



ALBURY  
WODONGA

# Response to Australian Law Reform Commission *“Review of the Family Law System”*

## *Submission on behalf of Albury Wodonga Family Law Pathways Network*

This submission was prepared by the following members of the Albury Wodonga Family Law Pathways Network Steering Committee: Dione Garwell (Legal Aid NSW,) Sheri Moulton (Upper Murray Family Care), Paige Rolfe (Bellbridge Hague Solicitors), Connie Constas (UMFC Family Relationship Services), Rebecca Eberle (Victorian Department of Human Services) and Kerrily Jeffery, Family Law Pathways Network Coordinator

# 1. Introduction

The Albury Wodonga Family Law Pathways Network (FLPN) has been auspiced by Upper Murray Family Care since 2008. The FLPN is funded by the Federal Attorney General's Department and is governed by a highly engaged steering committee with representatives from private family law firms, private mediators, Legal Aid NSW, Hume Riverina Community Legal Service, the Federal Circuit Court, Family Relationship Services, Child Protection, Family Violence and Community Health.

With a membership of over 300 people representing over 100 organisations across a broad range of legal, health and community services sectors, the FLPN covers a large geographical area including North East Victoria and Southern Riverina New South Wales, with a population of approximately 240,000 people.

The purpose of the FLPN is to build stronger relationships between sectors, and increase connectivity between the Federal, NSW, Victorian, family violence, family law and child protection jurisdictions. This is to open up referral pathways between the different sectors so that the public gain better access to family law services and receive a more integrated response.

In fulfilling this purpose, the FLPN has recognised there is fragmentation and silos operating in the family law system<sup>1</sup>, child protection and family violence sectors, which is further complicated by the FLPN being located geographically on the NSW/Victorian border. One example of how FLPN works to address this, is by organising, supporting and delivering regular local professional development for practitioners, focusing on delivery of professional development as much as possible that will be relevant to practitioners across disciplines, and therefore achieving interconnection around central issues. Specific examples of this will be referred to further in the body of this submission.

FLPN also produces a bi-monthly bulletin circulated to members online. The bulletin publicises recent developments in the family law and associated sectors, local information, links to resources and publications, details of upcoming local professional development, and availability of professional development located in other cities and regions.

On Monday 19 March 2018 members of the FLPN steering committee met with representatives from the Australian Law Reform Commission including Professor Helen Rhoades and Dr Rae Kaspiw to provide input into the Review of the Family Law System. The Steering committee had not yet had an opportunity to read the Issues Paper which had been released two working days prior to the meeting. The discussion was therefore of a general nature and focused on the work of the FLPN and some of the key themes over the past 12-18 months. The FLPN were very grateful for the opportunity to meet in person with the ALRC, and considers it important to complement that meeting with a written submission that summarises and expands upon this discussion.

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<sup>1</sup> For this submission, the 'family law system' refers to legal and non-legal services including family lawyers, the Federal Circuit Court, Family Dispute Resolution Services and Family Relationship Services.

This written submission will address specific questions within three sections of the Issues Paper as follows:

## 1 Access and engagement

*Q3: In what ways could access to information about family law and family law related services, including family violence services be improved?*

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

*Q9: How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?*

*Q10: What changes could be made to the family law system including to the provision of legal services and private reports to reduce the cost of clients resolving family disputes?*

*Q13: 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 those with safety concerns?*

## 2. Integration and collaboration

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

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

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

## 3. Children's experiences and perspectives.

*Q.34 How can children's experiences of participation in court process be improved?*

## 2. Submission

### 2. 1. Access and engagement

*Q3: In what ways could access to information about family law and family law related services, including family violence services be improved?*

*Q4: How might people with family law related needs be assisted to navigate the family law system?*

**People engaging with the family law system, be they families or professionals, can find it difficult to access relevant information and to navigate the range of associated service systems such as family violence. Family Law Pathways Networks were set up with a particular undertaking to address these issues and this has been an integral part of the work of the Albury Wodonga Network over the past ten years (see examples below). The capacity to continue with this work depends on ongoing and appropriate funding. Currently the future of FLPNs is uncertain and there has been no commitment to their continuation past the current funding cycle (to June 2019). A**

**firm commitment to FLPNs as an integral and ongoing part of the family law system would be beneficial to both providers and service users.**

How the FLPN provides information about how to access and navigate services

The FLPN has produced a *Separation Services Guide*, *Referral Card for Services*, and a *Mapping of Family Violence Services* across the Albury Wodonga region. These documents are aimed at assisting both clients and professionals to navigate the family law and family violence service systems in our region.

The *Separation Services Guide* (the Guide) is a professionally published booklet with comprehensive information and contact details for the following local service types: counselling and support, Family Dispute Resolution, parenting after separation, legal advice, going to court, Family Violence, child welfare, child support services, housing and financial counselling and assistance. The Guide is updated and distributed in hard copy each year to services with a high traffic of potential family law clients, including the Albury Federal Circuit Court, NSW and Victorian magistrates/local courts, community legal services, private family lawyers, Family Relationship Services, Child Protection, Health Services, Family Violence services and Police. It is also available on the Albury Wodonga FLPN website: <https://www.familylawpathways.com.au/services.php?code=31>. There is also a Nepali translated version available on the website (the Nepali speaking Bhutanese community are one of the largest culturally diverse groups in the Albury Wodonga region).

The *Referral card for services* is a professionally published business size card listing the contact details for the services found in the Separation Services Guide. It is designed to fit in a personal wallet so that the information can be stored by the user discretely. This allows the user to store the information which could be useful for those clients experiencing difficult family break downs or family violence. The Referral card is updated and distributed to the same services listed above each year as per the Guide and is also on the FLPN website.

The *Mapping of family violence services in Albury Wodonga region* is a Word document that allows quick consolidated access for the public and professionals to all available family violence services spread over a large geographic area. Mapping the information in this way is particularly helpful in a regional area that crosses two states, particularly when family violence services and networks are state funded. It is also helpful because different, but relevant services for a client's needs can often be located some distance away from the client who requires the service. This document also contains a one-page referral pathways diagram for family law services to use when referring clients. It is also available on the FLPN website.

Currently the budget allocation for FLPN publications only allows 1,000 copies of the Guide to be published each year. The *Referral Card for services* has 2,000 printed copies per year (being a smaller size it is less expensive) and the *Mapping of Family Violence Services* is available online only as a PDF document. Many services ask for additional copies of the Guide and are given the option of printing their own copies. Copies of the Guide are not made available at FLPN events as this is not accommodated in the budget (Referral cards for services are available).

Continued and additional funding for FLPN family law publications would allow more copies of both the Guide and the *Referral card for services* to be printed which would better meet demand. With additional funding, the *Mapping of Family Violence services document* (including the referral charts) could be professionally published and printed in hard copy each year. This would no doubt increase the use of this information by clients and professionals and increase referrals to family law services

### How the FLPN assists local schools

The schools and family law project is aimed at providing better access to and engagement with the family law system by targeting schools as a universal service. Schools initially approached the FLPN in 2011 asking for information and support about family law issues. The FLPN responded with the acknowledgement that teaching and support staff are a critical referral point for families experiencing high conflict and separation.

The initial rollout involved the project being developed and delivered as a seminar in various schools located in the Albury/Wodonga region from 2012. In 2016 the Schools & Family Law Project was reviewed and updated by a new project team and has since been delivered to school teachers and administrative staff from over 30 schools in the Southern Riverina NSW area.

The Schools & Family Law Project provides information to schools about the family law system, local family law services and, knowledge of how to handle family law disputes between parents. The seminar involves discussion of case studies that represent common scenarios within schools (e.g. disputes between parents on school's grounds, requests for information about children from 'non-lives with' parents etc.). Whilst the schools are not in the position to give legal advice to parents, after involvement in this project schools have reported they feel more confident about managing these situations and know where to refer parents. Many schools have placed in the foyers of their school information about family law services for parents to access if they wish.

There is clearly great value in the FLPN continuing to provide regular seminars to schools, pending the provision of funding beyond June 2019. Without FLPN funding this project will be discontinued.

*Q9: How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?*

*Q13: 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 those with safety concerns?*

**Increasing the number of circuits at the Albury Registry may improve accessibility for people living in our region. Increasing the number of circuits at the Albury Registry would mean that matters can be listed in the circuit closest to when an Application is filed assuming that the times for service and a Response are adhered to, and may result in smaller lists per circuit and greater opportunity for matters to be reached. The Albury Registry is fully staffed with a functioning court room, security staff on site, video link facilities and judge's chambers and would be able to accommodate more frequent circuits.**

**Consideration could be given to extending the circuit from one to two weeks two weeks in duration so that there could be at least two duty list days, or alternatively more frequent one week circuits throughout the year. The benefit of having two weeks in a row would be a reduction in the number of people physically present in the Court foyer on the duty list days, and the possibility of getting through a number of final hearing matters over the two-week period. Two week long circuits may also reduce the cost imposed on clients for practitioner and Counsel travel and accommodation.**

The Federal Circuit Court Albury sits on circuit from Melbourne. There has been a decrease in circuits since 2016, with nine circuits in 2016, seven in 2017 and five currently scheduled for 2018.

Circuits run for one week at a time. At present, the circuits are organised so that each Monday that the Court sits is a duty list day, and the following Tuesday to Friday are final hearing days.

There is presently a limit of 25 new first returns and 25 hearing directions that may be listed in a Monday duty list. There is generally a minimum of 45 matters that ultimately appear in the duty list there being some matters that settle by consent on an interim or final basis in the weeks leading up to circuit week with orders made in Chambers. In addition to the duty list which may also identify urgent matters requiring the Court's assistance, one or two urgent interim hearings are usually listed on the Monday.

There are between approximately ten to fifteen final hearings listed on each day from Tuesday to Thursday of circuit week. Usually one or two of those final hearings are marked as priority matters on each of the final hearing days. Sometimes matters settle during circuit week, however it is the case that most of final hearing matters are adjourned to the next circuit because they are not reached.

If a final hearing runs, it is likely to progress over two to three days. There is usually only one final hearing which is dealt with in a circuit if a final hearing starts, and this is simply due to limitations on time.

Some matters are not reached on the day they are listed, including some of those in the Monday duty list and those interim, urgent, mentions and directions are frequently stood over to another day in the week taking time away from any final hearing which happens to be running.

Matters in the duty list are staggered to commence at 10am and 2.15pm. The Albury Federal Circuit Court foyer is not large enough to seat the number of litigants and litigants generally attend Court with at least one but more often two support people. The result is that there is standing room only and very little access to private space to discuss confidential matters between solicitor/Counsel and client. A further problem in this scenario is that litigants have often come out of difficult relationships, or have experienced family violence from the other party and they are then, in very close proximity to each other, waiting for their matter to be mentioned. Although the Court does have the benefit of a safe room where persons who do not feel safe can wait it is available on a first in first served basis.

The reduced number of Court circuits has resulted in a situation where notwithstanding a litigant has filed their application in time to be listed in the next circuit, the circuit is full. One such example is to file an application in time for the June 2018 circuit that commences on 18 June 2018, the latest date an application can ordinarily be made is 14 May 2018. However, even before the April 2018 circuit was over, the June 2018 circuit was full and the Albury Registry could only list new matters in September 2018. Litigants making new, non-urgent applications are therefore forced to wait almost five months before their matter is first before the Court.

An alternative to litigants who would usually file in the Albury Registry is to file in the Melbourne Registry. However that then means that the litigant must travel approximately four hours (assuming they live in Albury and not further away), find and pay for accommodation to be in person at Court which even if an appearance can be made by telephone occasionally, will not always be a solution if for example a conciliation conference or section 11F report is required. Furthermore, if a matter is listed by telephone and the client is required to be present with the solicitor, the solicitor has no ability to advise the Court they are ready for the call and must simply be ready for the call at the time the list starts. The call does not however always come through at the time the list starts, and the best part of a day can be lost.

At times, proceedings will also be transferred to the Federal Circuit Court Melbourne or the Family Court of Australia Melbourne. This is usually in circumstances where it is identified that the proceedings are complex and will take more than three or four days of hearing time. This results in further cost and delay being incurred by litigants. In legally aided parenting cases in particular, litigants are at particular financial disadvantage and would find it particularly difficult to travel to and afford accommodation in Melbourne for the duration of the proceedings. It also means that clients need to find alternative care for their children whilst they are attending in Melbourne for Court.

Legal Aid NSW and Hume Riverina Community Legal Service both conduct outreach family law advice clinics to various remote regional locations in the North East Victorian and Southern Riverina New South Wales.

*Q 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 of clients resolving family disputes?*

**It may be useful to consider whether there is utility in making mediation a compulsory step during court proceedings or after a family report becomes available, similar to the compulsory requirement to undertake mediation prior to commencing proceedings with the Court. However, there may also need to be a clearer recognition that even after a report becomes available and the parties have had the benefit of other post separation services, that there are some matters that will not be appropriate for further mediation due to the nature of the issues involved. For these matters consideration needs to be given to establishing a way that these matters can be judicially determined as early as appropriate and allocated the Court time the matter requires.**

The delays in matters being dealt with by the Court as mentioned above, increases the cost to clients privately funding solicitors, and increases the cost for publicly funded matters.

Delays in having matters dealt with also leads to family reports undertaken by Court Family Consultants and expert reports pursuant to Chapter 15 of the Federal Circuit Court becoming stale. This potentially leads to further cost being expended for an updated family report to be undertaken by the Court or private expert report. Private expert reports can cost in the vicinity of \$6000 - \$10000 for the original report, and further costs if an update is required.

Some parties undertake mediation, either through Family Relationship Services, Legal Aid, or privately, after a report becomes available. It appears that the majority of those matters may then resolve. Engaging in mediation once a report becomes available, or during the course of the proceedings is sometimes Court ordered, but more often is usually up to the parties' agreeing to undertake the mediation process between themselves, usually on the advice of their legal practitioners.

## 2.2 Integration & Collaboration

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

**As mentioned above, the funding for FLPNs beyond June 2019 is currently in question. Continued funding of the FLPN is critical to the continued work of promoting and supporting integration and collaboration between the family law sector and other allied sectors such as Family Violence and Child Protection services.**

**If the FLPNs are no longer funded:**

- **Collaborative practice forums, such as the Family Law and Child Protection Forum, will no longer be run;**
- **Professionals working in and alongside the family law system will lose opportunities to develop and maintain understanding of the each other's roles and the types of services that are available in our region;**
- **The Separation Services Guide, Referral card for services, website and e-bulletins will no longer be produced;**
- **Practitioners working in and alongside the family law system will lose valuable opportunities for joint professional development on topics such as family violence; and**
- **We will lose our capacity to discuss and address issues in the family law system from a network perspective.**

### How the Albury Wodonga Family Law Pathways Network promotes integration and collaboration through collaborative practice forums

The FLPN focuses on developing and running practice forums that draw together services from a diverse range of sectors with a common factor that they all engage with separating families with complex needs. The benefits of these practice forums are an increase in professional knowledge and referral pathways that inevitably flow onto clients engaged with these various services. Some examples of these forums are detailed below.

An FLPN working group is currently developing a Family violence risk assessment and safety planning forum to be held in July 2018 for the Albury Wodonga family law sector. Currently there is no agreed tool or framework used within the family law system and many practitioners rely on professional knowledge. The purpose of this project is to review the family violence risk assessment and safety planning tools currently used across the region, and provide some recommended options and frameworks for use within the family law sector. Recommended tools and frameworks will have a clear evidence base and be supported by research. The workshop will also include the participation of local family violence services in order to build professional relationships across the two sectors. The working group is comprised of local family violence and family law representatives across both NSW and Victoria.

The Child Protection and Family Law Forum held in July 2017 was one of the professional development opportunities facilitated by the FLPN. The purpose of this forum was to identify and demonstrate how the family law and child protection systems can, and do, intersect across both NSW and Victoria. An FLPN project group within FLPN met on several occasions to develop the seminar. The target audience were legal practitioners, child protection workers, community services and family relationship services practitioners.



The framework for the seminar included a keynote presentation by Anna Sandt, Principal Practice Adviser (Family Law Liaison) at the Victorian Department of Health & Human Services; an expert panel discussion and a speed networking exercise.

The panel discussion involved a case study developed by the project group and based on a families' experience with the family law and child protection systems. A facilitator stepped through each stage of the case study, and a panel comprised of representatives from the Department of Health & Human Services Victoria, a lawyer, an Independent Children's Lawyer and a representative from the Department of Family & Community Services NSW. Each participant talked to each stage of the case study to show how they would respond to and advise on the circumstances of each stage.

The seminar was a very informative exercise, highlighting the differences and similarities of approach between the family and child protection systems and the state and federal jurisdictions. All involved were very interested and sometimes surprised at the outcome of the intersection of the different areas of law and jurisdictions, and the resulting experiences for the one family.

Feedback from Child Protection Victoria was 'I gained a lot of knowledge about the way that Child Protection works in NSW and about the way that the Family Law system works. I feel more confident now in my role to help other Child Protection workers learn about the family law context...At the forum, I had lots of questions directed to me from family lawyers which hopefully increased their knowledge of how Child Protection works and makes decisions'.

#### Working with Family Relationship Services (FRS)

**There may be scope for an increase in Court-ordered referrals to Family Relationship Services of complex families, especially those who may have had several court hearings. These are families who may benefit from a period of mandatory engagement with the suite of FRS services, before they resort to further Court determination.**

FRS offers families an integrated suite of alternate dispute resolution services, including Family Dispute Resolution (FDR), post separation family counselling, group work for separated parents, group work for children of separated parents and a Children's Contact Service (CCS) for supervised contact and supervised changeovers.

Family law clients are able to access these services voluntarily or upon recommendation of lawyers or as ordered by the court. Families with complex needs may use FRS services sequentially or simultaneously, as early intervention (soon after separation), while court proceedings are afoot and post court. For example, a family may use our Children's Contact Service for supervised contact and also engage with one of our family counsellors to address the issues that lead to the need for supervised contact, to assist the family to progress to self-management.

There are good working relationships and information sharing between FRS and the legal profession. For example, Independent Children's Lawyers (ICLs) and FRS staff (CCS and post separation family counsellors) often communicate about complex cases, discussing what support services might be helpful to families, suggested contact regimes and what each parent can do more/less of to promote their children's best interests.

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

**The possibility of a different Court model for matters incorporating child protection concerns could be considered. This could include a method of classifying the kinds of matters that would be dealt with by that specific Court model– similar to the drug court concept. The first tier could be a mediation/conciliation model, then if the matter is not resolved it could move to a panel of professionals who hear matters and who have decision making powers. Only the very high risk matters could progress to a court with a judge or magistrate to hear the issues and make a decision.**

Such a model would require combining child protection and family law court matters, essentially involving a Federal approach to child protection matters. This would be a significant change from the current State based model of child protection. If this approach is not feasible, an alternative could be that child protection practitioners be available and present in the family law court process.

There is currently a need to develop an agreed process for cases that are referred from the children's court in each state to the family law court. For example, when child protection are going to close a case and refer the family to the family law court, this needs to be done in a more proactive and seamless manner that would prevent families bouncing between the two court systems, sometimes for a number of years.

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

**In some Family Law proceedings child protection authorities are invited to intervene, and this intervention is currently at the discretion of the authority. Consideration could be given to whether intervention by a child protection authority should be a mandatory requirement when invited by the Court, and if specific criteria are met. This approach may also have the benefit of increasing information sharing between the child protection authority and Court.**

If child protection authorities are involved in more family law court cases, this may also decrease the circumstances of the children being involved in further Court proceedings should the child protection authority make a separate application to the Children's Court. When the child protection authority is a party in family law court proceedings it provides a further option to Courts when considering the best interests of the children. This is particularly important in difficult and complex matters where the children are subject to many risks in the care of both parents.

There needs to be consistency with the approach to information sharing. For example, the information provided by child protection authorities when a Notice of Risk is filed with the Court varies considerably. Only some child protection authorities provide a summary report to the Court on receipt of the Notice of Risk which would then be available to the Court prior to the first Court date. This is valuable information for the Court prior to the first Court date.

Each child protection authority provides their information in a different format when responding to a request by the Court for information pursuant to an order made under s69ZW of the *Family Law Act*. It would be useful for all child protection authorities to use the same format when providing

information pursuant to these orders. This also highlights current differences in approach between child protection authorities in how they assess risk. This includes the classification of the level of risk and how the child protection authority determines when an investigation will be ongoing or the child protection file closed. This is particularly relevant for matters that are dealt with by a Federal Circuit Court sitting in a border region such as Albury/Wodonga.

It would be useful if public records (such as criminal records and court transcripts from contested domestic violence charge matters in state Courts) were made available earlier in proceedings instead of issuing Subpoena later in proceedings. Consideration could be given to having a process whereby if those details are raised in the Notice of Risk, a mandatory request is made of the state Courts and the police to provide specific information to the Court prior to the first Court date.

### 3. Children's Experiences and perspectives

*Q 34 How can children's experiences of participation in court process be improved?*

**Children's experience of court process could be improved by adopting a uniform approach to children's representation across Federal and State jurisdictions. Such an agreed approach to children's representation in the Family Court, Federal Circuit Court and Children's Court jurisdictions would need to be based on thorough research and evidence. There are currently varying opinions on the efficacy of the different approaches.**

The role of the ICL in the Federal family law system is to act in the best interests of the child. The ICL is not bound by the child's instructions although the child's wishes are taken into account throughout the legal process.

In NSW, the *Children & Young Persons Care & Protection Act (NSW) 1998* provides that children twelve years and above are appointed a Direct Legal Representative (DLR). The DLR is bound to act on the child's instructions. If the child is under twelve years of age, they are appointed an Independent Legal Representative. That representative acts in the best interests of the child.

In Victoria, a DLR will be appointed in a child protection matter in the Children's Court when a child is ten years or above. Again, the DLR is bound to act on the child's instructions.

The aforementioned information highlights that children may have different experiences of legal representation, participation in Court proceedings, and opportunities to be heard, depending on the jurisdiction and geographic locale their matter is being dealt in. An agreed national approach that is based on research and evidence would improve children's experiences of the court process and make it simpler for legal practitioners operating across different jurisdictions.