on selection panels when the organisation recruits Indigenous staff, and communicating the cultural fitness of the organisation to the broader community.

The cost of employing Indigenous workers in our organisation is considerably greater than for non-Indigenous workers. Indigenous workers need to be employed, at least, in pairs—preferably a man and a woman—to allow for cultural considerations in communities and for peer support for workers. In reality, a workplace needs a minimum number of workers to create a legacy of relationships and supports if one worker leaves the organisation. Indigenous staff do not always work with Indigenous clients. Some of our Indigenous staff work part-time (or not at all) with



Indigenous clients, but may supervise Indigenous staff and help improve the cultural fitness of the organisation.

Indigenous workers at Relationships Australia benefit from both clinical and cultural supervision and our organisation takes its responsibility for cultural supervision seriously (see Appendix A for an example of a policy). Where we do not have internal resources, partnerships are formed with local Indigenous organisations to allow for internal cultural supervision.

The organisation must also provide choice in cultural supervision for Indigenous staff. Not all staff will want Indigenous supervisors as this may make them culturally vulnerable (their position in the community may make it difficult to submit to an Indigenous supervisor), and some will want different clinical and cultural supervisors. In some locations, cultural supervision is done in groups, and clinical supervision one-on-one. What is important is that staff have choice and this choice needs to be adequately resourced.

In most organisations, enterprise bargaining agreements have been modified to take account of 'sorry business' and cultural needs, including flexible leave to allow staff to attend funerals (high rates of suicide, and premature death from poor health). We have also re-written job descriptions and personal development plans. Services must recognise that these staff are often representatives of their communities and more often than not carry the burden of trauma of and for their family and community associated with their history of colonisation. For example, our Indigenous workers often have a heartfelt desire to work with people with trauma. However, Indigenous workers may be carrying their own experiences of trauma whilst simultaneously suffering vicarious trauma related to their work. Where they develop counselling skills they work in their communities 24/7 and our workplaces have a duty of care to ensure that they are appropriately supported. This out-of-hours work is often not counted in performance reporting and workplace stress and burnout is a serious concern.

At Relationships Australia, workplaces that have been successful in attracting and retaining Indigenous workers have reduced the amount of time workers need to spend on direct service provision to allow appropriate time for workers to network with Indigenous families, elders and service providers, and to build relationships and trust. This is commonplace in Indigenous organisations who know and understand these issues, but a mainstream organisation is bound by mainstream funding targets. It is therefore difficult to meet reporting requirements set by funding bodies and give Indigenous workers appropriate support to undertake this work.

Our Indigenous workers also often bear the lived legacy of the 17 year gap in life expectancy between Indigenous and non-Indigenous people and this significantly impacts on their ability to maintain employment. They may have significant personal health issues, be supporting family members with significant health issues, or they may be raising their grandchildren. These issues can quickly lead to burnout if the workers do not have the proper support and opportunities to do different kinds of work in the organisation to give them a break to ensure their personal wellbeing.

Regular meetings of Indigenous staff are essential, including with senior executives to ensure collaboration and support plans are embedded in the organisation. Our Indigenous workers have regular contact with our state and territory CEOs and visibility with our Boards. Our organisations

participate in cultural awareness training and cultural activities, and two-way learning whereby Indigenous staff teach non-Indigenous staff.

At the federation level, Relationships Australia supports a national network of Indigenous staff with the active support of a CEO sponsor. In 2007, the Relationships Australia Indigenous Network developed a framework for action that has underpinned Relationships Australia's commitment to Aboriginal and Torres Strait Islander peoples over the last decade. The objectives are summarised below and the full report is at Attachment C.

Objective 1: Create greater access, choice and equity in Relationships Australia service provision which will increase the number of Aboriginal and Torres Strait Islander Australians accessing Relationships Australia services.

Objective 2: Develop and implement, in partnership, innovative practice models. Social justice, in this context, refers to equity in distribution of social resources, opportunities and obligations, access and participation.

Objective 3: Influence funding bodies' policies and decision making processes, at a state and national level, in ways that reflect Aboriginal and Torres Strait Islander Australian communities identified needs and concerns.

Objective 4: Demonstrate a strong and active commitment to facilitating and expanding employment opportunities for Indigenous Australians within Relationships Australia.

### Training

It is difficult to find suitably qualified and skilled staff, particularly where the service requires professional, tertiary level qualifications, as is the case for many of the services provided by Relationships Australia. Many staff require support on their journey to obtain these qualifications which is both expensive for an organisation that needs to maintain mainstream service delivery targets, and requires a long-term commitment from both staff and the organisation. It also helps if Indigenous workers are supported to understand the business of the organisation and other mainstream referral organisations as they will be responsible for translating mainstream service offerings to Indigenous clients. Many of our mainstream services do not have the funding or resources to provide this level of support and this limits their capacity to do what is necessary to recruit and retain Indigenous staff and correspondingly the number of Indigenous clients who are willing to access services.

Relationships Australia organisations have invested in training for Indigenous staff in a number of ways. Since 2009, Relationships Australia Canberra and Region, for example, has offered a Diploma of Counselling Course for Aboriginal and Torres Strait Islander people with seed funding from government. It is a mainstream qualification, but has tailored content that was developed in consultation with Aboriginal and Torres Strait Islander community stakeholders. An extract from the Relationships Australia Annual report 2014 at Attachment A provides details of an evaluation of the experiences of 64 graduates of the Program. Unfortunately we are not currently offering this qualification due to resource constraints; however, some of our Indigenous staff are working

towards counselling qualifications through our registered training organisation at Relationships Australia South Australia.

All staff employed at Relationships Australia receive accidental counsellor training and some Indigenous workers are studying towards, or have achieved, counselling qualifications (as described above). At present, we are fortunate to have a handful of Indigenous staff with the tertiary qualifications necessary to provide dispute resolution and counselling services. These staff play a pivotal role in supporting other staff who are studying towards these qualifications and can provide some supervision. However, in urban areas in particular, these few highly skilled staff are drawn back to Indigenous organisations or the health sector where salaries are higher and/or there is a larger Indigenous workforce.

### *Recommendations*

- The Department investigate policies and resources for supporting the cultural fitness of mainstream organisations.
- The Department look at strategies for increasing the pool of Indigenous workers who are qualified to deliver social services.

### **Client barriers**

There is a multitude of evidence that exists elsewhere on the barriers to service access for Indigenous people, and our comments here attempt to add to this knowledge by sharing some of our learning in delivering mainstream services to Indigenous people. Many of these point confirm the findings of previous analyses and reports such as the summary of what is needed in Aboriginal healing services published by the Institute of Family Studies (Caruana, 2010).

If Indigenous clients cannot see someone they recognise at the service, they will not attend that service. They need and want choice in the practitioners they see. Sometimes they will request an Indigenous worker and sometimes they will request a non-Indigenous worker. If they request the latter, then they are likely to want assurance that this person is trustworthy and supported by Indigenous people.

As is the case with strategies for attracting Indigenous staff, Indigenous community engagement and outreach are crucial to providing services to Indigenous clients and building trust. The layer of mistrust attached to mainstream non-Indigenous services adds to well-recognised barriers to participation such as poverty, lack of transport, systems abuse and disengagement experienced by many disadvantaged and vulnerable client groups. However, our services report that even if the vulnerabilities of poverty, violence and addiction were present in both non-Indigenous and Indigenous clients, Indigenous clients would take more time to service due to their complex problems and the need to look after cultural considerations.

Considerable community engagement work takes place out-of-hours through workers attending local sports events, shops or community activities. Children's programs also offer an indirect way of building trust with Indigenous families. Over time, attending and sponsoring local art events and maintaining a presence at the local football club/community group can bring clients into mainstream

adult programs. Clients are also supported to get to the service and are helped with paperwork. In one example, the local shopping centre requested some Indigenous art and some of our Indigenous workers got community members involved. Art is a particularly good way of engaging young men, with these types of activities allowing space for relationships to be developed and over time clients trust the service sufficiently to engage. While this work may be done by an Indigenous counsellor, it cannot be counted as a counselling session for reporting purposes.

Our Indigenous clients say ‘are you chasing us for numbers?’ as other services are chasing the same families as well due to the pressure to meet Indigenous targets. Community relationships and capacity building is more than getting to know the community elders, it is about making a real and ongoing commitment to the community and supporting community elders to understand the language, evidence and messages around key social policy issues such as youth suicide and family violence. The elders can then talk within their communities and help people to access the services they need.

Our services report a general level of apathy in relation to accessing services by many of the communities they visit that makes engagement difficult. In remote areas, ‘fly in, fly out’ services have created a perception of a lack of long-term commitment by service providers. These types of services are costly to provide and do not allow for trust and much-needed people on the ground building multiple relationships. The ability of the services to maintain an ongoing presence in the community is undermined by short funding contracts, lack of flexibility and insufficient allowance for the real costs of delivering services. For example, it can take 2 years to establish a service due to the time needed to build up trust and connection with a community. If the contract is only 3 years, at the end of the period it may look like little direct service provision was undertaken and the program was—not correctly assessed—a failure. The constant rolling out of new, short-term, programs also leads to significant administrative burden and does not result in the funding directly reaching clients. These cycles lead to worker and client fatigue and little long term change.

Our Indigenous workers report frustration with the lack of appropriateness in the way services are delivered, but in many cases the delivery of programs is constrained by mainstream requirements, such as the client needing to attend a Family Relationship Centre to receive a service. For example, Indigenous clients will not phone if they do not have credit or come in to the service if they have no transport; poverty compounds these access barriers. There is still a great deal of stigma associated with mental health problems and education and awareness initiatives are greatly needed. Some Indigenous people still see therapeutic services aligned with stolen children (eg. child protection removals), but some changes are taking place. Our services report the support for Indigenous families must be case managed and provided free of charge.

There is also frustration with the assumed effectiveness of programs that are now labelled evidence-based. These programs often work for a population similar to where they were developed, but they may not work in Indigenous communities, or for different Indigenous communities. What is needed is consultation with local workers and Indigenous people and the flexibility to adapt the program for the local area. We note this is an issue identified in many government reports, but the flexibility and consultation is lagging behind the many recommendations of these reports. Mostly, mainstream programs can be adapted through consultation to make them relevant to Indigenous people, and the model can be made appropriate. Yet the way it is delivered needs to be modified. One example

is a program we deliver called Non-violent Resistance, a program for parents whose young people are violent. The main program worked well, but we had to make some investment in consulting with the local Indigenous community and modifying how it was delivered. This can be done with additional time and investment, but it adds to establishment costs.

An example of an innovative program is at Attachment B; this is an internal report and the privacy of the images and text should be protected. Two of our Indigenous workers ran a school holiday program that was developed locally. At the centre of the program were cultural activities which are an essential part of Indigenous healing. The program was run with no agenda, with the children being asked what they would like to do, and then the workers waited for them to show interest. This is a stark contrast to living in detention where children have no control over what they do. The workers told them what they themselves could do, for example they knew how to make nets and throw spears. Once the young people began to engage, there was room for conversation and therapeutic intervention. The cost of conducting the program was the cost of basic materials and the time of the workers, with the young people leaving with connection to country. These programs are designed by the people, for the people and were supported by counsellors from Danila Dilba, one of the local Indigenous services. These types of activities rarely fit within program guidelines or the criteria for evidence-based programs. These types of eco-therapy, including mindfulness, relaxation therapies and connection to country activities create an essential safe and calm space for victims of trauma.

In some areas our workers note there are too many siloed programs, with each service provider only funded to offer a single program and they all chase the same families. Often families will not engage because they are worried their children will be removed. Many reports, including the recent Productivity Commission report recommend that Aboriginal engagement has to be flexible. In reality, funding continues to be measured within short-term funding cycles. Parenting programs, for example, are not currently funded to work flexibly, yet it is a gentler and more long-term approach that has the potential to provide resilience, capacity and wellbeing for the whole community in the longer-term.

Our workers also reflect on the old-fashioned and 'office-centred' nature of current mainstream service delivery where we bring disadvantaged clients to our location and provide services to them at that location. This is often inappropriate for a range of marginalised groups, including Indigenous families. For example, our workers are often seeing clients who are young parents (as young as 12 years). These young people have no role models for parenting. Counsellors can expose them to positive role models by both the male and female counsellor visiting them in community, rather than trying to get them to come into an office to attend a parenting group program. On community, the workers can work with the elders and the young people in their own country and culture.

### *Recommendations*

- Increase the length of funding agreements where improved access for Indigenous clients is desired.
- Increase the flexibility of funding agreements to allow for community development and relationship building work, and improve reporting frameworks to accommodate the recording of this effort.

- Increase consultation with workers, clients and community leaders in the local community before an evidence-based program is implemented to avoid poor outcomes; funding agreements should also allow for adaptation of evidence-based programs.
- Review the recommendations of previous government reports on best practice service provision for Indigenous people, such as those summarised by the Institute of Family Studies in 2010.

## Data issues

### Does the data reflect the experience of Indigenous people accessing services?

Over the past few years, Relationships Australia has looked closely at improving our data and, in particular, we have looked at how to improve the collection of Indigenous data.

Increased energy has been put into training and improving the skills of staff, and more effort has been invested in registering clients (where possible) so that, at least, some information is able to be recorded. However, there remains a large component of effort in servicing Indigenous clients that cannot be captured within the current structure of DEX. This means that the data reported in the paper does not necessarily appropriately inform the policy discourse. Some improvements in DEX, such as allowing input of postcodes instead of full addresses has been helpful for recording information for Indigenous clients, especially where clients have no fixed address. However, like many other agencies, including the Australian Bureau of Statistics, there is a well-recognised list of issues related to the collection of Indigenous data that also negatively affect DEX data.

Firstly, as discussed briefly above, the data does not capture a realistic view of program effort. Due to the nature of services, Indigenous client access cannot be compared across programs, sub-activities, or with non-Indigenous access. Where sufficient engagement with community has occurred over a period of years and the local Indigenous people trust the service sufficiently to come to a centre, clients may come in to access a part of the service. For example Indigenous family advisors may bring a family group to the waiting room to speak with a counsellor or use the computer, but they do not wish to register as a client or be identified as Indigenous. In most cases, the time taken by staff is not registered as it is indirect service provision. Even if it is counselling, it might be recorded under a pseudonym or anonymously and the client record is likely to have many missing pieces of data.

Another illustrative example relates to a therapeutic service. To access counselling in a mainstream service, a non-Indigenous person would almost always call the intake line. They would be referred to a family advisor who is likely to undertake 1 hour of intake and then the client would see a counsellor who may provide 2-3 sessions. In contrast, to provide 2-3 sessions of counselling for an Indigenous client, the counsellor may need to regularly visit a community for many months, participate in community activities and build trust with families. Later on a family may come to the centre to use the computer and the counsellor may help them and informally chat to them as a group, some months later again a member of the family may come in for counselling. We do not turn away clients who do not wish to participate in data collection, but the way Indigenous client

access services means we cannot report this effort to funders. We would like to be able to record both direct and indirect service provisions so the true cost of delivering these services underpins policy decisions.

Secondly, Indigenous data collection needs a different focus, even if it refers to a mainstream program. While it is simple to report on direct service provision, if the goal is to improve client outcomes, more sophisticated ways of targeting and measuring effort in servicing Indigenous clients is needed to properly inform policy decisions. We observe ongoing suspicion about data collection by our Indigenous clients and as a result the data we collect is often biased towards the more highly functioning families, or those who have less complex issues. Often the choice not to participate is the only power these clients have in the service, and we must respect their choice not to provide us with their personal details. If this biased evidence is used to drive policy reform, it will not reflect the true picture of Indigenous service users and therefore might lead to incorrect decisions being made by both service providers and funding bodies.

Our services report that young Aboriginal clients are clever with the use of technology and there may be new tools that could be developed to improve the collection of their data. However, this will not work for many older Indigenous clients who may have poor literacy, low experience with technology and mistrust of data collection. What is needed are innovative ways of collecting data from Indigenous people, such as collecting wellbeing through art, collecting stories and translating them into wellbeing outcomes, or embedding small amounts of data collection in the process of delivering the service. One word answers and tick boxes do not work for many Indigenous people.

Finally, client level reporting takes the focus away from what is needed for Indigenous clients, and that is community level outcomes. Our organisations support longer-term pilot programs that have community wellbeing as their outcome measures, not client level outputs. Such measures might include: fewer child removals, improved school attendance and retention, reduced youth incarceration and reduced family violence. Funding bodies will need to accept that the outputs of these programs will be less, but there is huge potential that the longer term outcomes will be better. Rather than calling these initiatives 'place-based', we prefer 'community-building' programs.

### Targets

All Relationships Australia's members have invested in improving access to services for Indigenous people. Even where resources have been tight, members have ensured that the Department's targets of 4.5% have been exceeded. In reality, very few Indigenous clients end up in mainstream services and are effectively screened out by being redirected to other more intensive programs due to their complex presentations.

Over time it would be theoretically possible for our organisations to increase the proportion of Indigenous clients accessing services. If DSS decided to increase Indigenous targets, services would ensure that new targets were met, but as indicated elsewhere in this paper, there would be impacts on our ability to provide services to non-Indigenous clients, and it is likely that overall client numbers would decrease. This is especially the case for our services in remote location where the costs of service delivery are high. Increasing Indigenous access would also take a significant period of time.

Some of Relationships Australia's members have invested more heavily in providing services to Indigenous people using organisational resources that were not provided by DSS through the Families and Children activity. The decision to put greater effort into a particular vulnerable group has been made at the local level according to where the service sees the greater need. For example, in one location these resources could be put toward CALD clients, whereas in another location they might target child victims of family violence or support for fathers. Given these funds are resourced from outside the Families and Children activity and are finite, it follows that unfunded investment in Indigenous service provision will lead to a lack of investment in improving services for other vulnerable groups.

*Recommendation*

- That the Department improve the framework of DEX to allow for increased capture of Indigenous data, such as group work, community development work and indirect service delivery.
- That the Department works with the sector to develop innovative ways of capturing outcomes for Indigenous clients, such as improved wellbeing through increased connection to culture
- That the Department invests in and measure long term community level outcomes for Indigenous people.
- That the Department works with the sector to develop appropriate, evidence-based targets for Indigenous clients.

Thank you for the opportunity to provide our suggestions and recommendations. We support the Department's commitment to genuine and transparent communication and take this opportunity to re-iterate how critical we feel this is to improving outcomes for Indigenous clients.

Should you require any further clarification of any aspect of this submission or need information about the services Relationships Australia provides, please contact me or Paula Mance, National Policy Manager, Relationships Australia.

Yours sincerely,

A handwritten signature in cursive script, reading 'Alison Brook'.

Alison Brook  
National Executive Officer

31 August 2017



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## References

Caruana, C. (2010). Indigenous healing Family Relationships Quarterly No. 17, AFRC Newsletter No. 17 – September 2010.

## Appendix A

### Relationships Australia supervision policy

#### Provision - Cultural supervision

The cultural needs of all employees are accommodated in supervision and supervisors are supported to maintain their cultural competency by attending relevant and regular training.

Relationships Australia XX provides cultural supervision to facilitate the cultural development and capacity of Aboriginal and Torres Strait Islander staff through reflection, critique and action. (N.B. The terms 'cultural supervision' and 'cultural safety' are both used to describe the requirements of supervision for Aboriginal & Torres Strait Islander staff.)

In addition to clinical and non-clinical supervision, all Aboriginal and Torres Strait Islander staff receive cultural supervision. (Refer to Appendix A for a broader definition and procedures for cultural supervision).

Non-Aboriginal and Torres Strait Islander staff and/or their supervisors are able to access consultation and support from the [Aboriginal and Torres Strait Islander] team when they are working with Aboriginal and Torres Strait Islander clients. (Refer to Appendix A for procedures for non-Aboriginal staff to access cultural awareness support and consultation from the [Aboriginal and Torres Strait Islander] Team Leader.

# RESEARCH AND EVALUATION AROUND THE COUNTRY

## EVALUATION OF THE DIPLOMA OF COUNSELLING FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

The Diploma of Counselling for workers from Aboriginal and Torres Strait Islander communities is a mainstream counselling qualification. The content has been enhanced in consultation with Aboriginal and Torres Strait Islander stakeholders in order to connect traditional ways of healing with modern day theoretical counselling concepts. It uses

a reciprocal learning model to acknowledge and validate workers' existing skills.

The Diploma was developed after Aboriginal Elders in ACT communities identified the gap in access to therapeutic services for Aboriginal and Torres Strait Islander communities, and the need for more 'qualified black counsellors, mediators and educators to heal our own'.

The Diploma was first offered by Relationships Australia in Canberra in 2009, with seed funding from the ACT and Australian Governments. Since its inception, the course has been run five times across three locations (Canberra, Wagga and Bathurst) with a total of 64 graduates.

Training is conducted by Relationships Australia and is supported by a community partnership model, where relevant community organisations offer work placement and mentoring support to students.

Graduates are enabled to gain employment in organisations that require formal qualifications and eligibility for enrolment into further tertiary education.

Relationships Australia Canberra and Region has followed up on the successful delivery of the Diploma of Counselling for Aboriginal and Torres Strait Islander peoples, surveying the 64 Diploma graduates to discover the longer term outcomes for them since their graduation.

The evaluation focussed on three areas: employment, further involvement in study and training and the impact of undertaking the Diploma on the participants' personal, family and community lives. A total of 37 responses were received from the graduates.

### EMPLOYMENT

The survey found that completing the Diploma had a very positive impact on employment opportunities, both for individual graduates and systemically. As a result of completing the Diploma, 45 per cent of graduates who were already employed at the start of their studies had changed jobs, generally to positions that were more senior, or to counselling/ social welfare positions for which they were now eligible as result of completing their professional qualification.

Of the ten graduates who were originally not employed, six had obtained work as a result of their studies.

### PROFESSIONAL EDUCATION

A major goal for the Diploma was the expansion of professional education opportunities for Aboriginal and Torres Strait Islander people. It has been very successful in achieving this goal.

One quarter of survey respondents indicated they had undertaken further study since completing their Diploma, in a variety of related fields, including social work, social welfare,

**A MAJOR GOAL FOR THE DIPLOMA WAS THE EXPANSION OF PROFESSIONAL EDUCATION OPPORTUNITIES FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE. IT HAS BEEN VERY SUCCESSFUL IN ACHIEVING THIS GOAL.**







social housing, management, early childhood, Indigenous leadership, Indigenous trauma, mental health, and community sector management.

Almost 70 per cent of the respondents indicated their intention to undertake yet more study in the future.

### **IMPACT ON PERSONAL, FAMILY AND COMMUNITY LIFE**

The survey collected positive feedback from graduates about the impact of obtaining the Diploma on their personal, family and community lives.

Many Diploma students/ graduates have been managing complex demands in their own lives, often dealing with their own experiences of trauma. Anecdotally they have reported over time that the Diploma has resulted in significant personal development, with students proudly telling Elders and other community members of their experiences and achievements.

In response to the recent survey, almost every graduate spoke of feeling more confident and of being able to see and understand

situations with greater insight, thus being better placed to support others. Most also talked about improvements in their communication skills.

Significantly, some spoke of learning how to connect their professional and cultural worlds more effectively, with greater understanding leading to more meaningful connections with their communities and a sense of empowerment.

**...ALMOST EVERY GRADUATE SPOKE OF FEELING MORE CONFIDENT AND OF BEING ABLE TO SEE AND UNDERSTAND SITUATIONS WITH GREATER INSIGHT, THUS BEING BETTER PLACED TO SUPPORT OTHERS.**



# CASE STUDY

## STEVEN KEED

**“THE DIPLOMA...  
DEMONSTRATES A  
TRUE AND SIGNIFICANT  
RECONCILIATION ACT.”**

**“IN THE LONG RUN IT  
WAS ONE OF THE BEST  
DECISIONS I HAVE  
EVER MADE.”**

At the time he started the Diploma, Steve was working for the local Aboriginal medical service, providing case management and informal counselling. He loved helping his mob but was concerned that he didn't have formal training to provide counselling support.

Steve had suffered trauma as a child, with his teenage parents separating when he was two. He and his brother were sent to live with their extended family in Western NSW. While academically bright, Steve didn't flourish in the school system and left at the end of year ten.

Steve was interested in studying towards formal qualifications but found it hard to overcome the barriers to register for a study program. He heard about the Diploma through the local Aboriginal community and was keen to complete the program. As Steve has said “My people need some type of intervention at different levels to help them to be more aware of their own social and emotional wellbeing. Counselling is one major tool that can be used to reach our mob, and in most cases must be done by our own people.” As the original idea for the Diploma came from Elders in the local Aboriginal community Steve felt that the program would be culturally appropriate and was therefore confident to enrol in it.

While he was apprehensive about starting, and initially felt like ‘a fish out of

water’, studying with other Koori people and using traditional Aboriginal ways of learning made the process easier for him. For Steve, the Diploma offered inclusiveness and knowledge in a culturally appropriate way that fostered his confidence. Throughout the program he felt supported by his peers and the facilitators, with students encouraging one another to complete each program module.

Completing the Diploma has opened up new opportunities for Steve. He has continued with his studies, completing a Diploma of Family Dispute Resolution in 2013. Steve took advantage of an academic route to higher studies that was established by Relationships Australia with the Australian Catholic University and enrolled in a Bachelor of Social Work degree. He is currently half-way through his undergraduate studies and will finish in 2015. Steve now works as a family dispute resolution practitioner and would like to work as a counsellor in the future.

Now, two years after completing the Diploma, Steve says he is more confident, aware, proud, and secure (financially and emotionally), as a direct result of his academic journey. Most importantly to him, he feels more hopeful about the future, for himself and especially about Aboriginal issues for the wider community.



## **FRAMEWORK FOR ACTION**

### **Relationships Australia's Commitment to Aboriginal and Torres Strait Islander Peoples**

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***Prepared by Relationships Australia Indigenous Network (RAIN)  
May 2007***



This document contains:

- A statement that reflects Relationships Australia's commitment to the ongoing process of reconciliation and positioning in regards to Indigenous issues
- Principles and protocols that will provide a framework informing the services developed and delivered within Aboriginal and Torres Strait Islander context
- A plan to further Relationships Australia's objectives and priorities in increasing the number of Aboriginal and Torres Strait Islander people accessing services

This document is in keeping with the philosophy informing the vision, purpose and values of Relationships Australia's National Strategic Plan 2007 – 2010 and has been developed by the Relationships Australia Indigenous Network (RAIN) and endorsed by the National Board on 5 May 2007.

### **Members of the RAIN Network**

Kendall Bastin  
Margaret Drayton  
Lynore Geia  
Janenne Hamilton  
Janet Hurley  
Deborah Lockwood  
Natasha Maher/Marie Morrison  
Dennis McDowall  
Bronwyn Penrith  
Roger Smith  
Jane Vanderstoel  
Joanne Willmot  
Jan Woodland  
Leonie Wovat  
Terri Reilly (CEO Sponsor)

The Framework is also informed by and has come into being as a result of the collaborative efforts of the **RAIN Workshop held in Brisbane on 13-14 September 2006** and attended by:

Kendall Bastin  
Deborah Durie  
Margaret Drayton  
Janenne Hamilton  
Janet Hurley  
Deborah Lockwood  
Natasha Maher  
Dennis McDowall  
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Jane Vanderstoel  
Joanne Willmot  
Jan Woodland (Chair)  
Leonie Wovat

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## **1. STATEMENT OF SERVICE**

The Aboriginal Nations within Australia and the Torres Straits have cared for and maintained the Land for thousands of generations. New Australians live and benefit from this.

The contribution of Aboriginal Australians has shaped our knowledge of the country and our identity. All Australians benefit from the generosity of Aboriginal people sharing the Country and their culture.

Relationships Australia acknowledges Aboriginal and Torres Strait Islander Australians; their spiritual, physical, emotional, mental and economic connection to the Land and Seas, and apologise for the atrocities that have been perpetrated on them and their ancestors, and recognise the continued impact on Aboriginal and Torres Strait Islander Australians today.

Relationships Australia is committed to an ongoing process of reconciliation. Relationships Australia will actively engage in redressing inequitable distributions of the physical, spiritual and political economy, in regards to Australian Indigenous issues.<sup>1</sup>

Relationships Australia recognises and acknowledges that dispossession around Country, and the disruption to family connections has resulted in a breakdown of social networks created through Aboriginal and Torres Strait Islander Australian's Knowledge, Law and Culture. Relationships Australia recognises the continuous intergenerational impact of the history of invasion, policy and legislation.

## **2. PRINCIPLES AND PROTOCOLS FOR WORKING WITH ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES**

- Placing Aboriginal and Torres Strait Islander people, world view, knowledge and protocols at the centre of what Relationships Australia does
- Valuing the uniqueness and integrity of Aboriginality and Torres Strait Islander Australians, and allowing that uniqueness to inform Relationships Australia's work
- Respecting cultural protocols: kinship, diversity, extended family relationships, responsibilities and obligations and connection to Country.
- Relationships Australia works in ways that ensure Aboriginal and Torres Strait Islander Australians have the right to determine policy, service

<sup>1</sup> Aboriginal and Torres Strait Islander Australians are not a homogenous group and as such protocols are relative to context. The term Indigenous, when used in this document represents Aboriginal and Torres Strait Islander Australians

development and delivery that adds value and is significant to the Aboriginal and Torres Strait Islander Australian Community.

- Relationships Australia in working in partnership with Relationship Australia's Indigenous Network will ensure that policy and/or service delivery directed to, or impacting on Aboriginal and Torres Strait Islander Australians and the wider community, reflects the views and perceptions of Aboriginal and Torres Strait Islander Australians, community and /or its representatives

### **3. VALUES**

#### **3.1 Aboriginal self determination and self management**

From a non –Aboriginal and Torres Strait Islander standpoint the above core value relates to supporting and facilitating the right of Aboriginal and Torres Strait Islander Australian people to position themselves in a way that “promotes the political, social and economical structure by Aboriginal people, for Aboriginal people” (2000:115) This has particular significance for non-Aboriginal practitioners working with Aboriginal and Torres Strait Islander Australians and communities and relates directly to conceptual interpretations of practice/work.

*A working definition of self determination and self management in the context of this document is as follows:*

Self management is about people having control over the management of their affairs. This can be achieved through; contribution to policies and services, community and economic development and how Indigenous people's views are represented. This will determine how policy and service development and delivery will/could affect Indigenous people in the future.

Self Determination is acknowledging and recognising the rights of Indigenous peoples to control the decisions which impact on their day to day lives. The achievement of self-determination necessarily involves a fundamental transfer of decision making power and control to Indigenous people. It also involves establishing appropriate organisational structures and processes to allow people to have the authority, resources and capacity to determine and control their own futures, and that of their families

#### **3.2 Social justice and social change**

Social and economic indicators consistently present Indigenous Australians as the most marginalised and disadvantaged people in Australia. Disadvantage in this context translates to, and encompasses all areas of well being that the majority of non-Aboriginal and Torres Strait Islander Australians take for granted.

Relationships Australia embraces a social justice<sup>2</sup> perspective and is committed to challenging oppressive behaviours and attitudes and structural barriers.

<sup>2</sup> Social justice, in this context, refers to equity in distribution of social resources, opportunities and obligations, access and participation

Relationships Australia will facilitate positive social change; as identified by relevant stakeholders, for the health and well-being of Aboriginal and Torres Strait Islander Australians and the broader community.

### **3.3 Integrity**

Relationships Australia is committed to maintaining integrity and 'cultural safety and security' in any work, service design or delivery that involves Aboriginal and Torres Strait Islander Australian. This will be achieved by prioritising and taking direction from relevant and appropriate Aboriginal and Torres Strait Islander Australians. Relationships Australia will act in accordance with the outcome of this process.

## **4. THE ROLE OF RAIN: RELATIONSHIPS AUSTRALIA'S INDIGENOUS NETWORK**

Relationships Australia's Indigenous Network, RAIN was formed in 2005. The network consists of members from the states, territories and National office. The object of the network is:

- to provide policy, advice and direction within all services of Relationships Australia
- as a forum to ensure that Australian Indigenous issues are not marginalised in the work of Relationships Australia
- to address issues of appropriation and misrepresentation in relation to Aboriginal intellectual, economic and cultural property in service delivery/development and funding arrangements
- to provide support for staff (Aboriginal and non-Aboriginal) working with Aboriginal individuals, families and communities

## **5. OBJECTIVES**

This Framework for Action is designed as a conceptual framework and as a precursor to a more detailed operational or business plan. The framework will identify a realistic vision of how RA will:

1. Create greater access, choice and equity in Relationships Australia service provision which will increase the number of Aboriginal and Torres Strait Islander Australians accessing Relationships Australia services.
2. Develop and implement, in partnership, innovative practice models.
3. Influence funding bodies; their policies and decision making processes, at a state and national level, in ways that reflect Aboriginal and Torres Strait Islander Australian communities identified needs and concerns.

4. Demonstrate a strong and active commitment to facilitating and expanding employment opportunities for Indigenous Australians within Relationships Australia.

## **5.1 Rationale and Philosophy informing Objectives**

### **Objective 1)**

**To create greater access, choice and equity in Relationship Australia's service provision which will increase the number of Aboriginal and Torres Strait Islander Australians accessing Relationships Australia's services.**

Relationships Australia's core business is inclusive of Aboriginal and Torres Strait Islander people. Aboriginal issues are not an 'add on', and Relationships Australia will not rely on "Aboriginal" funding to provide services, programs and or employment opportunities for Indigenous Australians.

Within government and non-government organisations, tensions exist between mainstream service delivery, and Indigenous Australian managed/determined service development and delivery. Theoretically, 'mainstreaming' suggests equal access and places greater accountability and success of service provision on service providers. In practice however, existing power differentials, cultural disparity and limited engagement with Aboriginal and Torres Strait Islander Australian's knowledge, realities and frameworks means that mainstream service provision is rarely culturally appropriate and/or effective.

- Relationships Australia will provide innovative and flexible service delivery model(s) that reflect Indigenous Australian's world view.
- In consultation with Relationships Australia's Indigenous Network, Relationships Australia will work towards developing a cultural shift across all levels of Relationships Australia management, practitioners and practice to ensure an open, transparent safe environment and culturally sensitive service delivery for Aboriginal and Torres Strait Islander Australians who may wish to access mainstream services.
- Relationships Australia will develop education and evaluation processes that will transform an abstract concept of 'cultural awareness' to 'cultural awareness in practice'. Relationships Australia will utilise local knowledge<sup>3</sup> for local solutions as best practice.

### **Objective 2)**

**To develop and implement, in partnership, innovative practice models**

Australian Indigenous community centres are facilities that provide services, activities, programs and resources for the community. The 'physical' location and space, together with Aboriginal and Torres Strait Islander Australian

<sup>3</sup> Local knowledge will be informed by Aboriginal and Torres Strait Islander Australian employees, Local Elders and Community members

management/ownership is conducive to progress a wide range of community driven programs where community is comfortable in attending and participating.

Relationships Australia has the option to work within, or resource/broker services to, the community centre. Physical location and Indigenous ownership addresses power differentials and cultural disparity. Services are then accountable to community evaluation, therefore more likely to meet community objectives in service delivery.

Delivering services from within a community centre; being accountable to community approval, shifts service delivery from one of imposition and/or ineffectiveness to practice that places Indigenous Australians knowledge's, experiences and protocol at the centre of any 'work'. This model incorporates the practice of reciprocity; sharing knowledge, skills and resources, building community capacity and sustainable Indigenous/non-Indigenous relationships and enhancing cultural learning.

### **Objective 3)**

**To influence funding bodies, policies and decision making processes at a state and national level, in ways that reflects Aboriginal and Torres Strait Islander Australian communities identified needs and concerns.**

- As a formalised working party endorsed by Relationships Australia , Relationships Australia Indigenous Network has the capacity to influence policy development at a state and federal level, including through the National Social Policy Sub-Committee.
- In supporting Relationships Australia Indigenous Network, Relationships Australia is prioritising and enacting RA's broader vision, purpose and values.
- Through and with Relationships Australia Indigenous Network, Relationships Australia will both work and contribute in an advocacy and consultative partnership role to non - government and government organisations to achieve culturally diverse and community sensitive programs for the health, social, emotional, physical and spiritual well-being of Aboriginal and Torres Strait Islander Australian communities, families and individuals.

### **Objective 4)**

**To demonstrate a strong and active commitment to facilitating and expanding employment opportunities for Indigenous Australians within Relationships Australia**

- To ensure Relationships Australia is 'the agency of choice' when recruiting Aboriginal and Torres Strait Islander Australian staff, innovative recruitment practices and procedures will be implemented. Recruiting Aboriginal and Torres Strait Islander staff is crucial to increasing access for future Aboriginal and Torres Strait Islander clients.

- Acknowledging Aboriginal and Torres Strait Islander Australians life skills and 'recognised prior learning', together with an ongoing commitment to providing skills based training, educational and professional development, will ensure greater staff recruitment and retention.

## 6 STRATEGIES TO ACHIEVE OBJECTIVES

### 6.1 Create greater access and equity in Relationships Australia's service provision that will increase the number of Aboriginal and Torres Strait Islander Australians accessing Relationships Australia services.

#### Environmental

- Aboriginal and Torres Strait Islander Australian art works, posters and other relevant resources<sup>4</sup> such as literature and pamphlets visible in Relationships Australia offices and buildings. Incorporating 'symbols' that reflect and signify Indigenous Australian culture will facilitate a welcoming environment and provide Indigenous Australians with familiar reference points.
- Relationships Australia's statement of service, as outlined in section 1, is visible in offices and buildings.
- Recruit Aboriginal and Torres Strait Islander staff for reception areas.
- Interpersonal skills: Meeting and greeting Aboriginal and Torres Strait Islander Australian clients with genuine interest. Culture of reception is of warmth as opposed to business like efficiency.
- All staff will have their own way of connecting with and relating to Aboriginal and Torres Strait Islander Australian groups and individuals. Those relationships will be informed by a commitment to providing services of benefit to the clients and community.

#### Management and Leadership

- Managers, senior staff and Team Leaders will take responsibility for a 'learning culture'. This will enable and encourage discussion and discovery in relationship to the staff body increasing their cultural competence and awareness of current Aboriginal and Torres Strait Islander Australian issues.
- Relationships Australia will provide mentoring, coaching and ongoing support, such as appropriate supervision and training, for team members who are working in challenging and innovative programs with Aboriginal and Torres Strait Islander Australian organisations and individuals.

<sup>4</sup> Incorporating cultural competency training and developing relationships with local community organisations/members, as recommended by this document, will address any possible tokenistic practices of displaying Aboriginal and Torres Strait Islander Australian arts and resources



- Relationships Australia in consultation with Relationships Australia Indigenous Network and /or other Indigenous Australian agencies will actively seek out funding and grants that will enable Relationships Australia to provide innovative and realistic projects to Aboriginal and Torres Strait Islander Australian Communities and clients.

#### Professional Development of Relationship Australia's staff

- Cultural awareness training package developed and delivered by Relationships Australia Indigenous Network. Training packages will explore concepts of 'whiteness'; colour and cultural blindness, dominant cultural practices and power relations.
- All staff will have an understanding of the history of policies and practices that have directly affected Aboriginal people within the respective state/territory as well as nationally.
- Local and state wide Indigenous Australians groups will be invited to talk to Relationships Australia staff on cultural practices, concerns and issues. Aboriginal and Torres Strait Islander Australians to be paid as consultants for this information.

## **6.2 Develop and implement, in partnership, innovative practice models**

Connecting with Aboriginal and Torres Strait Islander Australian organisations and promoting Relationship Australia's services

- Relationship Australia staff will be encouraged to actively connect with Indigenous Australian organisations, to build relationships and as an opportunity for collaboration. These relationships will promote Relationships Australia services and increase the number of Aboriginal and Torres Strait Islander Australian clients accessing all services. Language needs to be appropriate and jargon free<sup>5</sup> with tangible examples of service delivery including flexible service delivery, for unique situations within Indigenous Australian communities.
- Relationships Australia will participate or be involved in Aboriginal and Torres Strait Islander Australian community events, where appropriate.
- Relationships Australia will support alternative programs and service delivery developed in partnerships with Aboriginal and Torres Strait Islander Australian communities by supporting cultural differences and diversity relating to concepts of time, work and sustainability.

<sup>5</sup> One of the significant barriers to successful service delivery within Aboriginal/non-Aboriginal context relates to language and meaning making. Aboriginal and Torres Strait Islander Australian world views and cultural practices are rarely acknowledged or recognized within mainstream service that operate largely from a dominant white framework. Relationships Australia Indigenous Network training will address the impact of dominant cultural practices

**6.3 Influence funding bodies; policies and decision making processes, at a state and national level, in ways that reflects Aboriginal and Torres Strait Islander Australian communities identified needs and concerns.**

Relationships Australia staff involved in working with Aboriginal and Torres Strait Islander Australians will:

- Develop relationships/partnerships with relevant stakeholders; government funding bodies, community leaders, academics, corporate bodies, and local government in order to achieve best practice as determined by Aboriginal and Torres Strait Islander Australian community.
- Access and utilise relevant government policy, and resource information relating to legal, social and economical matters that affect Aboriginal and Torres Strait Islander Australians.
- Be an active voice in constructing and documenting alternative models of practice and different frameworks for service delivery to and with Aboriginal and Torres Strait Islander Australian communities and people.
- Undertake collaborative/participatory research to identify areas of concern and need within the Aboriginal and Torres Strait Islander Australian communities.
- Document and record Relationships Australia's best practices in working with Aboriginal and Torres Strait Islander Australian communities and individuals that are beyond the current service agreement reporting and evaluation requirements.

**6.4. Become a leader in facilitating and expanding employment opportunities for Indigenous Australians**

- Provide a culturally safe and secure working environment for Aboriginal and Torres Strait Islander Australian staff by facilitating a culture of learning within all levels of the organisation. Relationships Australia staff will actively engage with cultural competency practices as identified by training.
- Job advertisements will contain the statement that Aboriginal and Torres Strait Islander Australians are encouraged to apply.
- Innovative positions and roles will be developed for Aboriginal and Torres Strait Islander Australians alongside mainstream employment opportunities.
- Aboriginal and Torres Strait Islander Australian workers are to be recognised as having expertise rather than positioned as the 'Aboriginal and Torres Strait Islander Australian expert'. Non Aboriginal and Torres Strait Islander staff will support, work and learn along side Aboriginal and Torres Strait Islander Australian staff.

- Provide positions that recognise and value life experience, along with traditional qualifications.

***This document will be reviewed in twelve months, May 2008 to evaluate the progression or otherwise of Relationships Australia's Indigenous Network's identified objectives and recommendations.***

## APPENDIX I

### PARENTING CO-ORDINATION



RAWA is affiliated with the Federation of Relationships Australia State and Territory member organisations. A more comprehensive submission on this Issues Paper is being developed across the Federation. This submission should be read within that broader context.

The purpose of this proposal is to bring to the Commission's attention to work underway on a pilot of Parenting Coordination in WA.

Parenting Coordination is a model of service developed in several international jurisdictions to address the needs of high conflict families to more effectively navigate the Family Law System, resolving problems related to the changing needs of families and reaching agreements that are more enduring and provide better outcomes for children. An important outcome is a reduction to the demand on court services and more timely resolution of issues to the benefit of families and children in particular.

RAWA has been a major provider of Family Law Services in WA since 2000. Our current range of services includes Family Law Counselling, Family Relationships Centres, Family Dispute Resolution and Legally Assisted Family Dispute Resolution, Child Contact Services and Relationship Education Programs. RAWA has also worked extensively in the domestic violence field with perpetrators, victims and children. Most recently RAWA was the lead community service provider for the WA implementation of the Family Advocacy and Support Services (FASS) pilot project, providing specialist FDV support for families accessing the Perth Family Court of WA.

RAWA's extensive experience providing family law service led to identifying the need for a new service type that would provide support for families going through the family law system where there was a history of high conflict, leading to frequent representations to the Family Court of WA. Research and consultation led to identifying a service type called 'Parenting Coordination'. Several variations have been implemented in jurisdictions including several states in the USA, Canada and South Africa.

Several definitions of Parenting Coordination have currency and flesh out the complex, hybrid nature of the model.

*Parenting coordination is a non-adversarial, quasi-legal, quasi-mental health process which combines assessment, education, case management, conflict resolution and decision-making (Parker & Wilson, 2013).*

*a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's need and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract. (Association of Family and Conciliation Courts, 2006)*

The Association of Family and Conciliation Courts (AFCC) have developed Guidelines for Parenting Coordination (Association of Family and Conciliation Courts, 2006). A chapter of the AFCC exists in Australia. Other

jurisdictions have adapted and developed additional guidelines suited to their own legislative contexts or disciplinary perspectives (British Columbia Parenting Coordinators Roster Society, American Psychological Society, Guidelines for Parenting Coordination in South Africa).

Parenting Coordination differs from other comparable approaches in several important ways. It is a more intensive intervention than most others. PCs are usually contracted to work with the family for a significant period of time (2 years in some jurisdictions). A PC works with both parties in the conflict. Processes vary, but usually include meeting individually with each parent and together, depending on the needs of the family. This allows the PC to develop a thorough understanding of the nature of the relationships in the family they work with including the conflict styles of family members.

Most descriptions of Parenting Coordination stress the importance of the required skills of potential PCs. The positions require a combination of legal and mental health skills, or more specifically psychological and applied social science typical of psychologists or social workers but more broadly include the skills and abilities to work effectively with families in conflict. From a workforce development perspective there are two options. One is upskilling candidates with a social science/allied health background with the requisite legal knowledge. An in depth understanding of domestic violence in theory and practice is also deemed essential. The other option is to work with the legal practitioners to develop their capacity to work in a PC role (Henry, Fieldstone, Thompson, & Treharne, 2011). There is currently a project underway at the UWA Law School to develop the capacity of legal practitioners to work with high conflict families (Howieson & Priddis, 2011). RAWA is also involved in this project and has an interest in bringing together our pilot of Parenting Coordination with the UWA project as they evolve.

An important distinction is that Parenting Coordination is not therapy. The focus is on assisting both parents to make decisions in the best interest of the child(ren) (Demby, 2016). The ability to think clinically is an asset that will assist PCs to plan and implement their engagement strategy with each family.

It is important that the PC at all times maintains a clear focus on the agreed scope of their role. Where PC is mandated by the court (generally by inclusion in Court Orders) the scope of the PCs engagement with the family, the nature and extent of their recommendations/decisions will generally be specified therein. In less formal circumstances the scope of PC arrangements will need to be negotiated and clearly agreed by all parties.

The most controversial element of the program is the status of the decisions made by PCs. These can range from 'binding' decisions with legal status and appropriate consequences for non-compliance through to consensual decisions in response to recommendations from the PC. In some jurisdictions the Courts choose to endorse the recommendations, thus giving them the status of legal rulings. The key issue is whether the PC as decision maker is usurping the authority of the judiciary.

Parenting Coordination and its relation to the Family Court of Australia needs to be carefully considered. Constitutional Issues could arise if the manner in which PC is implemented oversteps the limits of the role or of the Court (Parker & Wilson, 2013). The key issue is whether PC constitutes a delegation of judicial power to an officer outside of the Court. This relates to the status of the decision making role of the PC. If the PC makes 'Binding' decisions, it may breach the delegation of judicial power test. On the other hand if decisions are consensual there is no breach. In practice the inclusion of directives with consent as part of court orders is quite common. The obvious limitation of fully consensual approach to PC is that those families most in need may opt out.

Another option is for PC to make 'recommendations' which then need to be ratified by the Court before they become binding on the parties involved. This approach would still require Court consideration, thus diluting the benefits of the program.

RAWA is piloting a PC program here in WA. Initial discussions with the Family Court of WA indicate there is a consistent need for the program. The Court is prepared to include a requirement for PC in Court Orders where high conflict is indicated. The cost of PC will be funded by the families themselves initially and underwritten by RAWA.

As a relatively new innovation PC has not yet developed a strong evidence base which would be expected of a mature program. The best evidence comes from jurisdictions that have accessed court records to select cases for PC based on historic high levels of representations to courts and associated imposts on court resources. Evaluations in these jurisdictions indicate significant reductions in court involvement with families involved in PC (Brewster, Beck, Anderson, & Benjamin, 2011; Henry et al., 2011; Sullivan, 2013). Other areas that have been studied include reduction in acrimony, development of knowledge of child development and the impact of conflict on child development, parenting skills, communication skills and conflict resolution skills.

One of the strongest perceived advantages of PC is continuity of engagement with high conflict parents. This contrasts favourably with the episodic nature of most other interventions in the Family Law System, with the exception of Family Law Counselling in some cases and the potentially ongoing relationship with one's legal counsel in certain privileged cases.

The relatively continuous nature of PC is justifiable on the grounds that it should only ever be considered an option in cases identified as high conflict. The majority of families negotiate their own way through the family law system with relatively little problem. It is also quite likely, should the option of Parenting Coordination become more widely available, more victims of DV will come forward, who currently may not disclose to anyone through the family law engagement, and likely suffer suboptimal outcomes as a result. Parenting Coordination by practitioners with expertise in domestic violence has the potential to deliver safer and more durable outcomes.

RAWA is in the process of negotiating with the Family Court of WA over the implementation of PC in this state. It would be timely for the ALRC to consider the options for legislative changes that would enable PC in Australia, including the best ways to enable recommendations/decision making by the Parenting Coordinator to be supported by the Courts (Parker & Wilson, 2013).

RAWA commends the model of Parenting Coordination implemented in the jurisdiction of South Africa (Western Cape) as the most appropriate for the Australian context. If the ALRC requires any further information or clarification, please contact:

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