

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

14 May 2018

By email: familylaw@alrc.gov.au

Submission to the Review of the Family Law System

Dear Panel Members,

Community Legal Centres NSW (CLCNSW) and the Community Legal Centres NSW Regional, Rural and Remote (RRR) Issues Committee welcome the opportunity to make this submission to the Review of the Family Law System.

About Community Legal Centres NSW

CLCNSW is the peak representative body for almost 40 community legal centres in NSW. Our team supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Community legal centres (CLCs) are independent non-government organisations that provide free legal services to individuals and communities, at times when that help is needed most, and particularly to people facing economic hardship.

CLCNSW represents the views of community legal centres to the government and broader community, advocates on key law reform and policy issues, and supports community legal centres to improve the efficiency and quality of services they deliver to the community.

CLCNSW is advised on matters relating to family law by the CLCNSW Care & Protection Network, and has worked on this submission in conjunction with lawyers and other community legal centre workers from rural, regional and remote communities, in the RRR Issues Committee. The RRR Issues Committee is open to any RRR members of CLCNSW to discuss issues for service delivery and sustainability for CLCs operating regionally and remotely.

General comments

Community Legal Centres NSW endorses the submissions of our member organisation, Women's Legal Service NSW. This is a joint submission from Community Legal Centres NSW and the Community Legal Centres NSW RRR network, with a specific focus on the challenges in access to justice in family law for people, families and communities in regional, rural and remote NSW.

Summary of recommendations

CLCNSW recommends that:

1. Local court magistrates should receive specialist training in family law.
2. Greater funding should be allocated to judges in rural, regional and remote areas.
3. There should be more sitting dates for the Federal Circuit Court in rural, regional and remote areas.
4. Audio visual link facilities should be installed in local courts in areas where there are no Federal Circuit Court sittings, or where sittings are rare, to allow for clients to access the Federal Circuit Court in other areas.
5. Subsidies should be provided to clients with limited resources to travel to attend court or face-to-face family dispute resolution.
6. Computers should be made available for those with a family law matter to use in the registry, and an administrator should be employed to assist people to use these computers.
7. There should be separate entrances for Applicants and Respondents, to both courthouses and courtrooms.
8. There should be a greater number of safe rooms in local courts, and the locations of these should be adequately planned.
9. Wheelchair accessibility measures should be implemented in all courts, such as ramps, automatic doors, lifts and appropriate carparks.
10. Funding should be provided for legally-assisted family dispute resolution with domestic violence and trauma-informed mediators and lawyers, for some matters that include family violence.
11. Early and ongoing risk assessment by specialists in family law risk assessment must accompany any expansion of legally-assisted family dispute resolution to some matters that include family violence.
12. Any reforms made to family dispute resolution that impact Aboriginal and Torres Strait Islander people and communities should be led and co-designed by these communities and Aboriginal-controlled organisations. Any reforms made to family dispute resolution that impact culturally and linguistically diverse people and communities should be led and co-designed by these communities and community-controlled organisations.
13. Family dispute resolution services should be made available in a greater number of rural towns.

14. Online dispute resolution processes should be limited to the most straightforward matters, and are not appropriate for matters such as family law property matters and family law children's matters.
15. Online dispute resolution should only be implemented and expanded if in conjunction with the provision of computer services in local Federal Circuit Court registries, as set out in recommendation 4, and on the condition that the option of paper forms is not removed.
16. Family dispute resolution processes should ideally remain face-to-face, with the provision of travel subsidies, and the option of shuttle mediation where appropriate.
17. Indigenous List should be expanded into regional, rural and remote areas.
18. Courts should be provided with the wait times for any services they order clients to attend.
19. Registrars or similar court staff should coordinate what parties have been ordered to do between court dates.
20. Specialist Domestic Violence Courts should be trialled to address all legal matters relating to domestic violence.
21. Community legal centres should be funded to hire designated non-legal workers to provide non-legal services to family law clients.
22. Every community legal centre should be funded to hire Aboriginal Legal Access Program workers.
23. Family Law Pathways Networks should engage workers from the FCC as chairperson. This can be carried out in conjunction with recommendation 12, with a registrar tasked with coordinating family law matters between court dates, and chairing the FLPN.
24. Training should be provided at Family Law Pathways Network meetings.

Accessibility of the family law system for regional, rural and remote communities

Question 9 of the Issues Paper asks:

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

Many regional, rural and remote (RRR) areas do not have Federal Circuit Court (FCC) sittings, or sittings are few and far between. Family law matters therefore often have to be filed in the local court in RRR areas. This creates issues when local court magistrates have little experience with family law matters; they often refuse to deal with these matters and send them to FCC, creating greater delays for the clients in an already delayed system. Clients are faced with a choice to either wait significant amounts of time for the next FCC sitting in their area, or, where there is no FCC sitting in their area, travel significant distances to access FCC. Family Dispute Resolution services are also geographically limited. There are several measures that should be taken in order to reduce instances of significant delay in family law proceedings in RRR areas, and of RRR clients having to travel significant distances in order to attend FCC or face-to-face family dispute resolution.

If more local court magistrates in RRR areas received specialist training in family law this would greatly assist people in RRR areas to resolve their matters with minimal delay. This is particularly important with urgent family law matters including recovery orders and relocation injunctions; and also straight forward family law matters for example name change applications.

There should be an increase in funding for judges, including in the area of family, to allow for more sitting dates for FCC in RRR areas. For example, Dubbo has between 4 and 6 sittings of FCC per year; this number could be greatly increased. There are already high volumes of cases being lodged at the FCC in Dubbo because it is the only FCC in that greater RRR area, the nearest FCC is in Parramatta. Further FCC sittings would significantly reduce delays.

Case study: Lengthy delays for a domestic violence victim seeking a divorce in a RRR area

A victim of domestic violence approached a RRR community legal centre for assistance to file an Application for Divorce. She did not have the address of her husband. The Application was filed with the court on 22 June 2017, but the first divorce listing date was not until 5 months later, on 20 November 2017. When a community legal centre solicitor attended court on the client's behalf, the solicitor had to apply for special leave for substituted service; the next court date was not until 13 March 2018, 9 months after filing. The divorce was finally granted on 14 April 2018, nearly 10 months after filing. This is a delay that is regularly incurred by RRR clients.

Case study: Delays in a simple application for a grandfather to spend time with his grandchildren in a RRR area

A RRR CLC helped a grandfather apply to the FCC to spend time with his grandchildren who were in the care of their grandmother, his ex partner. They filed on 9 February 2017, and the first court date was 1 May 2017. The court ordered an adjournment because the respondent did not show up. No orders for time were made, and the next court date was 25 July 2017. On the next date, the respondent showed up but stated that she was unable to get legal representation, and so the court allowed yet another adjournment, until October 19 2017. Again, no orders were made for the client to spend time with his grandchildren. At this stage, it had been more than 8 months since filing, and the client went to Legal Aid for representation. The centre still does not know if the client has been able to spend time with his grandchildren, or how long the process took.

In areas where there is no FCC at all, the local court should have audio visual link facilities installed in a designated room, where clients in the family law system can effectively access FCC via their local court. These audio visual link facilities could also be used by clients to access FDR services in other areas. This would also assist local courts to stay open.

Many people in RRR areas have no choice but to travel in order to attend court or face-to-face FDR, and in these instances they incur a large burden of costs for travel and accommodation. In these types of cases these people should receive subsidy to travel and potentially stay overnight at the location of the court or FDR. This could be for clients who are particularly remote and need to travel more than say 200km to the court.

Case study: Accessing courts via telephone

The respondent to property settlement proceedings filed in Newcastle was a client of a RRR CLC, who lived 3.5 hours from Newcastle and who suffered from a mental health condition that prevented him from working. The client could not afford to make the trip to Newcastle as the trip would have cost more than \$200, factoring in petrol and accommodation. The client's mental health condition made it difficult for him to focus and complete simple everyday tasks. Along with drafting his financial statement, affidavit and response, the CLC also applied for him to appear via telephone. This application was successful. Property settlements are a lengthy process with many court appearances, and the client was required to lodge an application to appear via telephone for every court date. It would have been much simpler if the client had been able to register as a rural party and opt to appear by telephone or via an alternative remote access method such as an AVL in his closest court for every court date, rather than having to make an application for each appearance.

A significant barrier to people in RRR areas is a lack of reliable access to a computer and to the internet, which are sometimes necessary throughout family law proceedings. FCCs could host some computers for the use of clients with family law matters, alongside an administrator role to assist these clients. This is particularly important with a very recent direction from the FCC registry that they would prefer online Applications for Divorce only and may stop accepting paper applications.

Recommendation 1 – we recommend that:

Local court magistrates should receive specialist training in family law.

Recommendation 2 – we recommend that:

Greater funding should be allocated to judges in rural, regional and remote areas.

Recommendation 3 – we recommend that:

There should be more sitting dates for the Federal Circuit Court in rural, regional and remote areas.

Recommendation 4 – we recommend that:

Audio visual link facilities should be installed in local courts in areas where there are no Federal Circuit Court sittings, or where sittings are rare, to allow for clients to access the Federal Circuit Court in other areas.

Recommendation 5 – we recommend that:

Subsidies should be provided to clients with limited resources to travel to attend court or face-to-face family dispute resolution.

Recommendation 6 – we recommend that:

Computers should be made available for those with a family law matter to use in the registry, and an administrator should be employed to assist people to use these computers.

Changes to the physical design of the family courts

There are some physical changes to family court venues that could better protect the safety and other needs of clients.

It has been noted that victims of domestic and/or family violence can feel intimidated if they arrive at court and have to walk past a perpetrator already present in the room. In order to maximise the safety of clients in family law matters that include domestic and family violence issues, courthouses should have two entries, and so should court rooms; one for Applicants and one for Respondents. Where this is not possible, a court liaison officer should be available to organise when the victim and the perpetrator arrive and leave the court.

Often in RRR areas local courts only have one safe room. In some courts they do not have one at all. If the courts do have a safe room, often the location of this safe room is inappropriate. There should be more safe rooms at courthouses, and the locations of these should be thoroughly planned so as to maximally protect victims from potentially facing perpetrators.

It is important that courts all have wheelchair accessibility measures implemented such as ramps, automatic doors, lifts where applicable, and appropriate nearby carparks. For example at the Dubbo FCC there is not a carpark available. The nearest car park is the Coles complex which is quite a distance from the court.

Recommendation 7 – we recommend that:

There should be separate entrances for Applicants and Respondents, to both courthouses and courtrooms.

Recommendation 8 – we recommend that:

There should be a greater number of safe rooms in local courts, and the locations of these should be adequately planned.

Recommendation 9 – we recommend that:

Wheelchair accessibility measures should be implemented in all courts, such as ramps, automatic doors, lifts and appropriate carparks.

Legally-assisted Family Dispute Resolution (FDR)

Currently, FDR is presented as a cost-effective option for parties to negotiate property settlement in family law matters in a structured environment. However, FDR could play a role in some cases in which there is family violence, where this FDR is legally assisted and set up to address power imbalances with the support of domestic violence and trauma-informed mediators and lawyers. Shuttle mediation can be an additional safety mechanism, and help reduce stress.

However, any approach to expanding legally-assisted FDR to some cases that involve family violence should be subject to the implementation of early and ongoing risk assessment by specialists in risk assessment in family law, so as to ensure that FDR does not proceed in circumstances where this may lead to unsafe outcomes.

Any reforms made in the areas of FDR as relates to Aboriginal and Torres Strait Islander people and communities, and culturally and linguistically diverse people and communities, should be led and co-designed by these communities and community-controlled organisations.

FDR is available in a few remote towns. For instance, Interrelate and Centacare in Dubbo do some travelling to Coonabarabran, Coonamble and other surrounding towns up to about two hours away. However, people in towns further away such as Lightning Ridge and Bourke are given an initial telephone consult but are then expected to travel to Dubbo to attend FDR. This is the case for many RRR areas of NSW. FDR services should be rolled out to more rural towns to increase accessibility.

Recommendation 10 – we recommend that:

Funding should be provided for legally-assisted family dispute resolution with domestic violence and trauma-informed mediators and lawyers, for some matters that include family violence.

Recommendation 11 – we recommend that:

Early and ongoing risk assessment by specialists in family law risk assessment must accompany any expansion of legally-assisted family dispute resolution to some matters that include family violence.

Recommendation 12 – we recommend that:

Any reforms made to family dispute resolution that impact Aboriginal and Torres Strait Islander people and communities should be led and co-designed by these communities and Aboriginal-controlled organisations. Any reforms made to family dispute resolution that impact culturally and linguistically diverse people and communities should be led and co-designed by these communities and community-controlled organisations.

Recommendation 13 – we recommend that:

Family dispute resolution services should be made available in a greater number of rural towns.

Online Dispute Resolution Processes

Question 28 of the Issues Paper asks:

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

As divorce matters are generally the most straightforward family law matter, an online system for these matters would be useful, particularly for clients in rural, regional and remote areas. This process could be similar to the District Court Online Court processes currently used in some civil law matters. It would be useful to have a registrar online, potentially based in Sydney, and for rural, regional and remote-based clients to log on to have divorce granted. It may also be appropriate to implement an optional online process for consent orders.

For family law property matters and family law children’s contested matters, online processes are not appropriate due to the complexity of these cases.

Also relevant to this question is the fact that people experiencing disadvantage often lack consistent access to computers and to the internet. In order for online processes to be successfully adopted, this measure must be taken in conjunction with the provision of computer services in local FCC registries, as well as an option for paper forms to still be lodged in lieu of taking online processes. They must ensure that it does not become online only, this places many people at a greater disadvantage.

FDR processes are very challenging when parties and the mediator are in different locations and participating via the phone or the internet. FDR should remain face-to-face wherever possible, with the (as outlined in recommendation 5) provision, where necessary, of travel subsidies, and the option of shuttle mediation where appropriate.

Recommendation 14 – we recommend that:

Online dispute resolution processes should be limited to the most straightforward matters, and are not appropriate for matters such as family law property matters and family law children’s matters.

Recommendation 15 – we recommend that:

Online dispute resolution should only be implemented and expanded if in conjunction with the provision of computer services in local Federal Circuit Court registries, as set out in recommendation 4, and on the condition that the option of paper forms is not removed.

Recommendation 16 – we recommend that:

Family dispute resolution processes should ideally remain face-to-face, with the provision of travel subsidies, and the option of shuttle mediation where appropriate.

Processes for risk management for children in families with complex needs

Question 29 of the Issues Paper asks:

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

Aboriginal and Torres Strait Islander children and families can have complex needs better met by the Indigenous List. This should be expanded beyond just city areas and into RRR areas.

Courts often send clients to relevant services such as counselling, drug testing centres, and rehabilitation. However, these services can often have significant waiting times, particularly in RRR areas. Courts should be provided with the wait times of any services they send clients to, so that they can make appropriate orders, both in the services they choose to order clients to attend, and in the timeframes they set for clients to attend these services.

Where there are complex matters and multiple court dates, there is a need for support to coordinate this. At present, when a court makes orders, there is an expectation that by the next court date, parties will have complied with these; however this often does not happen and there are increasing delays. Special registrars or court officers should be given the role of coordinating with parties on court orders. This may lead to a new listing date, if parties are ahead or delayed with court orders. Registrars or similar court staff have the background for this job, as they carry out a similar role in the local court small claims process, and they should also have this role in family law matters.

Recommendation 17 – we recommend that:

Indigenous List should be expanded into regional, rural and remote areas.

Recommendation 18 – we recommend that:

Courts should be provided with the wait times for any services they order clients to attend.

Recommendation 19 – we recommend that:

Registrars or similar court staff should coordinate what parties have been ordered to do between court dates.

Engagement with multiple courts to address safety concerns for children

Question 32 of the Issues Paper asks:

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

At present, when an ADVO matter is heard, it will be in an open court room. This often means that victims are reluctant to report domestic violence for fear that their matter will be heard by everyone who is in the courtroom at the time. On list days this could be 50-100 people.

A specialist Domestic Violence Court could be trialled to address all legal matters relating to domestic violence, such as ADVOs, family law children’s and property matters. These could make use of specialist judges/magistrates with superior training in domestic violence and trauma.

Case study: Complex property and parenting proceedings in a case involving domestic violence

One RRR CLC had a client who had experienced very serious domestic violence, and wanted to retrieve some of her property from the marital home. The other party would not allow her to do so. She requested a Property Recovery Order with the Police Prosecutors but it is unclear how this process has progressed as yet. She is simultaneously having to get parenting orders as the other party is using the child to contact the client. Victims of domestic violence should not have to go through years of property and parenting proceedings with their abuser. A specialist domestic violence court would assist in complex matters such as these.

Recommendation 20 – we recommend that:

Specialist Domestic Violence Courts should be trialled to address all legal matters relating to domestic violence.

Gaps in legal assistance for clients with family law matters

Clients of community legal centres often have complex and diverse needs. Community legal centres should be adequately funded to address these needs. This should include funding for workers to provide necessary non-legal services, so that solicitors can devote time and resources to legal services. This should also include funding for Aboriginal Legal Access Program workers in every community legal centre, to ensure the cultural needs of Aboriginal and Torres Strait Islander clients are met.

Family Law Pathways Networks may be less successful in some areas than others. Generally it is the experience of RRR solicitors that FLPN are more successful where a staff member from the FCC is the chairperson. The connection that the chairperson has to the court is imperative. If recommendation 12 were taken up, and a registrar be tasked with coordinating matters between court cases, then we would suggested that part of this role could also be to coordinate the Family Law Pathways Network. FLPN meetings should also include training for local solicitors.

Recommendation 21 – we recommend that:

Community legal centres should be funded to hire designated non-legal workers to provide non-legal services to family law clients.

Recommendation 22 – we recommend that:

Every community legal centre should be funded to hire Aboriginal Legal Access Program workers.

Recommendation 23 – we recommend that:

Family Law Pathways Networks should engage workers from the FCC as chairperson. This can be carried out in conjunction with recommendation 12, with a registrar tasked with coordinating family law matters between court dates, and chairing the FLPN.

Recommendation 24 – we recommend that:

Training should be provided at Family Law Pathways Network meetings.

More information

Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact us via clcnsw@clcnsw.org.au or on 0209212 7333.

Regards,



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