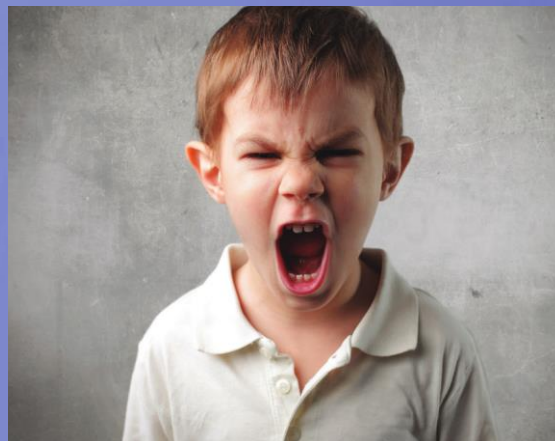


drummond street services Submission Australian Law Reform Commission Review of the Family Law System

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We acknowledge the traditional owners of the land where
we work and pay respects to elders past, present and future.

drummond street's submission to the ALRC

Background information regarding drummond street services is provided in *Appendix 1*.

A summary of drummond street's key work within the family law system is provided in *Appendix 2*.

This submission is structured in line with the *ALRC Issues Paper* (Mar 2018). We strongly agree with many of the concerns and recommendations presented within the paper. We do not strongly *disagree* with any, and note that some issues are outside our area of expertise. Below we outline reasons for the strong support for some of the recommendations. We provide some additional recommendations based on our own research and evaluations. At the end we provide case study to illustrate some of the issues and needs of the family law system.

Objectives and principles

33 Our sector has some excellent Australian research to draw upon, and as a sector we have benefitted from government funding for innovative pilot programs and evaluation capacity-building. We agree that many of the families who turn to the family law system for support have multiple and complex needs, including safety concerns for children, family violence, mental ill-health and substance misuse. These in turn are further exacerbated by current processes and systems.

We also wish to emphasise the critical need for continued investment in research and evaluation to understand and define the issues and needs and groups of families accessing the family law service system, and to improve our responses in terms of policies, services and practices to reflect.

We also think this is a timely opportunity to review and better target our universal interventions for 'friendly' and 'cooperative' families. As an agency our long-held approach is an emphasis on early intervention, with whole-of-family proportionate responses based on needs and risks, which we outline further. We have seen some shifts over time in this direction, both in terms of funding and service responses, but would argue that this requires further development, investment and effort. Additionally, as just as important, we also see a critical opportunity to build more effective and consistent responses for the most vulnerable families, those with persistent high conflict and with family violence, who need targeted interventions and sufficient resourcing to reduce wellbeing risks for children and adults, *as soon as possible* after separation.

3, 4, 31 Recognising that families and children are impacted by complex issues such as family violence, mental health and drug and alcohol requires integrated services responses.

Effective integration is established on the platform of a thorough assessment of the conditions of families' lives, one that is child centred and can locate a dispute about children in the wider context of a child's developmental world.

This process can and should occur from the first contact families have with the family law system, prior to families engaging in the adversarial system of FDR and Family Court. Assessment seeks to identify and develop strategies to address risk and protective factors for children and young people. Given the importance of parents or caregivers to a child's developmental processes, a focus on the matters that impact on their capability to be the kind of caregiver that promotes health child development is essential to resolving family disputes between parents about children guided by a principle of "best interests of the child". Thorough assessments can provides the basis for a

coordinated care plan that can include strategies for managing engagement with other support services both to respond to immediate needs and issues, but sustained over time acknowledging that reformation of the family unit and the parenting post separation shifts, changes and adapts over time.

This process may also provide a basis for the design and provision of support to families navigating court processes, assisting families to manage engagement in multiple jurisdictions.

Below are key points about our family law system client base we wish to emphasise.

The profile of separated families

The 5 year study of separated families by Qu et al. (2014)¹ found:

- inter-parental relationships in separated families can be classified into 5 broad quality types:



(Note: percentages for each inter-parental relationship type are given for each of the three data waves reported in Qu et al., 2014)

- a majority of separated parents report their inter-parental relationship is 'friendly' or 'cooperative' and most maintained this view over 5 years, or moved to a 'distant' dynamic
- Those with 'distant' dynamic at the outset were likely to maintain this view over 5 years, or hold a more positive view over time
- 15-20% of separated parents reported 'lots of conflict' or 'fearful' (i.e. family violence) dynamics at one or more time-points across the 5 year period.
- 17% of separated parents reported 'lots of conflict' or 'fearful' dynamics at 2 time-points across the 5 years- these can be considered a highly vulnerable group
- For those separated parents with 'lots of conflict' or 'fear', , similar percentages of relationships improved as deteriorated over 5 years
- 4% of separated parents reported 'lots of conflict' or 'fear' dynamics at all 3 time-points. These families did not report a friendly or cooperative dynamic at any time over the 5 year period- these may be considered the most vulnerable and high-risk cohort with entrenched and complex issues
- About one fifth of parents hold safety concerns about their children, due to the other parent or a new partner

¹ Qu, L., Weston, R., Maloney, L. Kaspiew, R., and Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years. Canberra: Attorney-General's Department.

- There are strong links between holding safety concerns for children, perceptions of the quality of the inter-parental relationship, experience of violence in the preceding 12 months, and reports of mental health or substance misuse issues prior to separation
- In this way, safety concerns often cluster with other health issues and risk behaviours

Our understanding from a presentation by Qu, Moloney & Kaspiw (AIFS Conference presentation, July 2016), is that:

- ‘fear’ (i.e. family violence dynamics) is the only variable to distinguish the 17% and 4% cohorts above, and fear’ is predominately reported by females
- families with persistent ‘lots of conflict’ and/or ‘fear’ across three time-points had the following characteristics
 - severe violence/abuse reported before/during separation
 - multiple forms of emotional abuse, especially controlling and isolating behaviours
 - physical injury
 - married
 - school-age children
 - mother was seen as the initiator of the separation and having left the home
 - less able to reach agreement thru FDR
 - more likely to have used courts.

35 We agree with the points raised, and in particular, have experience and hold concerns about:

- the adversarial nature of legal processes
- the harmful impacts of legal and court costs on children and families
- the lack of integration and effectiveness of family law, child protection and family violence systems in protecting children. We would add to this a lack of integration between the courts, legal services and family relationship services, and Child Support services
- dispute resolution as a single event being inappropriate for families with persistent high conflict or family violence dynamics

38 We agree with the key functions outlined, and would add to this the importance of advancing effective communication, conflict management and cooperative co-parenting in the child/ren’s best interests.

39 In terms of objectives that best express the appropriate role and functions of a contemporary family law system, we suggest consideration of the following three frameworks to help guide the functions and development of the family law system.

A public health approach to the family law system

The family law system would benefit from using a *public health approach* as one key guiding framework².

² A definition of a public health approach is available within WHO (2002) ²: “A *public health approach* aims to provide the maximum benefit for the largest number of people..... to prevent health problems and to extend better care and safety to entire populations... is interdisciplinary and science-based... emphasises collective action... cooperative efforts from diverse sectors.... is above all characterised by its emphasis on prevention”. [pp 3-4 in Krug, E.G. et al. (Eds), (2002). *World report on violence and health*. Geneva: World Health Organization].

In terms of the family law system, a public health framework could help clarify:

- population health issues and needs in relation to separated families;
- family law system and service objectives and interventions;
- risk and protective factors contributing to, and resulting from, separation
- the intentions of collaboration and integration with other systems and services;
- a coherent family law system evaluation framework.

Applied to the family law system, this approach places the health and wellbeing of children and adults as the priority, or intended aim and impact, of the family law system.

This approach can help us to keep the key risk factors which impact on child and adult wellbeing front and centre in our design of policies, programs, and practices. It encourages us to get in as early as possible in the development of health risks and behaviours, and to collaborate and integrate with other sectors and services towards shared goals.

Framing the aim of the family law system in terms of health and wellbeing outcomes for children, parents/carers and families could ensure a critical focus on what is most important in terms of the intended outcomes, roles and functions of the family law system. It can be used to clarify objectives and principles, and guide the development of all areas of the family law system.

The integration of family law services (including family relationship services, legal services, judicial services), and interrelated sectors (including child protection, family violence, child support, mental health and housing services) would benefit from a common framework.

For instance, Family court working together with family law services, both informed by an understanding of the health and wellbeing risks evident in a child's developmental world can assist to identify and better manage the potential harms to children that come when their access to services such as family support or counselling is undermined by the conflict between the parents. There are situations where the presumption of equal shared parental responsibility has been rebutted under Section VII of the Family Law Act, and services may need to determine that it is not in the best interests for children to commence or, once commenced, to continue with a family support service since the parent whose parental responsibility has been limited by the court does not support the child to access the service. A process for addressing this situation that entrenches the conflict between parents as adversaries rather than co-parents leaves children vulnerable.

A public health approach has traditionally involved four steps: defining and monitoring the extent of the problem; identifying the causes of the problem; formulating and testing ways of dealing with the problem; and applying widely the measures that are found to work (WHO, 2002).

'Population health' is an alternative label, and a definition for this is available within CDHAC (2000) ²:

"Population health attends to the health status and health needs of whole populations. It encompasses population needs assessment, developing and implementing interventions to promote health and reduce illness across the whole population and/or in particular population groups, along with monitoring trends and evaluating outcomes. Population health recognises that health and illness result from the complex interplay of biological, psychological, social, environmental and economic factors at personal, local and global levels"

[pp.20 in Commonwealth Department of Health and Aged Care 2000, *Promotion, Prevention and Early Intervention for Mental Health- A Monograph*, Mental Health and Special Programs Branch, Commonwealth Department of Health and Aged Care, Canberra. <http://familyconcernpublishing.com.au/wp-content/uploads/2013/12/PPEiMentalHealth2000.pdf>]

A Program Logic for the entire family law system

Evaluation frameworks such as a *Program Logic* are useful to help guide program design, delivery and evaluation. In particular documenting a program logic prompts a program to articulate:

- its key objectives, intended outcomes and impacts;
- the key theories and research underpinning the program design and the theoretical mechanisms of change;
- the key activities to be undertaken to achieve the intended outcomes; and
- evaluation methods and measures.

It is possible and useful to conceptualise a *program logic* for the entire family law system, with an overarching aim, goal or intended population-level impact, and key objectives.

For example, the overarching aim of the family law system could be: *“To administer the current family law system with the purpose of strengthening the health and wellbeing of children, parents, carers and families, including those experiencing separation”*.

Wording of this aim may need further work to accommodate those children and families engaged in the family law system regarding approval for medical interventions in relation to gender identity, and those engaged regarding surrogacy matters.

Within program logics, *objectives* are the smaller sub-goals of a program, and intend to be measureable in terms of program outcomes. Within drummond street’s Victorian FRC FDR outcomes evaluation project (on behalf of the AGD), key FDR service objectives were identified. These were:

- 1) To increase safety for all family members;
 - 2) To enhance health, development and wellbeing of children and adults;
 - 3) To improve communication and reduced conflict between parents/carers;
 - 4) To increase capacity and cooperation of parents/carers to work effectively together in the best interests of children;
 - 5) To improve capacity of parents/carers to make agreements/resolve disputes; and
 - 6) To achieve client satisfaction with their experience of participation in a service.
- (more on this project is provided below under **198**)

These objectives could be considered in terms of their relevance across the family law system policies, services and practices more broadly.

A proportionate universalism approach within the family law system

The concept of *proportionate universalism* arises from research which demonstrates the greatest overall outcomes for communities are achieved not by focussing only on the most vulnerable in the community, but by providing universal services for whole communities *and* targeted interventions with different levels of intensity (i.e. *dose*) for those in the community with different levels of need.³

In relation to universalism, we refer to genuine inclusion of *all* rather than using a mainstream (heterosexual) approach, that can further marginalise or reduce people to ‘add-ons’ rather than being inclusive of all families. This is important in the achievement of a contemporary, accessible and inclusive Family Law System that reflects the relationships and families of Australian society. The framework of the *Issues paper* and its questions reproduces this logic by having the LGBTIQ and

CALD questions as separate rather than integrated into every category. This also applies to use of the word 'couple': people who aren't couples, again become add-ons and won't be truly included.

In relation to the family law system, we recommend aiming to provide:

- universal services to all separating families; and
- greater resources and targeted interventions for the 17% of separated families with persistent high conflict and/or fearful dynamics and for the 4% of families who are most vulnerable with fearful family violence dynamics persisting for 5 years after separation.

This approach could involve:

- lower dose interventions for parties who are friendly/cooperative, such as access to information, self-help resources and digital-based resources.
- higher intensity interventions (i.e. more sessions and longer involvement) for high conflict/fear families. Based on our experience with the Post Order Enforcement Pilots, we recommend the following
 - More pre-FDR sessions that address the risks that compound the conflict
 - Use of multiple interventions- groups, counselling, FDR
 - Allocation of family case-manager to provide referrals, service coordination and integration, and monitoring (e.g. Child Support, legal services/courts, Family Violence, Mental health, Alcohol and Other Drug, Child Protection services)
 - Access to Family safety/violence workers integrated within FDR/FRCs
 - More FDR sessions- for separate issues (parenting, Child Support, finances?)
 - Psycho-education groups regarding understanding and applying the children's best interests
 - Child Support – basic info provision/knowledge by practitioners, phone links
 - Hybrid/Dual-practitioner FDR model (i.e. Family Counsellor and FDR practitioner)
 - Access to Child-inclusive practice and Legally-Assisted FDR.

Principles of the family law system

40 We agree that further work is needed to develop the values and principles of the family law system, and based on our experience we suggest direct involvement of senior practitioners from the various services in this work, and not just managers. We suggest the following principles are considered:

- The need for holistic assessment and targeted responses in relation to wellbeing risks for children and adults (for example, child abuse and neglect, family violence, mental illness, stress, persistent and severe conflict, suicide, homelessness and financial hardship)
- The need to assist individuals and families to navigate and access the family law system and broader health and community service systems
- The need to be *child-centred* in terms of recognising the vulnerability of children based on their developmental stage and impacts and in terms of the need for approaches which are inclusive and ensure their best interests
- The need to be *family focussed* in terms of using a whole-of-family approach to understand and respond to individual needs and relationship dynamics present in families
- The need to integrate services involved with families where possible, for example, through involvement of a family-based case-management function

- The need for a client-centred approach which supports and empowers individuals and families to access services and achieve wellbeing, for example through information provision and transparency of approach
- The need to ensure that all terms defined within the family law system are inclusive, so that all family types, relationship types are included and given equal legal status
- The need to ensure culturally sensitive and affirmative practice for individuals and families who identify as Aboriginal or Torres Strait Islander or with a culturally and linguistically diverse community
- The need for trauma-informed practice to be embedded in the system and services (see Appendix 3 for more information on trauma-informed practice)
- The need to ensure basic staff competencies in relation to family law, family violence, child abuse and neglect, mental illness, and family relationships and parenting (e.g. power dynamics, conflict, communication and children's development)
- The need to assist families to ensure safety for children and adults within families
- The need to ensure emotional and physical safety for clients and staff within services, and to ensure services do no harm
- The need to assist families to resolve disputes, through facilitated conversations, provision of education and skills and/or through effective referrals to other services
- The need to strive to not replicate relationship power dynamics within services and practices, but instead to ensure safety and to empower vulnerable family members to participate equitably in processes towards safe and suitable outcomes
- The need to seek client feedback and embed client and process evaluation within service processes

41 Section 43 of the *Family Law Act* appears outdated. (a), (b) and (d) in particular could be omitted or reworded to reflect contemporary community values, language and approaches.

44 These principles proposed are important.

46 We know that there are access issues for people in LGBTIQ+ communities. People experience barriers to access because of the expectation of discrimination, misrecognition, and misidentification. For example:

- (a) People in queer relationships experiencing family or intimate partner violence often have great difficulty in conveying their situations to legal and allied professionals. This can be because of gender stereotypes (i.e. women are not perpetrators of abuse and therefore women in same-sex relationships cannot be experiencing intimate partner violence). This provides barriers to access appropriate services for that particular couple, but because this is a social and cultural phenomenon, we know that the barriers to access are much wider: queer people *expect* not to be understood properly, *expect* to be interpreted via stereotypes and still *expect* to experience discrimination whether overt or not within the legal system (i.e. the barrier to access is a population-wide problem and not one of individuals, couples or people in relationships only).
- (b) One of the consequences of the above is significantly decreased safety for children in families where there is violence occurring. If we continue the example of a same-sex female couple, it follows that it will be assumed that the children also won't be experiencing violence. *drummond street services* has direct, frequent experience of children experiencing greater harm and greater threat of harm for these reasons. The failures of the Child

Protection system, of police, of psychologists, of judges, to recognise the possibility of the occurrence of family violence in women-led families places children at greater risk.

For these reasons, we recommend that there is ongoing, targeted training of all relevant people within the family law system, and that this training be provided by LGBTIQ+ specialist providers. We believe that this is an important component of producing cultural change towards non-discrimination and inclusivity which is required before the legal system can be regarded as accessible by groups such as LGBTIQ+ communities.

A key feature of an accessible legal system is that the system recognises *all* citizens of the country as equal before it. Queer family forms do not have this recognition before the law, and are therefore already unable to access the legal protections or to take up the legal responsibilities offered to others under the Family Law Act. For example, we know that there are people who are becoming parents but who have no parental status in the eyes of the law. Formation of family outside the conventional 'couple' paradigm has long been a feature of queer relationships, and there is inadequate recognition of these forms under current law: in many cases, for one parent to attain legal status, another parent has to relinquish theirs. The complexity of these family formations is difficult enough to handle for the families concerned without the added stress of having to conform to legal requirements that do not reflect the reality of the family they have created. Children, too, have less rights under the law as a result.

We therefore propose that the current system of legal recognition of families according to the standard couple as 'parents' and others as 'donors' be revised to include the full range of forms of family. This would be a more truly accessible legal system, enabling parents to have both rights and responsibilities in relation to their children, and the partners involved in parenting.

Access and engagement

Access to information

48 We agree with the concerns you have listed.

Despite the intention for Family Relationship Centres (and/or the Family Relationships Advice Line (FRAL) and/or FRSP Online) to be visible entry points to the family law system, our experience indicates families often stumble upon these universal services by chance. Centrelink, Child Support or lawyers are often the first points of contact with the family law system. These services need to provide clear information which sets out the scope, services and processes of the family law service system. Education materials should cover common parenting and financial issues which need to be sorted out, and common issues which arise which impact child and parent wellbeing, and where to go for help early.

In our experience, lawyers often do not facilitate engagement of families with community services such as therapeutic/counselling services for separating families, other than perhaps mandatory FDR. We have observed within court hearings, lawyers and judges not placing value on order conditions which require family participation in government funded family law therapeutic services, and where they have included conditions about participation in such services, they have often referred families to private practices or practitioners. Our experience indicates some individuals or families benefit from enforceable conditions to participate in therapeutic services towards positive change. Stronger partnerships between courts, legal services and practitioners, and family law support services are required.

Navigation assistance

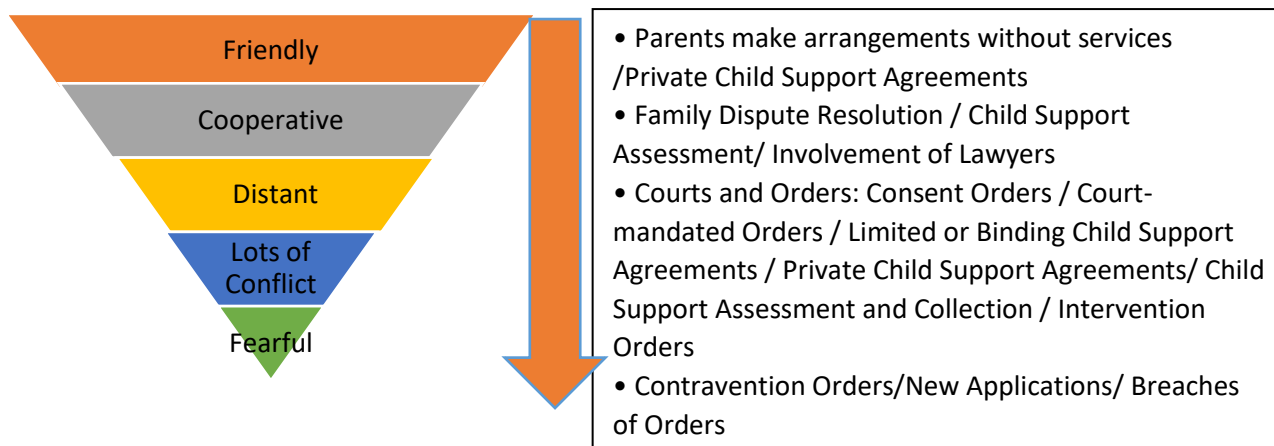
52 We agree a model that involves a case-worker would be highly beneficial for vulnerable families. We suggest the following service elements be considered:

Wherever the individual or family enters the service system, individuals and the family benefit from:

- initial thorough whole-of-family assessment, assessing the needs of all family members and the family (inter-parent) dynamics
- based on the assessment, families are matched to the levels and types of interventions needed (within or beyond the family law system)
- families with high conflict and/or family violence dynamics should be allocated a family case-worker to provide information, psycho-education, warm referrals to the full range of family law and health and community services, coordination and monitoring of service involvement for as long as is needed
- where there are risk issues identified including high conflict or significant disputes, all family members should be involved in the assessment process and be assisted to access therapeutic services. This includes children being seen by child consultants and/or referred to child-specific services or practitioners for support
- information gathered by the service and case-manager, including individual or family engagement and progress within services should be made available to courts as needed in the future, to assist decision-making.

In terms of assistance with navigating services, the following should be kept in mind:

- Separation involves a multitude of demands and stressors on families in terms of their time, financial resources, and emotional energy. Individuals and families may be having to deal with moving house, family violence, high conflict, mental illness, substance abuse, financial stress and /or housing insecurity/homelessness. Despite the many demands at the time of separation, involvement in pre-FDR support may assist FDR and other longer-term outcomes. Anecdotally we hear demands on families do not necessarily reduce over time after separation, as parents need to manage on their own or with new partner and possible step-children.
- Parents/carers need to make arrangements in at least 3 key areas:
 1. Parenting arrangements- e.g. care arrangements, handovers, other decisions
 2. Financial arrangements- e.g. Property/financial settlement, Centrelink payments
 3. Child Support arrangements- i.e. financial support of the children's ongoingFamilies benefit from a coordinated and integrated approach in relation to these three areas.
- Families with high conflict or family violence dynamics present should be made aware of and in some cases be ordered to participate in one or more of the range of support services available to them, including the government funded family law services of Counselling, Children's Contact Services, Supporting Children after Separation groups and counselling, and Parenting Orders Programs.
- When complexity, conflict, hostility or abuse/fear in inter-parental relationships levels are higher, levels of involvement with services and legal interventions also often needs to be higher, for example:



Our consultation with separated families within our Child Support policy papers indicated families with high conflict and/or family violence dynamics present may not be suitable for private arrangements regarding parenting and child support. Power dynamics may result in the more vulnerable parent compromising the child's wellbeing or their own in order to settle parenting and financial arrangements and avoid ongoing conflict or risk of violence.

Aboriginal and Torres Strait Islander communities

Culturally safe approaches that acknowledge the importance of cultural identity and self-determination for Aboriginal people and communities are critical. To that end, Aboriginal people and communities' access to and benefit from family law systems will be improved by a greater understanding of family structures within Aboriginal communities as defined by Aboriginal people themselves.

Culturally and Linguistically Diverse clients

66 In 2012 we completed a child support policy discussion paper entitled: *CALD Families' Experience of the Child Support System*. This paper is available from DSS and provides focus group findings and case study examples which highlight the issues and needs of CALD families in relation to the Child Support program and the family law system more broadly. Examples include the difficulties with trust of services, literacy, and the need for in-language resources, access to face-to-face consultations and flexibility of approaches and that are culturally inclusive and informed.

People with Disability

Lesbian, gay, bisexual, transgender, intersex and queer clients

87 In 2010 we completed a child support policy discussion paper entitled: *Queer families and the Child Support System*. This paper is available from DSS and provides analysis of the child support data collection, legal and policy issues which impact the LGBTIQ community.

89 In relation to same-sex parenting, it is not only children of male same-sex parents who are not covered by current laws or the non-biological lesbian co-mothers. The inquiry needs to consider the full range of family formations. In order to do this, the paradigm of parenthood itself has to be questioned. For example, we still insist that only two parents are listed on a birth certificate. Why is this the case? What is the logic of this? The registration of a child's birth is not a registration of the biological facts of their parentage, yet we still have systems that assume this is the case. Although birth registrations are a state matter, they provide a good example of the kind of logic that has to be deconstructed for any law to be truly representative of its citizenry.

91 Our *queerspace* service provides a range of services to support individuals and families who identify (or have family members who identify) as LGBTIQ. It assists many clients with post-separation processes, including how to manage children's welfare. Many of our clients want to avoid the legal system, and sometimes make decisions which are more costly for them (in both financial and non-financial ways) to avoid engaging with a system that does not understand and does not legally or culturally recognise our family forms. The law recognises our family forms only insofar as they follow the monogamous heterosexual paradigm of the couple established by the idea of marriage. We need a system that recognises the diversity of relationships and family forms, including the diversity of forms of parenting.

Regarding the exclusion of non-biological parents, we still privilege, in our society, the biological as a superior position in a hierarchy of parenthood, where a non-biological parent is regarded as having a lesser role and a lesser bond. In queer families, this is quite often not the case, with parents both biological and non-biological taking up equal identities and responsibilities as 'parents' of children. Yet we are persistently faced with others (experts, or people in power) undermining this form of parenting (either deliberately or simply by assuming this privileging or superiority of biology as a form of connection). We have clients currently who are non-biological parents of children and who are at the same time in a family violence situation where they are the protective parent of a child. We have had to take a strong advocacy role in these situations with Child Protection, with child psychologists and family therapists, who have failed to recognise family violence (between two women) and who have also failed to recognise the protective parent (assuming it must be the biological mother who is the protective one).

At the same time, it is important to note that the family law system, like our society, is still gendered and sexist, and that women's and men's positions are not heard equally. For example, where there are three people who become parents together, two women and one man, the person least likely to enjoy any legal protections is the non-biological mother.

93 *queerspace* is the lead agency in 'w/respect', an LGBTIQ+ specialist integrated family violence service in Victoria. We agree that prevalence rates of family violence for LGBTIQ people, according to current data, are similar to those in the general population. Given this, it is clear that the under-reporting is significant and also it is alarming that the failure to recognise and appropriately respond to LGBTIQ+ people experiencing intimate partner violence or family violence are so systemic and so widespread.

94 If a service is to be universal then its needs to be genuinely inclusive. It must examine how all services in the family law system are presently configured, including how target groups for these services have been defined, and what has to be redefined for the service to be genuinely inclusive. At the basis of the definition of relationships in the family law system is heterosexual marriage (and every second order assumption that goes with it), and this is what needs to change for LGBTIQ+ people to be genuinely included.

People living in rural, regional and remote areas

All elements of a Family Law System and its Principles must continue to ensure access to justice, therefore this includes the ability to offer the full range of whole-of-family support services, not just a sub-set or lesser services. Both judicial, government and service sectors must also invest and embrace the use of technologies to ensure access, including building on digital platforms such as apps, online telephone and web support services to ensure those in rural and remote areas access timely support.

Costs and access to the family law system

103 and 106 We strongly agree that legal and court costs can create an imperative for vulnerable parties' compromise to an unfair or unacceptable level in order to settle. We know from experience that vindictive and abusive parties use court legal processes and systems to further control and abuse the other party financially, practically and emotionally.

107 Increased access to low cost resolution mechanisms such as FDR for property and financial matters is important. We think enhanced FDR processes for vulnerable families and wrapping interventions (such as those listed in **167**) around children and families early in their separation may result in enhanced outcomes for children and families in the long run.

105 and 108 We agree the development of a fee schedule to regulate the costs of family reports would be beneficial, as well as unbundling of legal services, development of a fee schedule and development of complaints processes to help regulate services and empower parties in relation to legal costs.

Self-represented parties

110 We can understand parties resorting to self-representation when they have had high legal and costs and low satisfaction with legal processes and outcomes. Access to para-legal staff such as senior law students, to coach them in relation to paperwork and processes may be beneficial.

116 As is outlined, we are concerned about cases of family violence in which the perpetrator is self-represented and is able to cross-examine their victim/s.

The court environment

Legal principles in relation to parenting and property

124 Following on from points made earlier, legal recognition of parenthood requires legal recognition of a range of relationships outside the couple. A system of registering the relationships of people together and in relation to any child of those relationships would make the protection of all parents and of children with respect to both property and the rights and responsibilities of parenthood possible.

127 An additional factor for the court to consider (as above in **40**), is: the power, control and/or abuse dynamics between the parties and the need to not replicate these in processes or decisions.

129 In our experience there have been occasions when children in high in shared care arrangements of equal or substantial time with parties who are in high conflict have benefited from comprehensive prescriptive orders with less flexibility, and greater onus on parents to comply with existing orders more rigidly. Parties may need support with understanding and applying orders consistently, to help reduce ongoing conflict. As conflict reduces, they may be in a position to have more flexibility in their approach to orders. We have observed courts can hold the belief that where there is high conflict between parties, shared care is not suitable and they have increased the child/ren's time with one parent on this basis. Often the increased time is with the parent who happens to who hold the power in the inter-parent dynamic, without clear reasons backing this particular decision.

Our involvement in the evaluation of the Post Order Enforcement Pilots highlighted the benefits of services working with both parties to understand and apply Orders in a consistent way, and to clarify and amend orders directly with the courts when there have been mistakes or ambiguities in orders,

so that they can be applied effectively and help reduce conflict. Partnerships between services and courts, and new two-way communication processes, are essential to help high conflict families effectively apply orders that are made, to reduce conflict.

130 As above, we would add concern that the decision-making framework in Part VII of the Family Law Act does not adequately take account of how to approach families with high conflict and/or family violence dynamics. We also wish to note the need for the family law system to place greater emphasis on understanding and managing power dynamics and structures within relationships, and to endeavour to equalise power dynamics in family law system processes and outcomes, in the interests of children and families long-term.

In our experience use of the term ‘high conflict’ by services in relation to couple dynamics can hide coercive power dynamics, and can also hide the level of compromise being made by one party to settle financial or parenting matters.

We have observed legal practitioners and Judges to be unaware of or disregard coercive power dynamics between parties. Legal practitioners can put pressure on their own clients to agree to arrangements even if they are the ones who are constantly compromising, and Judges can make judgements and decisions which align with the more powerful party’s line. It is as though legal practitioners or Judges do not see the dynamics, or do not think the dynamics at play are relevant. They do not seem to see the considerable negative implications of their behaviours and decisions for the children and the weaker parent in the long-term.

We have been confused and concerned by this and are not entirely sure the basis of this. It is possible that the ‘culture’ of legal practice and courts involves disrespect for those who are not able to ‘hold their own’ in negotiations. Alternatively it is possible that the ‘culture’ leads legal practitioners and Judges to see the style of negotiation as being not relevant, and any outcomes or agreements made as being due to the decision and discretion of the parties involved.

Our experience in providing therapeutic services and evaluating post-separation services suggests that while two parties may contribute to high conflict dynamics and need to contribute to positive changes, often one party is driving the conflict or being less cooperative and more demanding and bullying. There may be reasonable reasons for this behaviour, including having being hurt or disempowered by the other party in the past. We consider both parties (and most importantly any children involved) in high conflict dynamics are likely benefit from child-centred family-focussed therapeutic assistance to gain insight into the dynamics, to increase their flexibility of thinking and behaviours, and to gain skills to change the harmful stuck dynamics. Involvement in therapeutic services should be pushed more within the family law system.

Family violence and parenting orders

132 We agree with concern that the current family violence definition omits misuse of process as a form of abuse, and does not mention psychological abuse. Examples of behaviours which could be covered include: a party being highly coercive/directive/dictatorial rather than ‘negotiatory’ in communication; using name-calling and derogatory comments; yelling or swearing at the other party; undermining the relationship between the other party and the children; regular demands to make arrangements which are in contrast to orders and which reduce time with the other party or are otherwise disruptive to the other party; regular non-compliance with orders even in seemingly small ways which are disruptive to the other party; or acting in ways which exclude the other party from involvement in decisions or services relating to the children.

133 We agree with these proposals regarding the decision-making framework. Further guidance for making decisions in relation to high conflict families and protecting children from conflict between parties would be beneficial.

Our experience with evaluation of Post Order Enforcement Pilots demonstrated the benefits of courts ordering high conflict families to participate in therapeutic services for children and families early in the judicial process, such as at mention or within Interim Orders. Providing external motivation for participation can result in beneficial outcomes including: increased parent insight into the experience and needs of children and increased insight into their own behaviours which maintain conflict and which are uncooperative with the other party. This participation needs to take place as early as possible in time following separation, and not after final orders are made so that courts can monitor engagement and progress of each party, and take this into account in final orders. Once final orders are made, the incentive for some parties to participate is gone.

The welfare jurisdiction

139 Our experience indicates Independent children's lawyers can be the biggest advocates within legal and court proceedings regarding the need for therapeutic services for children and families, whereas lawyers and Judges can at times be dismissive of the value of these services.

In line with our earlier comments, we consider the most effective advocates for children in queer-parented families or where the young person themselves is LGBTIQ+ are those people who do not bring prejudicial or false assumptions about gender or sexuality to their understanding of the needs and position of the child. Often children's lawyers can be very effective advocates for the child. We recommend ongoing cultural change within the family law system regarding these issues, which would include training of all staff at all levels of the court process.

Many clients of *queerspace* have felt unable to deal with the level of discrimination, misrecognition, stereotyping they have been subject to within the family law system, as they go through what is already a stressful and alienating process. The system would benefit greatly from a transparent, accessible process by which people involved in the system could bring their complaints forward. The management of complaints is clearly a complex problem, and could produce a misuse of process, but it is key for ensuring accessibility of family law services for all involved. It may be the only way for some people to have their position heard.

Arrangements for children and family diversity

We agree that Part VII of the Family Law Act should be amended to better reflect the diversity of families in Australia and support a consistent decision-making approach for all children regardless of their family structure.

140 The principle of inclusivity as applied to family law services would begin with redefining 'family' itself, rather than adding on the new types of family. The LGBTIQ+ forms often include several parents, and may or may not involve intimate partnerships between one or more members of the partnership group. There would ideally be an inclusive definition of 'parent' that encompasses all those in a contractual model, where people opt in to the role of parent in agreement with all others. This would allow people to plan and conceive children knowing that all parents have the same legal rights and responsibilities. There may be other processes required to recognise families which then

transform over time, either by relationship breakdown, the birth of other children within other related relationships, etc.

Property adjustment

151 We agree that within high conflict or family violence dynamics, a person who has less power or who has experienced violence may not achieve a fair outcome and may suffer long-term financial disadvantage within current decision-making approaches.

The replication of the power dynamics within legal and court processes and outcomes may play out in a range of ways. A disempowered and/or traumatised person who has been/is the subject of bullying or abusive behaviours may find it harder to think and communicate clearly, for example to write affidavits or communicate well verbally with lawyers or within a court context. They may be more likely to 'give in', compromise and settle by consent, even when it may be detrimental to the children (and to themselves) to do so. This may take place due to feeling pressure from their own legal representatives to settle, or due to financial and emotional costs accruing for them. 'Giving in' can take place for financial as well as parenting matters. To not 'give in' may be treated as being 'positional' or uncooperative', even by one's own legal representative, and a vulnerable party is more likely to be impacted by feeling criticised, and give in.

152 We agree with the suggestions made, for example, adopting of a 'community of property' approach (outlined in **149**), and requirement of the 'best interests of the child' also applying to adjustment of property.

We want to point out we have observed replication of power dynamics in relation to financial matters. Coercion by dominant parties in relation to financial/property matters has been acceptable within the system and resulted in compromise by weaker parties and outcomes which negatively impact the children and the weaker party financially, and in myriad other ways.

Examples are provided here. We have observed

- a more dominant parent refusing to participate in FDR in relation to financial (or parenting) matters, instead wanting to take the matters to court (which the other parent could least afford), and the FDR service providing an s 60I certificate indicating their assessment was the case was not suitable for FDR
- within 'negotiations' involving legal representatives, a more dominant (e.g. high income earning) parent demanding a hefty payment (e.g. \$20,000) from the weaker parent (e.g. who can only work part-time in low paid role and/or may have mental health issues or trauma impacts) in order for the dominant parent to agree to settle and accept a Child Support Assessment
- a dominant parent demanding consent by the other party to a \$0 Child Support liability, in order to settle financial matters
- dominant parents protracting negotiations over years by repeatedly making an offer and when the weaker parent agrees, withdrawing the offer and pushing for more gains
- dominant parents any of all of these strategies to achieve the financial outcomes they want

We have observed coercion such as these behaviours be seen as acceptable by lawyers representing both sides. Coercive 'negotiations' such as this are hidden from a Judge within FDR certificate grounds indicated by FDR services, within service confidentiality requirements, and within current 'without prejudice' legal processes. This is of great concern to us.

We have observed lawyers and Judges to consider this coercive behaviour as reasonable and within the scope of 'robust' negotiations and suitable outcomes. The level of compromise being made by one party can appear to be ignored by lawyers and Judges. Having one's own legal representatives condoning the behaviour and court outcomes, leaves weaker parties feeling confused. Court outcomes resulting can seriously impact weaker parents financially, emotionally/mentally and in terms of parenting arrangements agreed on.

Complaints processes regarding behaviours and failings of lawyers, barristers and Judges are too hard to access and to negotiate with people who are trained to negotiate hard for their living.

An example of this is a case in which one party who had higher income earning capacity coerced the other party who was on disability benefits (due to mental illness triggered by workplace bullying) to not seek Child Support Assessment and collection but instead to have a Binding Child Support Agreement with the high income earner not paying anything. The more vulnerable parent was told by their lawyer and Barrister they would not present well if they were on the stand and they were encouraged to settle financial matters by consent. In this case the lawyers and Judge missed or ignored the coercive and harmful nature of the negotiation style and the poor outcomes for the children and the vulnerable parent. The financial impacts of the decisions made have significant long-term negative impacts on the financial wellbeing of the weaker parent and the children in their care. In this case, the coercive parent was female. It was not clear if the legal professionals and Judge were also applying bias against the male for having mental illness and being perceived as weak.

Spousal maintenance

Binding financial agreements

163 As above, consideration of a weaker bargaining position and family violence dynamics should be able to be taken into account in decisions regarding binding financial agreements.

Resolution and adjudication processes

Timely and cost-effective resolution of litigated disputes

167 We agree with calls for greater use of orders diverting litigants to low-cost dispute options and other family law service options outside courts. Our experience with the evaluation of the Post Order Enforcement Pilots demonstrated the benefits for families with high conflict or family violence dynamics, being ordered to engage in therapeutic services prior to Final Orders being made.

In particular, findings indicated:

- ordered support services can be helpful in changing attitudes and behaviours towards increased cooperation
- The leverage of being court ordered was important for some parties to engage
- Even with court directives, some parties didn't engage with services, often one of the two parties was reluctant to engage and the other was motivated to, and those reluctant to engage had lots of 'no show's and/or 're-schedules' of sessions
- These services are suitable to be trialled earlier in the separation trajectory for families with high conflict (e.g. at the filing stage or Interim Order stage)
- The target group of families with entrenched high conflict (and related risk of returns to court) have complex issues and needs, and require a longer-term and flexible service model.

Effective diversionary services should involve access to a suite of services able to be applied flexibly based on assessment of child and adults needs, for example:

- Individual assessment for each adult party
- Clarification of existing order interpretations
- Psycho-education tailored to individual case needs (in individual and group contexts) to build understanding of children's best interests and practical strategies for managing family dynamics and parenting. For example, use of Adult Attachment Interview and/or Caregiving Interview within assessment, to build insight for positive change
- Individual adult counselling for managing trauma-related responses, and coping with their situation
- Close connection with a range of other post-separation interventions and services and other specialist support services for effective referrals and an integrated approach (e.g. specialist family violence, mental health and substance use services)
- Case-management/ follow-up with courts and other services
- Access to a legal practitioner to assist with consistent interpretation and application of orders and to liaise with courts where orders are problematic
- Use of Child-Inclusive Practice to build parent capacity to understand child/ren's experiences and focus on their best interests
- Therapeutic services for children (i.e. individual counselling and/or groups)
- Longer-term individual adult counselling
- Providing opportunities for parties to negotiate issues (i.e. hybrid/dual-practitioner Family Dispute Resolution (FDR) intervention and legally-assisted FDR) with clear lists of issues developed prior

Additional learnings were as follows:

- Effective referral pathways to family law support services require concerted and sustained collaboration (including face-to-face engagement) with local court staff (e.g. judges, court registrars, collaborative law groups, and Independent Children's lawyers) to develop effective two-way protocols for referrals and communication.
- If not earlier in the separation trajectory, referrals for families on Interim Orders at risk of ongoing conflict and court returns are a key opportunity to create positive change and outcomes for families
- Order wording should include that the court "requires parties to attend the service for assessment and to follow service recommendations"
- Order wording should include that the court "requires feedback from the service about attendance and service recommendations"

- Communication channels between courts and services are needed to address ambiguous or contradictory orders made by courts, to reduce conflict in the application of orders by families.

Small property claims

175 We agree with recommendation that the requirement of s 60I of the Family Law Act to attempt FDR prior to lodging an application for children's orders be extended to financial matters.

We are concerned about the application of s 60I certificates by many FDR services and practitioners, which excludes some families from FDR too readily. Currently there is no real consequence for parties who are not willing to participate in FDR. Resourcing is needed for services to be able to provide effective FDR interventions for more complex families, for example, resourcing to incorporate child-inclusive practice or legally-assisted FDR, as well as the suite of services listed above under **167**.

Appropriate dispute resolution for cases involving family violence

We strongly agree with many of the concerns and suggestions outlined, for example:

177 We are very concerned that the adversarial approach 'mirrors the dynamics of abusive relationships' and court processes can re-traumatise people who have experienced trauma.

We have observed legal practitioners and Judges to not take into account adequately the mental health and/or trauma-related vulnerabilities in parties. Processes have not taken into account that there is not a level playing field in, for example, communication and negotiation capacities. Commonly there has not been an effort to equalise power relations. Court outcomes have often compounded and laid into law the unequal power relations, further impacting vulnerable parties and children, emotionally/mentally and in ongoing parenting or financial arrangements.

179 The need for trauma-informed care (TIC) approaches across the family law system, services and processes. See Appendix 3 for more Information on TIC.

184 The need for embedding specialist family violence workers in family courts but also within family relationship and FDR services.

185 The need for expansion of legally-assisted FDR services for families with complex issues. In our experience exclusion from FDR to go to court may result either in the family not going to court and risk for children and parents continuing, or the family going to court and resulting in processes and outcomes which are not favourable for children or vulnerable adults. We have heard of cases of family violence which have benefitted from court involvement, but more so we have heard and seen cases where the court process has not worked well for children and the more vulnerable parent.

Misuse of process

190 We agree with the range of behaviours listed as misuse of process and a form of abuse.

191 We agree with the recommendation that the definition of 'family violence' in the Family Law Act be amended to include 'abuse of processes, and the recommendation to strengthen penalties as consequence.

198 drummond street, within our *Centre for Family Research and Evaluation* (CFRE) www.ds.org.au/research/ partnership with Deakin University, undertook an '**FDR Outcome Measurement Tool Development Project**' with the Partnership of Victorian Family Relationship Centres (PVFRCs), Department of Social Services (DSS) and the Attorney-General's Department (AGD).

The final report is still under consideration by DSS and AGD and has not been disseminated as yet.

A summary of the scope of the project is provided here.

Project outputs included:

- 1) A systematic literature review regarding suitable FDR outcome domains and measures
- 2) Interviews with key academics with expertise in post-separation family issues, and service and system outcomes and pathways
- 3) FDR service online surveys to determine FDR service outcomes from the practitioner viewpoint
- 4) A workshop with FDR Managers and senior FDR practitioners to consolidate the FDR program logic, articulate key outcome domains and conceptualisations and progress tool development
- 5) Review of existing relevant standardised measures and construction of new quantitative and qualitative items to cover identified client and process outcome domains and conceptualisations
- 6) Development of client and staff surveys, evaluation processes and documents
- 7) Human Research Ethics Committee approval for the evaluation
- 8) Four FDR service staff evaluation training sessions
- 9) Evaluation trial, conducted from 1st February to end September 2017 (nine months)
- 10) Evaluation implementation communication, monitoring and support
- 11) Quantitative and qualitative data analyses
- 12) Reporting and dissemination (Final Report).

Significant feedback was received from FDR practitioners regarding what the key FDR service objectives should be and how they should be conceptualised and measured. Key FDR service objectives were identified as follows:

- 1) To increase safety for all family members;
- 2) To enhance health, development and wellbeing of children and adults;
- 3) To improve communication and reduced conflict between parents/carers;
- 4) To increase capacity and cooperation of parents/carers to work effectively together in the best interests of children;
- 5) To improve capacity of parents/carers to make agreements/resolve disputes; and
- 6) To achieve client satisfaction with their experience of participation in a service.

Their fuller conceptualisations according to practitioners are provided in the Final Report.

Evaluation measures within Client and Staff surveys comprised both standardised and constructed quantitative measures, and several constructed qualitative items (e.g. regarding benefits of involvement and suggestions for service improvements). Outcome measures related to the key identified FDR service objectives and processes common across FDR services.

Linear Mixed Methods (LMM) analysis was used to identify significant change across the measures of key client and process domains, by matching client surveys at baseline and post-intervention surveys. Factor analysis was then used to determine which items on each scale were most predictive

of the total outcome, with the purpose of being able to propose a shortened version of the outcome measurement tool.

Characteristics of the sample are described in the report and biases acknowledged. Quantitative and qualitative analyses indicated significant improvements across a number of domains. Factor analysis enabled a comprehensive set of items to be reduced to just 26 items for future FDR outcomes evaluations.

Comprehensive feedback was gained from FDR practitioners regarding their experience of the evaluation and tools trialled, and in relation to the proposed shortened version of the client outcome measure, all of which fed into recommendations offered within the Final Report. Feedback contained wide ranging and contradictory views which made cohesive conclusions and recommendations challenging.

Overall, feedback in relation to the shortened version continued to indicate concern about the survey length, the wording of items, and other limitations. There were differing views on the evaluation processes but overall recommendations were able to be provided. Process outcomes in terms of which elements of FDR services clients participated would likely be able to be incorporated within current DEX data collection methods. Constructive suggestions were provided to improve evaluation design and delivery for the future.

In the Final Report, a shortened measure and simplified evaluation processes were provided along with recommendation that further engagement of practitioners and services in refinement of the measures and processes would likely assist sector engagement and implementation of outcomes evaluation going forward. FDR practitioners are passionate about their work and the outcomes they are working to achieve with clients and should be consulted directly and comprehensively for future evaluation or service developments. It is anticipated this would be the case for other professionals involved in the family law service system.

Further development of FDR evaluation methods will also need to take into account future developments of FDR service delivery and the family law system more broadly. For example, it may need to be able to account for outcomes for specific cohorts of clients using services (ATSI, CALD, LGBTIQ, families with Family violence and/or persisting high conflict), the range and integration of services and interventions accessed by clients, and the voice of children.

200 As above, we agree with the expansion of legally-assisted FDR services for families with complex issues as a strategy to avoid court processes and costs and to enhance longer-term outcomes for children and families.

Technology-assisted mechanisms to support client-led resolution

206 We agree there is a need for accessible information and dispute resolution processes for clients with less complex needs and for support to enable these clients to sort out issues and have control over processes without incurring significant legal costs.

208 We agree there is scope for the further development of online resources for these families. The examples provided sound promising.

Problem-solving decision-making processes

212 We agree with concern about the adversarial nature of court processes and the inappropriateness of the single event model for disputes about care of children where there are complex issues such as ongoing conflict and risk. We also make the point that high throughput of families through services should not necessarily be a sign of efficiency and success of services, or of positive outcomes for children and families longer-term. The achievement of service objectives such as those listed under **4** are a more suitable measure of success of services.

214 Problem-solving approaches as outlined sounds a promising approach for families with complex issues such as high conflict and family violence.

219 We consider judicial monitoring of a party's behavioural change progress over time would be beneficial to decisions and outcomes for some families, and changes to laws to enable this would be beneficial.

Family-inclusive decision-making processes

222 We agree Family Group Conferencing and Family Led Decision-Making models offer promise in terms of involving key members from the extended family or community in assessment processes and in negotiating suitable arrangements for children and families post-separation, outside courts. In many cases, the involvement of broader family in assessment, decisions and monitoring may increase safety and reduce conflict, but not always. At times it is the extended family that can escalate and maintain abuse or conflict, so suitability of this model or a given family would be based on the individual family assessment.

223 and **224** we agree use of FGC or FLDM models would be suitable for Aboriginal and Torres Strait Islander families, and those from culturally and linguistically diverse backgrounds, as well as those with family violence, and potentially families with high conflict as well.

Integration and collaboration

Integrated services and partnerships

231 We strongly agree with the need for increased collaboration, coordination and integration between the family law system and other systems including Child Protection and Family Violence service systems. We would add the need for greater integration between family law services also, including courts, legal services, Child Support and family relationship services (e.g. Family Relationship Centres, Children's Contact Services, Supporting Children after Separation groups, Parenting Orders Programs, Family Dispute Resolution services, the Family Relationship Advice Line; and Family Law Counselling services).

We have raised above the importance of direct communication between support services and courts to help families understand court orders in a consistent way, and to clarify or amend orders which are unclear or ambiguous.

In 2015 we completed a child support policy (*on behalf of the Department of Social Services ex FAHCSIA*) discussion paper entitled: *Exploration of the viability of incorporating Child Support*

discussions into existing Family Dispute Resolution (FDR) Practice. This paper comprehensively considered the challenges and benefits of increasing integration between FDR services and the Child Support system. This paper is available from the Department.

Further information and suggestions arising from our Child Support policy analysis work are provided below.

The child support program culture of staff is certainly perceived by a majority of male, and payer parents, to be biased against them, with attitudes of staff seeing them as someone from whom money is to be collected from, and that there is likely to be resistance from them in paying a fair and reasonable amount. The complexity of the administrative and bureaucratic process further confuses and alienates them. At the same time, a majority of female payees are experiencing highly stressful financial circumstances, with inadequate enforcement being undertaken, from their perspective. It appears an alternative paradigm should be considered, while a new conceptualisation is challenging and complex.

It seems reasonable to take into account all child care and financial arrangements post-separation in a holistic and integrated way, rather than to hive off child support process as a separate process from FDR or court hearings. This may enable full consideration of all aspects of the family circumstance and perspectives. It may help male payers to feel they have more voice and more say, even if a decision is made that is not entirely to their satisfaction. There would be an opportunity for enhanced face-to-face communication with qualified professionals, who can explain/educate, as well as provide some small therapeutic value, while supporting parents towards their own fair and reasonable decisions.

Private agreements and collection arrangements could be made via this method in the first place, but registered with the child support system for regular review and enforcement. Applications to change Child support arrangements could be put to an FDR process, with the service's full understanding of the family issues based on their assessment. Issues of dispute could be passed to the child support system to assess and decide Child support requirements.

Parents could approach FDR services in relation to issues of non-compliance, to attempt mediation, and again if not successful, refer to the child support system to finalise and to enforce if required.

In cases of family violence or proven/persistent non-compliance with Child support, then the legal authority of the child support system should be strong and uncompromising. This could include income and expenditure, tax fraud investigations, etc. and involve prosecutions and penalties which are also enforceable.

A greater involvement of FDR services in achieving Child support agreements would involve a shift of resourcing to FDR services in the initial stages, and a shift to the Child support program in cases of conflict or non-compliance, when their resources could be targeted to enforcement procedures.

Some FDR practitioners consider including Child support discussions in FDR processes may compromise a child focus, however a majority agree that issues of finances, parenting and child support are inter-related and that suitable training of practitioners and integration of the services, plus some additional resourcing for FDR services to provide more sessions to families who need it, would enable effective application by services and result in more suitable and sustainable outcomes for children and adults.

233, 234 and 237 These Family Safety, Family Advocacy and Support Service, and Children's Advocacy Centre Models sound very promising in terms of better managing and addressing risks in families.

Engaging in multiple courts

244 The idea of supporting state and territory courts of summary jurisdiction to exercise their family law powers where parties with family law needs are already before the court, sounds promising.

246 Suggestions regarding development of a national family and child protection system and development of digital hearing processes likewise sound worth exploring further.

Cross-jurisdictional collaboration

248 We strongly agree with concern about the limited collaboration and information sharing between family courts, children's courts and family violence courts. Serious problems exist in Victoria, despite the Magellan list and the co-location of child protection practitioners in family court registries.

249, 250 and 251 We agree with the recommendations listed. Any initiatives which promote cross-fertilisation of understandings, expertise and integration of processes would be beneficial.

253 We are aware that Child Protection services in Victoria can receive concerns regarding children in a separated family, and quickly deem it a 'family law matter' and without proper investigation close the case to let the family address concerns within family court processes.

In other cases, Child Protection may substantiate concerns about a particular parent, and ask the protective parent to address risk issues by seeking custody or conditions through the family court. In such cases, Child Protection practitioners often provide no documentation regarding their direction to the parents, and the onus is on the protective parent to follow through on their own. There is often no advocacy by Child protection or engagement with family court process to ensure the necessary outcomes are achieved, and there is often no follow-up to ascertain that the necessary outcomes were achieved. There should be greater involvement of Child Protection services in matters where risks are substantiated, to ensure suitable orders are made which can protect children and vulnerable parents.

We are also aware of Child Protection responses which 'reward' a parent who is a perpetrator of family violence by awarding them custody of the children due to them being seen as the more capable parent, for example when the other parent who is the victim of family violence has mental health or alcohol and other drug use issues and is seen as less capable. Often once a decision to place children with one parent is made, the attention and resources are directed to the parent with custody and there are long-term impacts on the involvement of the vulnerable parent with the children.

An alternative approach would be to place greater emphasis on empowering the vulnerable parent to receive suitable treatments, so they are able to manage the care of the children, and to place greater weight on the impacts for children of being raised by a parent perpetrator of family violence who has not demonstrated genuine behavioural and attitudinal change. Child abuse and neglect in the form of harsh punitive and abusive parenting, as well as the undermining of the relationship of the children with their vulnerable parent, often go hand in hand with family violence behaviours towards an adult parent.

Children's experiences and perspectives

257 In our experience, good Independent Children's Lawyers have often been the best advocates for therapeutic family law services for vulnerable children and families, including those with high conflict and family violence.

258 Child-inclusive practice is not common practice, and while it should be used with caution, and feedback to parents needs to ensure the emotional safety of children involved, we believe there is greater scope for its use to ensure 'best interests' FDR and court decisions and outcomes for children.

259, 260 and 261 These are interesting and important findings and proposals in relation to children's experience of process and outcomes with Independent Children's Lawyers. Models which combine legal representation and a therapeutic approach, and an opportunity for children to write directly to a Judge making decisions about their family appear promising approaches to trial.

Children and young people and FDR

265 and 267 We agree there appears merit in expanding child-inclusive practice and its evaluation, to ensure suitable practices and safety for children involved so they do not feel for example, increased pressure from parents or be exposed to retaliation by parents.

Children's participation and risks to children

268 Use of specialist counselling services and/or specialist child consultants to undertake conversations with children and provide feedback to parents is critical. Time to prepare feedback sessions with other practitioners involved with the family, such as FDRPs or other family counsellors, prior to delivery of the feedback to parents is important. We are aware of a service which has the child consultant present observing individual adult assessment appointments by HDRPs and/or Family Counsellors through a one-way mirror, to assist their understanding and planning of how to best communicate the children's needs to each parents.

Barriers to children's involvement in the family law system

Learning from the experiences of children and young people

Professional skills and wellbeing

Comments regarding therapeutic services provided to children outside the family law system:

Children are often taken by a parent to counselling services provided by community services other than family law children's counselling services. These other community services may not be trained in working with children in separated families dealing with high conflict or family violence dynamics. They may be unaware of the family law service requirement of the consent from both parents for a child to participate in services unless exceptional circumstances exist. This ensures both parents are involved in decisions about a child's health and wellbeing, unless the rights of one parent have been removed or it is judged in the children's interests to not require the consent from one parent. Such good practice with children in separated families should be made more widely known in the broader service system.

When a child is referred for counselling, counsellors and psychologists can focus on individual counselling with the child and not place adequate focus on family-based practice which involves assessing the family environment and inter-parent dynamics, and may seek to intervene with family dynamics as the priority in terms of the child's individual mental health symptoms. There is the need for broader community education to counsellors and support services of the range of needs of children from separated families and good practice in meeting presenting needs.

Even within the family law system, many therapeutic practitioners take an individual and not a whole-of family approach to working with children, and greater training in family therapy skills may be needed.

281 We agree with the skills gaps identified in relation to family law system professionals. We would add the capacity to identify risk and harm caused by persistent high conflict between parents, and to understand nuances and drivers of the conflict dynamics between parents.

282 We agree with the concerns raised, for example about the competence of some legal practitioners with respect to family violence and trauma-informed practice, and their practices at times escalating conflict.

We would add a lack of understanding and importance placed on power dynamics between parents can inadvertently replicate rather than equalise power dynamics. For example: legal practitioners may push vulnerable parents to compromise to agree or settle; and their practices may involve lack of clarity and empowerment in relation to fee structures, and lack of transparency and education in relation to court processes and culture.

We would add concerns about their knowledge of and the value they place on therapeutic services for families in the community including those in government-funded family law services.

It is our experience that Family Consultant Family Reports provided in Victoria can be problematic in terms of: not taking enough time with the family members and relevant others to build a complete understanding of the complexities of a case: reports at times appearing biased and not objective; escalating conflict in families and/or taking more resources for family members to address inaccuracies in assessments.

As above, lawyers and Judges have often not placed importance on linking families with therapeutic services and when they have ordered this, they have often referred families to private services and practitioners, some of whom demonstrate the bias seen in Family Reports. Evaluation of the assessments, reports and interventions used by these services is needed in our view.

283 We agree with the proposal in relation to training, and would note the need for a module regarding child abuse and neglect more broadly than just child sexual abuse, and to incorporate training in relation to power and conflict dynamics and effects on children, and trauma-informed care.

Professional wellbeing

291 We are not surprised to hear of the number of complaints against lawyers practicing in the area of family law. We acknowledge it can be a very difficult client base and highly complex issues are being dealt with. We acknowledge the need for people to go into this profession, and to be safe and able to sustain their work.

However, we also think practices and approaches of legal practitioners, and the 'private club' culture of legal practitioners within the courts needs to change, to be more transparent, empowering and effective for families. Lawyers charge immense costs which impact families greatly and legal processes and outcomes may not to the client satisfaction either. These all contributes to a negative attitude and lack of confidence in the family law system more generally.

The issue of the replication of power and abuse within systems is noted here, and the need for suitable supervision and support for staff to manage issues of anger and abuse in clients in a way which doesn't lead practitioners to project control onto a weaker or more vulnerable party.

Other feedback in relation to service evaluation and development within the family law system

Our experience with the FDR outcome measurement project alerted us to the need for the following in relation to development of outcome evaluations in this sector and in relation to development of this sector more generally:

- Direct early consultation and ongoing with senior practitioners, practitioners, Team Leaders, Administration Coordinators and Managers
- Involvement of clients in co-production (planning, design, implementation and review) processes
- Suitable times for establishment so services can tailor and implement processes and effectively manage change process with staff
- All service staff to be involved in training processes and where possible, onsite training for all relevant staff to allow for tailoring of processes to different service models
- Repeat training sessions be provided for new staff
- Easy to access online instructions and Frequently Asked Questions (FAQ) forums be available
- Evaluation data collection to be for a period longer than 6 months, to allow for sufficient data collection and client completion of interventions.
- Embed outcome measures within existing data capture systems (such as DEX)
- Suitable resources allocated for evaluation

293 We agree with the suggestions listed regarding supervision and caseloads.

Governance and accountability

Transparency and privacy

296 We agree with the need for greater transparency and accountability in relation to family law proceedings, combined with ensuring the protection of privacy of individuals involved.

We are concerned that privacy issues prevent family law services from sharing information which could benefit the decisions and outcomes in cases, for example in relation to the best interests of children related to parent behaviour or functioning.

Privacy related to FDR services prevents reasons for families being excluded from FDR and certificates being granted, being shared with parties. FDR services are reluctant to judge that a party did not show genuine effort to participate, and privacy issues can conceal lack of willingness of a party to negotiate or conceal coercive behaviours by one party who wants to use the system to harm the other party.

311 We agree with the need for formal complaints processes for family consultants and others providing assessment reports for family law proceedings.

A Case example

The case outlined here is illustrative of the experiences of processes and outcomes for the children and parents in a family with persistent, high inter-parental conflict. Drummond Street provided support for only one parent of the family (over a period of a year) and we consider there would be greater benefits for all involved in if there had been an experienced practitioner/service working closely with both parents towards the children's best interests.

While we acknowledge both parents are vulnerable, the parent we were supporting suffered from anxiety and depression, and other trauma-related impacts, from workplace bullying experiences a few years prior to separation. The behaviours of the other parent combined with the family law processes and system which were replicating the power structures in the relationship and further disempowering the parent were exacerbating those symptoms.

We acknowledge the likely vulnerabilities of the other parent, and the possibility that past behaviours of the parent we were working with may have significantly contributed to the current dynamic. For example, it is possible that in the past the parent we worked with may have been rigid, controlling, directive, critical or blaming of the other parent, but these behaviours were certainly not apparent during our involvement and in those behaviours were apparent in the other parent's behaviours. The other parent regularly asked for more time with the children in a directive and non-negotiable manner. She used derogatory language towards the vulnerable parent, and undermined their relationship with the children in subtle ways. The other parent was empowered and assertive in dealings with professionals and services.

The parent we worked with had provided well for the family financially over the years preceding the workplace bullying experience, to the point they had a home and no mortgage. The other parent had achieved a doctoral level qualification during this time. The parent we worked with had shared the parenting of the children, particularly when he was no longer able to work, two years prior to the separation.

At the time we commenced working with one parent, this parent was only able to manage very casual hours in maintenance work due to mental health issues and ongoing demands and impacts of the family law system and other parent's behaviours, and was on sickness benefits. This parent had stayed in the family home and the family financial assets had funded the housing of the other parent during the initial period of the separation. The other parent had re-partnered with a high income earner, and had herself worked in high income roles since the separation.

From our perspective, it appeared she had reduced the hours she worked to reduce her income, for the period of going through court processes (including finalisation of financial matters including child support), while her capacity to earn was much higher. The parent we worked with was unlikely to be able to work full-time in the foreseeable future due to mental illness, although if conflict was able to be reduced and family law matters settled, the rate of recovery and a return to work and a higher income would likely benefit. The parent we worked with placed all their focus and emotional energy on providing high quality parenting care for the children when they were with him. And any energy left was spent managing communications from the other parent and family law processes, and pursuing individual therapeutic support to get well. Their children is what gave him a sense of joy, satisfaction and purpose in their life. The children benefitted from a quality parenting approach, and great efforts without adequate support, to reduce conflict with the other parent but they were still being significantly impacted by the parental conflict.

For the purposes of this example, we will refer to the parents as 'the more dominant one' and 'the more vulnerable one'. In this case, the more dominant parent was a female, and the more vulnerable parent was a male. This may have impacted their experience of the family law system, in that the system may be biased against males who are vulnerable, but it also shows the replication of power structures, rather than disempowerment of a female parent based on their gender. Further research but also application of existing research relating to the role of gender within family law system processes and outcomes is needed, as well as the replication of power structures by the system.

At the time of our involvement with the more vulnerable parent, the parents had separated six years prior, and their four children were now aged 7-14 years. Final orders regarding parenting arrangements had been achieved by consent two years prior, via a few months of negotiations facilitated by a mutual friend in the family law profession.

At the time of our involvement, the dominant parent claimed the orders were complicated and confusing but it seemed only in so far as they did not accommodate the flexibility desired to have them fully her way. She would regularly endeavour to interfere with time the children had with the parent we worked with, and would not offer make-up time. The parent we worked with needed support to communicate in an assertive and effective way with the other parent.

The orders were comprehensive in order to accommodate the parents' various wishes at the time they were agreed on. The dominant parent was living one hour from the children's schools at the time they were negotiated. There were no significant changes which warranted them being thrown out and new orders negotiated. It is possible that the change that took place was the dominant parent's willingness to keep complying with the orders and an increased desire and efforts to gain more time with the children, and to potentially move the children to a school closer to her.

The other parent (applicant) wished to change existing final parenting orders and increase their time with the children who were in a shared care arrangement. And she wished to finalise financial settlement which were still not settled after six years within a court context. So the family were referred for mandatory FDR in relation to the parenting arrangements. They commenced with individual assessment appointments at a government funded FDR service, not an FRC. The parent we worked with was not sure how the process of allocation to an FDR service occurred. The parents were not offered pre FDR education sessions by this service, or resources regarding the best interests of the children. When later asked about this by us, the service indicated these were provided in their Family Relationship Centre FDR services only. The family were not provided resourcing to reduce conflict and focus on the children's best interests. The family was not offered child-inclusive practice nor legally-assisted FDR service. These are not commonly available within Victorian FDR services. No independent children's lawyers engaged. Our client was unaware of these options and possibilities.

Two children attended psychologists in the community at the mother's initiation regarding anxiety. The parent we worked with was not contacted by the psychologists for consent for their children's involvement, or for involvement in assessment processes. Psychologist review letters to GPs regarding their work with the children indicated the assessment was that inter-parent conflict contributed to child stress but the psychologists made no effort to involve either parent to address this or to refer the parents for support with their conflict.

In relation to FDR, the parent we worked with wanted to participate in FDR with a support worker and using two separate rooms in a shuttle process to address the issues in dispute. However a s 60I certificate was issued by the FDR service on the grounds that FDR was not suitable, and the other

party made application to the court. The more vulnerable parent was not told reasons for exclusion from the FDR service, and advocacy and appeal to the service manager by us was not successful nor illuminating. The vulnerable parent had no choice but to participate in further protracted legal and court proceedings. This significantly impacted them emotionally/mentally and financially, to the point they were at risk of losing their home.

The other parent had protracted financial settlement over years, for example, by offering for the parent we worked with to pay her \$20,000 for them to agree to a Child Support Assessment. When the parent we worked with reluctantly agreed to this to achieve settlement, the other parent withdrew their offer and would on no conditions agree to financial settlement unless the Child support liability was agreed to be \$0 in a binding agreement and further that their current Child Support debts were to be deemed covered/paid in the financial settlement. When the parent we worked with reluctantly agreed to this, in order to settle arrangements, the other parent then withdrew their offer and insisted on addressing financial matters in court.

It was clear from our perspective the other parent knew they would be the higher income earner and did not want to take responsibility for child support payments to the other parent into the future. The parent we worked with knew the costs of going to court would outweigh any gains in persisting with a Child support assessment and collection. The coercive nature of these 'negotiations' was known by respective legal practitioners, and they had no problem with this. The nature of the negotiations was concealed from the Judge by 'without prejudice' requirements. All signs from the Judge during the hearing, however, indicate he would not be concerned by such dynamics either. He was alerted to the presence of coercive dynamics with the affidavits provided by the parent we worked with, with us having provided significant support to write the affidavits.

The parent we worked with was told by their legal representative they would not present well in the stand, and to avoid going to hearing/trial if at all possible. Attempts the parent to ask their legal representative to advocate for court ordered therapeutic services to address inter-parent conflict were dismissed, and this was not put to the judge in initial mentions.

The court had the choice to dismiss the application to change the existing final parenting orders based on 'no significant change' since they were made, but proceeded with the application. A family report was ordered by the court. The assessment involved one hour with each parent individually and one hour with the four children together. The report noted the children's description of the clumsy attempts to explain what was happening by the parent we worked with. It noted the preference by the 14 yr. old to have more time with the other parent (of the same gender). It did not present the parent we worked with in very favourable light, despite indicating there were no protective concerns for these children. The other parent who was financially able to provide objects the children like and engage the children in many out of school activities, presented favourably.

The report recommended therapeutic services for the family to reduce the impacts of inter-parental conflict on the children, which was positive. The report further recommended given the 'high conflict' nature of the parents' relationship, equal shared care was not suitable and the children should be with one parent more. The report recommended not only the teenager who wanted more time with the other parent, but the other children (who did not express this wish) have more time with that parent in order to be with the older sibling. In our view there was inadequate reason given for this decision. The decision resulted in the children having to travel an hour further to and from school each day as the stronger parent had moved an hour away from the children's schools.

In relation to finances, the other parent offered to pay (low) school fees for the four children who attended state schools, and this was the decision of the court. The extra day of care and the school

fees being paid by the parent resulted in the stronger parent being named by the schools as the primary parent, and this had anticipated ripple effects of disempowering the parent we have worked with, to be genuinely involved in decisions regarding the education of their children.

During negotiations and court processes, legal practitioners were not placing any importance on the dynamics being played out. The parent we worked with was told to avoid going to trial as they would not present well in court (i.e. they may become emotional, given their mental health and trauma-related emotionality). The parent we worked with, at the encouragement of their lawyer, compromised on almost all points of disagreement, including reduced time with the children for no good reason, while the other parent made little if no concessions. Despite repeated requests by the parent we worked with, their lawyer did not advocate for court ordered family therapeutic services until the final hearing. A related condition was included to final orders, but there is no real way to enforce these after final orders are made. The other parent has subsequently refused requests by the parent we work with, to participate in these services.

In this case, the power dynamic was replicated within the family law system. The court experience compounded trauma related and mental illness symptoms in the vulnerable parent, and entrenched increased power and control with the more powerful parent in relation to the children, going forward. The impacts for the children is that they have less time and influence from one of their parents, their relationship with this parent has suffered, and they have seen their parent become more disempowered and their mental health decline as a result of processes. The parent we work with continues to pursue their own recovery as a matter of priority.

Examples of how the family law system could have provided improved processes and outcomes for the children in this family and their parents, are provided.

A whole-of-family caseworker would have had better understanding of both sides and how to best advocate and ensure children's needs and facilitate positive change in the inter-parental relationship. The family would have benefitted from education support to understand the children's best interests and their role in the conflict. Child-inclusive practice and/or dual practitioner or legally-assisted practice within the FDR service would likely have assisted, as well as involvement of independent children's lawyers in court processes. Therapeutic support for the family at the outset of the application to change the parenting orders, would have been beneficial, as well as mandated greater efforts by the other parent to participate in FDR processes.

Involvement of parents in child mental health assessment and interventions would also have been beneficial.

There was also no enforcement by the child support system in relation to the other parent's capacity to earn and pay more child support, or to pay debts assessed. There was no avenue for the child support system to know of the compromise being made by the parent with low income, which would impact the children while in that parent's care, going forward.

A whole-of-family practitioner should be a caseworker and therapeutic worker with experience and skills in relation to inter-couple conflict, family violence including psychological, child needs and best interests, mental illness and trauma impacts, family law and services to assist families to reduce conflict. It is worth the systems whole to employ highly experienced and skilled practitioners in this role rather than base level caseworkers and to enable sufficient resourcing to engage two practitioners where needed to work together in an integrated way with the family, undertake reflective practice, and to liaise and link with services.

One post orders pilot model we are aware of incorporated an FDR practitioner and family counsellor in dual and integrated support for high conflict and complex families. The two skill sets were considered beneficial to promote positive change. They also involved child consultant for child inclusive practice, individual counselling for adults (trauma- focussed where indicated) and therapeutic supports for children individually or in groups. Close connection and liaison with the courts was also found to be important to ensure orders that were understood and able to be applied consistently. These initiatives would have assisted the family in the case presented to achieve better processes and outcomes in the children's interests.

Appendix 1. Background in relation to drummond street services

drummond street has a remarkable history as one of the longest serving welfare organisations in Victoria. It was originally founded in 1887 as the *Charity Organisation Society*. From 1947 it operated as the *Citizen's Welfare Service of Victoria* (1947- 1996). In 1996 its name was changed to *Drummond Street Relationship Centre* to reflect a long-term focus on family relationships. In 2010, its name was changed to *drummond street services* to reflect a broader focus on individual, family and community wellbeing. www.ds.org.au

Our overarching mission is: *Promoting wellbeing for life*. We aim to support the wellbeing of individuals, families and communities across the life course from pregnancy to ageing.

We honour our 130 year history as an independent not-for-profit organisation by continuing two distinct *service streams*:

1. delivering services which creatively and effectively respond to changing community, social, economic and cultural needs; and
2. providing national thought and practice leadership through research, evaluation, education and advocacy.

Over the past 15 years we have grown from one site in Carlton, Melbourne, to eight sites stretching from Carlton in the inner north of Melbourne, across the north and west of metropolitan Melbourne, Wyndham and Brimbank, Whittlesea, to the regional City of Geelong.

We undertake community development and engagement activities to strengthen vulnerable communities and to actively engage community members into wellbeing interventions across the spectrum from promotion to recovery.

We have a centralised intake service which assesses risk issues for all family members and provides information and warm links to the full range of community services internal and external to our organisation.

We deliver education and therapeutic services for vulnerable individuals, families and communities. We aim to address a range of risk and protective factors for wellbeing in an integrated way, wrapping services around individuals and families, using a coordinated *care team* approach.

Our breadth of services includes: child and family services and parenting support services; *Stepfamilies Australia*; Youth programs; culturally diverse Community programs, in particular for newly arrived and Horn of Africa families in our catchments; **Queerspace** providing a range of programs for our LGBTIQ community; **iHeal** Royal Commission Support Service for those who impacted by childhood abuse; mental health and wellbeing services; Family violence recovery services; and our Research and Evaluation area of work.

Interventions types include: casework and support; individual, couple and/or family counselling; practical parenting coaching; seminars and multi-session groups; peer support; mental health, alcohol and other drug use, and trauma-related treatment and recovery support.

Our programs and practice are evidence-informed and evidence-based. We contribute to the evidence-base through undertaking new research, and we disseminate new knowledge and advocate for positive policy, system and program changes.

Our key *theoretical frameworks* include the following:

1. a *public health approach* which aims to positively impact the greatest number of people in our community through reliance on evidence and research, collaboration across sectors, and a focus on *prevention*;
2. targeting of *research-based risk and protective factors* across time and life course transitions and across multiple domains including individual (biology and psychology), family, peers/school, community and society (*an ecological approach*), understanding risk factors commonly co-occur and are inter-related and therefore require an integrated approach;
3. recognition that the greatest community impact is achieved through provision of universal services for all, and targeted services of higher intensity (dose) for those with greater needs (*proportionate universalism*);
4. recognition of the critical role of *social connection* for individual health and wellbeing and the importance of *family-focussed practice* to ensure strong and healthy close relationships and parenting approaches, for long-term individual and family wellbeing;
5. the necessity for *culturally affirmative practice* which recognises certain groups in the community are at greater risk of stigma, discrimination, and violence, and services need to strengthen equitable participation in our society for the wellbeing of all;
6. the value of *lived experience* as a specialist skill set within staff teams, and the importance of *co-production* of services with communities, service users and other stakeholders;
7. the need for *recovery-oriented practice* which recognises the prevalence of trauma and mental health issues within our community, and provides *trauma-informed services* and mental ill-health *recovery-oriented practice*, and which considers *restorative justice* for the recovery of victims and rehabilitation of perpetrators of violence.

Our two *Principles for Action* are: 1. Client-centred; and 2. Safe and Secure Environment.

Our six key *Values* are: 1. Leadership; 2. Diversity; 3. Inclusiveness; 4. Professionalism; 5. Quality and Transparency; and 6. Value and Innovation.

Appendix 2. drummond street's key work within the family law system

drummond street has been a provider of child and family counselling within the Federal Government family and relationship service sector since the 1960s. We recognise family separation is a key life course transition and for many, an adverse life event, which has the potential to significantly impact the long-term wellbeing of children and adults. Our service delivery includes programs to strengthen healthy family relationships and healthy parenting, and to address other stressors on families in order to prevent family breakdown. Our post separation services include groups, casework and counselling to help children and adults adapt to changes associated with separation and re-partnering, for long-term wellbeing.

The Stepfamilies Association of Victoria (established in 1981) came under the auspices of drummond street in 2008. **Stepfamilies Australia** holds the national office of the stepfamilies Australia network of state and territory branches and is known nationally as the peak body for research, professional training and best practice service delivery models for stepfamilies. Its website (<http://stepfamily.org.au/>) provides free educational resources and online forums for families and professionals (the Stepfamily Professional Network).

drummond street developed MyMob, <http://mymob.com> a smart phone application which is child centred and enables effective connection, communication and information sharing between family members who are separated or living apart for other reasons (<https://ds.org.au/free-parenting-tips/free-apps/>).

drummond street provided 12 Child Support policy discussion and response papers between 2010 and 2014, under funding by the Department of Social Services' (DSS) (previously Department of Families and Housing Community Services, Indigenous Affairs, FaHCSIA), *Child Support Policy Community Strategy*. These papers harnessed our connection with families in the community impacted by separation and sought to embed their voice within our policy analyses and research findings. Around 1000 community members provided feedback within surveys or focus groups, including payees and payers, mothers and fathers, those with positive experiences and those with negative experiences. Topics were as follows:

1. Queer families and the Child Support System- 2010
2. How the Child Support System works for Stepfamilies –2011
3. Young Adult Children and the Child Support System- 2011
4. Pathway to Support: The CSA and Vulnerable Families –2012
5. CALD Families' Experience of the Child Support System- 2012
6. Change of Assessment- 2010
7. Late Payment Penalties- 2011
8. Reasons for parents ceasing to have care in-line with their agreed or ordered care arrangements –2012
9. Limited, Binding, and Private Agreements (vs Child Support Assessments) - who uses them and what factors influence their effectiveness? –2014
10. Private Collect- In what circumstances is this collection method being used, and what factors influence its appropriateness and effectiveness? –2014
11. Parents' experiences of making arrangements between themselves to pay for children's additional expenses (outside of a change of assessment process)- 2014
12. Exploration of the viability of incorporating Child Support discussions into existing Family Dispute Resolution (FDR) Practice- 2015

Over the past 10 years Drummond Street has undertaken numerous research and evaluation projects in relation to separated families, in conjunction with our *Centre for Family Research and Evaluation* (CFRE) partner, Deakin University. Examples are provided below.

In 2015 CFRE was successful in becoming a member of the Department of Social Service's Expert Panel to provide sector support in program planning and evaluation. Over 18 months we supported more than 50 organisations nationally across program areas including: parenting and children's services; family relationships and post separation; Communities for Children; Refugee and Settlement Services; and across metropolitan, rural and remote Aboriginal communities.

In 2016-2017 under funding from DSS and the Attorney General's Department, CFRE led two key family law service evaluation projects:

- Development and trial of an Outcome Evaluation Framework and outcome measures for Family Dispute Resolution services, in partnership with the Victorian Partnership of Family Relationship Centres (VPFRC).
- Evaluation of two Post (parenting) Orders Enforcement Pilots, in collaboration with Uniting and Catholic Care Victoria Tasmania.

Most recently we have been successful in receiving funding for two innovative programs, which we anticipate will offer some critical learning and key service features which could apply within the Family Law system.

- Family violence recovery service for women and children incorporating specialist peer casework support workers who have personal experience of family violence in the past, and a specialist skill set resulting from that experience which they can use to support clients, in conjunction with other support staff. This incorporates monitoring and support for the peer support staff and assistance with career pathways beyond peer support roles.
- In partnership Merri Health we will provide a 'Family Violence Applicant and Respondent Support Service' at the Children's Court of Victoria. It involves: assisting applicants/affected family members and respondents to manage/navigate the Children's Court process and provide at-court support and advice about the court process on hearing date/s; assisting applicants and respondents to understand the conditions of orders; providing an immediate and coordinated service response, outreach and case management, to improve the safety of families and children; providing applicants and respondents with access and referrals to necessary support services including counselling, behavioural change programs and adolescent family violence programs; and to provide advice and assistance to victims and perpetrators of family violence in the context of criminal proceedings and child protection cases.

Appendix 3 What is trauma-informed care?

drummond street believes a trauma-informed approach needs to be embedded across the family law service system. Provided below are a summary of a number definitions and directions which the family law service system may consider towards this.

The Australian Centre for Posttraumatic Mental Health and Parenting Research Centre (2013)⁴ defined trauma-informed care (TIC) as referring to a “framework grounded in an understanding and responsiveness to the impact of trauma, that emphasises physical, psychological, and emotional safety for both providers and survivors, and that creates opportunities for survivors to rebuild a sense of control and empowerment. It incorporates an awareness of the impact of trauma and traumatic stress and recognition of the potential longer-term interferences to one’s sense of control, safety, ability to self-regulate, sense of self, self-efficacy and interpersonal relationships” (p. 14).

These authors indicate TIC commonly involves: (i) routinely screen for trauma exposure and related symptoms; (ii) use culturally appropriate evidence-based assessment and treatment for traumatic stress and associated mental health symptoms; (iii) make resources available to children, families, and providers about trauma exposure, its impact, and treatment; (iv) engage in efforts to strengthen resilience and protective factors of children and families impacted by and vulnerable to trauma exposure; (v) address parent and caregiver trauma and its impact on the family system; (vi) emphasise a continuity of care and collaboration across child service systems; and (vii) maintain an environment of care for staff that addresses, minimises, and treats secondary traumatic stress, and that increases staff resilience” (p.14-15).

Kezelman (2016)⁵ outlines the following key principles for trauma-informed practice within an organisation:

- Safety – both physical and emotional
- Trust – that develops over time between survivor and service
- Empowerment – and the acquisition of skills
- Choice – maximising the level of control that clients have over services
- Collaboration – sharing power between both parties
- Building positive relationships and experiences
- Understanding trauma – prevalence, dynamics and impacts
- Understanding client complexities – different culture and coping mechanisms
- Be informed about the trauma experiences of staff – both direct and vicarious

⁴ Australian Centre for Posttraumatic Mental Health and Parenting Research Centre (2013). *Approaches targeting outcomes for children exposed to trauma arising from abuse and neglect – Evidence, practice and implications. Report prepared for the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs*. Australian Centre for Posttraumatic Mental Health and Parenting Research Centre: Authors. https://www.parentingrc.org.au/images/Resources/Child-trauma-abuse-neglect-Evidence-practice-implications/Trauma_Feb2014_web.pdf

⁵ Kezelman, C. (2016) Trauma-informed Practice: How important is this for domestic and family violence services? Blue knot foundation, <http://www.blueknot.org.au/ABOUT-US/Media/Blog/ID/47/Trauma-informed-Practice-in-Domestic-and-Family-Violence-Services>

Kezelman and Stavropoulos (2016)⁶ outline the following trauma-informed principles that can be readily acquired by all human services staff irrespective of the type of work, level of qualifications or services they provide:

- Basic knowledge of the impact of stress on the body
- Embedding principles of safety, choice, collaboration trust and empowerment throughout service systems
- Focusing on the way that services are provided including how the service works and not just what it is.
- Attention to what the client has experienced rather than what is “wrong” with client/s.
- Recognition that a person’s behaviour may result from the way that they cope with trauma, often attempting to protect themselves.
- A strengths-based approach that harnesses people’s skills, while remaining aware of some of the challenges of trauma

Elliot et.al. (2005)⁷ developed a set of ten principles to be incorporated into trauma-informed models of care when working with victims:

1. Recognition of the impact of victimization on a person’s coping strategies
2. Recovery from trauma should be seen as the primary goal
3. Empowerment plays a key role in recovery
4. People should have choices over their own recovery
5. Rebuilding relationships and social supports plays a key role in recovery
6. Survivors all have different needs relating to safety, respect, and acceptance
7. Emphasising strengths is a key way to build resilience
8. Services should implements strategies to minimise the possibility of re-traumatisation
9. Culturally competent services should look at survivors within their own context, life experiences and cultural background
10. Consumers should play a key role developing services to suit their own specific needs (Elliot, et.al. 2005, pp. 465-469).

Wall et al. (2016)⁸ indicate trauma-informed care is based on a set of theories which provide practical direction for practitioners, programs and host organisations, as follows:

- Attachment theory – forming a secure relationship with a primary care giver forms a template for secure adult relationships. When early attachment is disrupted and attachment with a primary caregiver becomes insecure, fundamental affects take place that can impact a person throughout their life, including in areas of self-concept and interpersonal

⁶ Kezelman, C. and Stavropoulos, P. (2016), ‘Dealing with Trauma’, Law Institute of Victoria, <https://www.liv.asn.au/staying-informed/lii/lii/october-2016/dealing-with-trauma>

⁷ Elliot, D.E., Bjelajac, P., Fallot, R.D., Markoff, L.S. and Glover Reed, B. (2005). Trauma-informed or trauma-denied: Principles and implementation of trauma-informed services for women. *Journal of Community Psychology*, Vol. 33, 461-477.

⁸ Wall, L., Higgins, D. & Hunter, C. (2016). *Trauma informed care in child/family welfare services*. Australian Institute of Family Studies, Child Family Community Australia, No. 37, <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca37-trauma-informed-practice.pdf>

relationships. Healing requires a safe environment to expose disruption to the attachment relationship, and opportunities to build new internal models and “scripts” of the self and relationships.

- Self-regulation and control – childhood and early life trauma can disrupt very basic functions and patterns within the body and mind, including how people come to respond to threatening events. For these reasons, trauma treatment supports improvements in people’s self-regulation, sense of safety and security, sense of control and mastery of their environment, and modulation of emotional reactions to traumatic stimuli. Providing healing environments requires practitioners to be aware of the ways in which programs and organisations can trigger traumatic reactions (or even inadvertently replicate the dynamics of the traumatic events/relationships)—and seek to minimise them, and promote environments that facilitate positive experiences of coping and regulating emotions.
- Fundamental attribution error – as a rule, humans tend to overestimate personal characteristics and underestimate situational factors, meaning that we will ascribe problems to a person and their behaviours rather than to their environment or situational factors that are externally influencing a person’s behaviours, leading to people asking questions like, ‘what is wrong with you?’ rather than ‘what happened to you?’ Rather than an inherent personality flaw or behaviour problem, a person with complex trauma carrying multiple injuries in the interpersonal domain may be exhibiting the influence of their environment, including behaviours that have helped them to survive but that in other settings are unhelpful or dangerous. For healing to occur, new supportive environments that allow for ‘reprogramming’ of life scripts are important. In addition, practitioners need to be open to seeing the external influences, and ask the right questions.

Wills et al. (2016) state that at the very minimum, trauma-informed services aim to do no further harm (through re-traumatising individuals) by acknowledging that usual operations may be an inadvertent trigger for exacerbating trauma symptoms. This is particularly the case for OAI, which have so many potential triggers and hazards for re-traumatisation.

Substance Abuse and Mental Health Services Administration (SAMHSA) (2014)⁹ (the peak body for substance abuse and mental health in the USA) indicate trauma-informed care requires four key assumptions:

1. Realisation at all levels of an organisation or system about trauma, and its impacts on individuals, families and communities.
2. Recognition of the signs of trauma.
3. Response -the program, organisation or system responds by applying the principles of a trauma-informed approach.
4. Resist re-traumatisation - of clients as well as staff.

SAMHSA (2014) also outline six key principles of a trauma-informed approach:

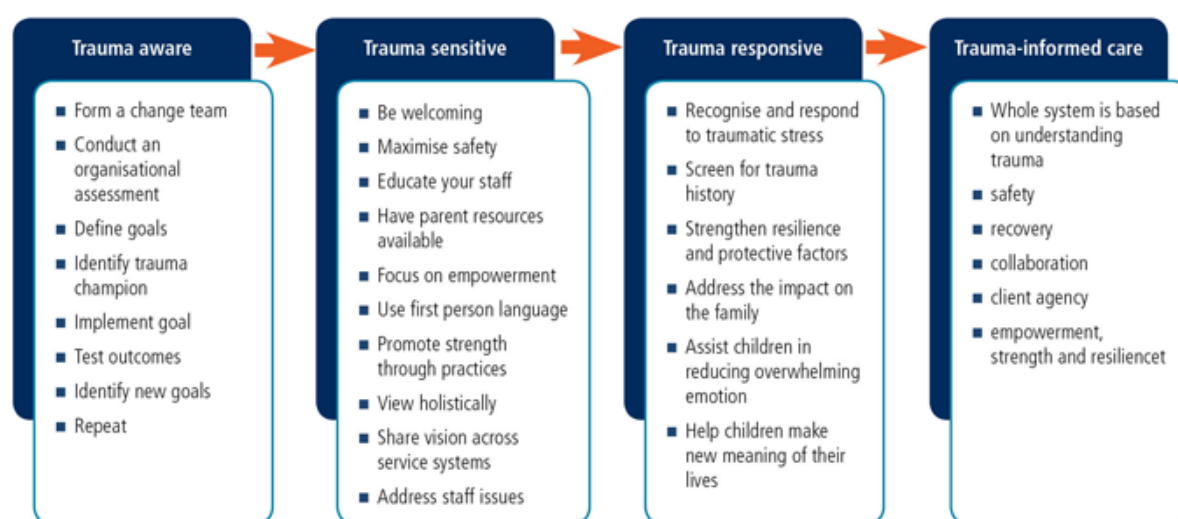
1. Safety - Staff and the people they serve feel physically and psychologically safe.
2. Trustworthiness and transparency -Organisational operations and decisions are transparent and trust is built.

⁹ <https://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>

3. Peer support - Peers are individuals with lived experience of trauma or their caregivers (also called trauma survivors).
4. Collaboration and mutuality - the need for levelling power differentials between staff and clients and amongst organisational staff to ensure a collaborative approach to healing.
5. Empowerment, voice and choice - emphasising the need for strengths-based approaches whereby the organisation and ideally the whole service delivery system fosters recovery and healing.
6. Cultural, historical and gender issues - incorporating processes that move past cultural stereotypes and biases, and embedding policies, protocols and processes that are responsive to the cultural needs of clients.

The Australian Government Australian Institute of Studies (AIFS) has an information exchange website called 'Child Family Community Australia'¹⁰. Its paper outlining trauma-informed care in child/family welfare services¹¹ defines trauma-specific services as those designed to treat and ameliorate the actual symptoms and presentations of trauma. This paper refers to a continuum from being trauma-aware (seeking information out about trauma and its implications for organisations, to being trauma-informed (a cultural shift as the systemic level), and provides the following diagram regarding practical steps for programs and organisations to become trauma-informed:

Practical steps to get from trauma aware to trauma informed



Source: Adapted by Antonia Quadara from Mieseler & Myers (2013)¹²

¹⁰ <https://aifs.gov.au/cfca/>

¹¹ <https://aifs.gov.au/cfca/publications/trauma-informed-care-child-family-welfare-services/export>

¹² Mieseler, V., & Myers, C. (2013). *Practical steps to get from trauma aware to trauma informed while creating a healthy, safe, and secure environment for children*. Jefferson City: Missouri Coalition for Community Behavioural Healthcare. Cited in: <https://aifs.gov.au/cfca/publications/trauma-informed-care-child-family-welfare-services/export>