

**Review of the Family Law System: Issues Paper 48 (March 2018)**

**Response from Mallee Family Care (May 2018)**

**Introduction**

As a non-government, not for profit community service agency with a vision to empower the vulnerable and disadvantaged in our communities, Mallee Family Care welcomes a comprehensive and holistic review of the Australian Family Law System. Mallee Family Care provides both Community Legal and Family Relationship Services to rural and remote families interacting with the Family Law system and is therefore pleased to contribute to the long-awaited review.

The *Issues Paper* provides a comprehensive overview of concerns arising in the operation of the Family Law System, many of which have been addressed in specific, targeted reviews, and which are now brought together to address the system as a whole. Mallee Family Care is pleased to provide comment below, and will look forward in the coming months to the opportunity to comment more comprehensively on the ensuing Discussion Paper.

Mallee Family Care’s comments below, addressing the issues most relevant to us, have been drawn from legal and non-legal staff experiences in supporting clients through the complexities and exigencies of the family law system.

***Objectives and Principles***

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

A modern family law system should be responsive to the needs of the diverse Australian community, and reflective of the needs of the changing landscape of Australian relationships and family structures and arrangements. The family law system supports the implementation of Family Law in Australia and should ensure fair and equitable access to the determinations and provisions of the law. The Family Law system should provide an independent and impartial (with the exception of prioritising the needs of children) forum for the resolution of family relationship and related matters, including divorce, separation, care of children and division of property. Since 1976 the Family Law Act has significantly improved the experience of separating families. However the system is now increasingly challenged to address the safety of parties, as well as to embrace mediation and dispute resolution processes, often remaining involved with parties until their children reach adulthood.

Mallee Family Care believes that the role of the family law system should be to facilitate the legal, safe, child-centred, fair, and wherever necessary or possible mediated resolution of family dissolution, restructuring and disputes.

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

The existing principles guiding the Family Law system include provisions to protect the institution of marriage and the family unit, the protection of the rights of children and protection of the family from family violence. However these principles could be strengthened with the following:

* That the interests and protection of children be paramount and the voices of children be comprehensively heard;
* That mediation is accessible and affordable for all parties;
* That the system strives to reduce complexity and is understandable and transparent for all parties;
* That the family law system is accessible to all Australians, including through the use of modern media and in ways which take account of the diversity of the Australian population;
* That the places for mediation and determination of orders be safe for all parties, including rural, regional and remote places;
* That the provisions of the family law system be implemented consistently in all locations and by all those working within the system;
* That the system contains within it the flexibility to meet the needs of all Australians seeking to resolve complex family law matters;
* That the system is able to efficiently respond to changing family needs, for example, as children get older;
* That all parties working within the family law system be appropriately educated about and aware of the impact of family violence and trauma on children and vulnerable family members; and
* That in recognition of the paramount needs of children, family law proceedings be conducted in as timely a manner as possible.

**Access and Engagement**

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

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

Information about family law and family law related services needs to be readily available, accessible and understandable for all Australians, including in a range of formats, sites, languages and presentation styles. Suggestions include links in the Maternal and Child Health record books for babies; public noticeboards, libraries, schools, as well as links on the websites of other service providers, such as police, child protection, education providers, legal practitioners, counselling services, rights organisations and the sites of all those providing a family law related service. Employers could also provide a link in the information provided to staff about their Employee Assistance Program (EAP). Given that the internet is a common place to start for those seeking information, there should be simple, plain language and step by step information available about rights, procedures, processes and likely costs.

There should also be publications for children and young people which can help them to understand the process and the outcomes as they affect them.

While information about family violence and family violence services is becoming more visible, and awareness is increasing, information about the impact on children, and about the ongoing trauma for the family, could be enhanced and provided through health, early childhood and education systems as well as on-line through the Family Court web links.

Mallee Family Care applauds the suggestion for the employment of *Navigators* to assist families through the complexities of the court system, similar to the kinds of support currently offered by Mallee Family Care in Mildura to female victims of family violence through the Women’s Safety Package.

Further we suggest there needs to be a system for ensuring that parties to an application in the family court fully understand the outcomes of court proceedings. While this may be the responsibility of each party’s solicitor where there is one, there is a need for a system to ensure that outcomes are also independently explained to children, and not left to often angry or aggrieved parents to explain.

Recommendation

Mallee Family Care suggests that where children are the subject of determinations in the Family Court, someone – possibly the Navigator, or Registrar, Solicitor or Magistrate sends an age-appropriate letter to the child explaining the determination in simple terms and including a statement of how the child’s wishes and best interests have been taken into account. Depending on the age of the child, this letter could also include a link to relevant children’s advice or rights web-sites, for example the Victorian Government’s Youth Central site [www.youthcentral.vic.gov.au/adviceforlife](http://www.youthcentral.vic.gov.au/adviceforlife) or a relevant child-related publication.

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

Mallee Family Care concurs with the recommendations made in Sections 61 and 62 of the *Discussion Paper* relating to engagement with Aboriginal and Torres Strait Islander communities in planning for culturally safe and appropriate family law responses, as well as the need for cultural competence for court-related employees.

In addition to a better understanding of family violence in Indigenous communities, the family law system needs to encompass a recognition of the role of grandparents and other relatives in the care of children and the history of interaction between Indigenous families and the child protection system, with the resultant trauma of past child removal practices. Current partnerships between State child protection authorities and Aboriginal Community Controlled Organisations to place decision-making about Aboriginal children in the hands of Aboriginal communities need also to be acknowledged and incorporated. Consultation processes operating in the child protection system, such as Family Group Conferencing and Aboriginal Family Led Decision-Making, may well have a role to play in the mediation system for Family Court.

Further, given the over-representation of Indigenous families in the lowest income sectors of the community, the cost of taking a matter to the Family Court can be a prohibitive factor.

Mallee Family Care also contends that in many cases the Family Court is a more appropriate, respectful and positive site for decision-making about the future of Aboriginal and Torres Strait Islander children than the Children’s Court, where child protection proceedings have left historical scars and have often left children in the long term care of the state (for example, on Guardianship to the Minister orders) when they are being securely cared for by grandparents or other relatives. In such cases, the Family Court needs to be a more accessible and affordable facility, and Federal and State courts need to work more closely together to achieve stability and security for children.

Recommendation

Mallee Family Care recommends that the Family Court works with Indigenous groups to develop appropriate information resources for parents needing to access the Family Law system.

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

Mallee Family Care operates in rural and remote Victoria and New South Wales which have both established and newly settled culturally diverse populations, and works closely with local support and advocacy organisations to develop and provide services. In this regard, we agree with the analysis in the *Issues Paper* recommendations in Section 71. Our Murray Mallee Community Legal Service provides a program of Community Legal Education which includes regular information sessions about aspects of Australian family, consumer and criminal law hosted by the Sunraysia Mallee Ethnic Communities Council.

*Anecdote: A concern sometimes raised during information sessions to newly arrived migrants is Australia’s laws relating to family violence and child protection. Attitudes towards the use of physical violence against women and children as a form of discipline vary. Sometimes male participants in the information sessions complain about not being allowed to exercise their “rights” as husbands or fathers to physically discipline family members. However it is explained to them that they need to comply with Australian law in this regard.*

The Murray Mallee Community Legal Centre continues to provide a legal service to a range of culturally and linguistically diverse (CALD) clients. One challenge is obtaining the translation of documents. This is not done as of right, but is crucially important for applicants and respondents to understand the nature and contents of an order following an adjournment or a final hearing. The current system allows for CALD clients who are supported by the relevant legal aid commission to seek a disbursement cost for the translation of documents. This does not address the needs of clients who have limited resources, but who do not qualify for legal aid. In some rare cases, clients who cannot read orders in English attempt to have members of their support network translate an order for them. While it is inappropriate for a CALD client to ask a child of a relationship to read a parenting order to that client to explain child arrangements, some clients feel that they have no other option.

This issue can also extend to other documents, such as family reports prepared by family consultants. For clients who are supported by a grant of aid from a legal aid commission this can be added as a disbursement, but this excludes clients who do not qualify for aid. The easiest practice for practitioners is to read the contents of the report to client, but translation of the document for a client can allow them to fully understand the alleged dynamic of a family unit.

Recommendation: Clients that identify as requiring an interpreter for hearing should as of right under the *Family Law Act 1975* (Cth), be entitled to one free translation of any court order in the language that they can read, subject to any relevant limitations that the court considers appropriate.

The dynamics in families can be complex, particularly from the perspective of clients from CALD communities. Family consultants can comment on observing differences in the way parties behave and occasionally make comment about expected behaviours that are absent, but place this due to “cultural differences” as a family consultant often views the dynamic from the perspective of an Anglo-Australian view of family dynamics and gender roles. There is scant transparency about what additional cultural awareness training that consultants have undertaken to make such assertions and how this training has informed their practice to produce the report. Ordinarily this information is only tested through cross-examination of the family consultant, which can add to cost and delay of a resolution at trial.

Recommendation: If there is evidence that cultural factors may be an issue in addressing family law issues that an appropriately trained family consultant with expertise in this area be appointed.

The new practice of the Federal Circuit Court encouraging all new applicants for divorce to initiate proceedings through the online Commonwealth Courts portal can present a challenge for clients wanting to initiate a divorce process. Notwithstanding the challenge in explaining the court process for obtaining a divorce, the portal itself is not translated if an internet browser’s settings are changed to read in another language. This creates a substantial barrier for clients attempting to initiate the process if their command of written English is not sophisticated enough to address the questions in the online form. This frequently leads to members of the CALD community requiring the assistance of lawyers to prepare the application, or commissioning the assistance of other support people who do not have the necessary training or expertise.

Recommendation: An option be included at the beginning of creating a Commonwealth Courts Portal account to request a preferred language for the Portal graphic user interface display prior to the creation of an account.

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

Mallee Family Care is sometimes asked for family law advice involving custody or access arrangements for a “child” with a disability who is older than eighteen years but who is still being cared for by one of the parents. While the “child” concerned is not covered by the provisions of the Family Law Act, there is still a need to resolve disputes around their care, and a need for some links between family law mediation provisions and other, state provided guardianship or civil mediation, especially where other family law actions, such as separation and divorce, are on foot. It may therefore be of benefit to extend the mediation provisions of the family law system to older children in some circumstances.

In addition, information about Family Law processes, along with other legal issues, needs to be made accessible to people with both physical and intellectual disabilities, to help them to protect their own and their family’s rights.

**Question 9: How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?**

Conflict of interest is often a hampering factor in provision of service to clients seeking Family Law assistance in small, rural communities, and additional options for clients are necessary to prevent clients from having to go out of town for family law advice or support. Video-conferencing facilities could reduce the need for travel as well as delays, and be a lower cost alternative to having visiting legal expertise.

The requirement for specialist reports can also prove prohibitive in remote and rural areas, where independent professional expertise is not always available, or is in high demand, and where parents are required to travel to larger centres, and with long waits for appointments before a family assessment, for example, can be conducted. From Mildura, for example, parents must often travel to either Melbourne (eight hours travel) or Adelaide (five hours travel) to participate in an assessment. Hence the Family Court could consider improved specialist contracting of assessments and reports, as occurs now in the child protection system in a number of states.

Further the physical court facilities in many rural centres leave a great deal to be desired, with Family, Criminal, Civil and Children’s Court proceedings occurring in the same location and with few private spaces for meetings with lawyers, for keeping parties separate and safe, or for keeping matters confidential.

*Anecdote: In the Mildura Court the public address system does not work all over the building, so that when a family court matter is called, only the parties at one end of the building hear the call. Because some parties need to remain separated while waiting, this has occasionally resulted in one party not hearing the call and missing the hearing.*

The Federal Circuit Court attends the Mallee 3-4 times per year, depending on the circumstances. This is quite infrequent relative to the demands of this area and compared with other rural areas. This does present a limitation in that for urgent interim applications the Magistrates’ Court of the State of Victoria does much of the interim relief work, such as recovery orders or airport watch list orders. It is unclear how this can be changed without a permanent Circuit Court being placed in this region.

Additionally, the remoteness of the Mallee region can sometimes result in other parties deliberately filing in a registry in a major city or other distant registry to make it difficult for one of the parties to attend the hearing. Legal practitioners attending from the Mallee to a major city then have to travel to the city or pay an agent to conduct any appearances. While there are cases where it is open to argument about the most appropriate venue of the court due to the geographical circumstances of parties in a dispute, filing in this manner can be done for tactical reasons to make it more difficult for the other party to attend due to the cost of travel or the difficulty associated with arranging appropriate care of any children.

Recommendations:

* That the s60I certificate contain a general statement about who the children currently live with; or
* That the relevant commonwealth court registry make a preliminary procedural order about the most appropriate venue for the hearing where the parties have elected a court venue that is evidently distant from their stated address for service.

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

Family reports can be of great assistance to the court to determine the best interests of the child, particularly in situations where there are high conflict personalities. Unfortunately, they can be prohibitively costly. Clients who do not have a grant of legal aid may not have the resources to obtain a report.

While there is a requirement for at least an attempt at mediation prior to a Family Court determination, a genuine attempt at mediation should be demonstrated, including broadened family dispute resolution methods akin to Family Group Conferencing, Family Decision Making and Yarning Circles.

Recommendation

 It is suggested that prior to seeking an order solicitors on both sides need to attest to the family’s attempts at mediation, and that prior to making an order the Magistrate or Judge should also note that all possible attempts at mediation have been undertaken.

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

One of the challenges for self-represented clients is articulating the legal issues in dispute.

The funding and provision of duty lawyers to provide advice and appearances on interlocutory matters at Court may assist litigants to obtain appropriate case management assistance. This can save the Court’s time in many instances and provide basic guidance to self-represented litigants as to what issues they need to consider and what evidence they will need to provide to the Court to allow it to properly address their legitimate concerns. Duty Lawyers will also provide a platform for appropriate negotiation and resolution of matters at Court without need for a hearing.

Recommendation

The issues paper at para 112, identifies issues about confusion with differences in the rules and procedures in the Family Court and the Federal Circuit Court. The rules and procedures should be standardised. There should also be ready access to self-represented parties to the rules and forms and understandable explanations as to how they work.

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

Mallee Family Care suggests that the forms for Family Court applications could be simplified, and further that additional family law duty solicitors could be made available at the Court, or on-line.

Further, Family Court processes could be clearly spelled out in a simple, step-by-step flow chart on Family Court and family related web sites.

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

As mentioned above, court facilities in rural areas are often shared spaces which are not conducive to safety or privacy for Family Court matters. There need to be secure and separate waiting and consulting spaces, and systems to ensure all parties can hear their matter being called and can enter and leave the court safely. Where the physical layout cannot be changed, then additional security or close off-site facilities could be arranged.

We concur with the suggestions made in points 120-121 of the Issues Paper.

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

Mallee Family Care welcomes the conversation regarding shared custody and links to notions of equal time, in terms of the implications for children. The interests of children may not be served by “cutting them in half” in terms of how much time they spend with each parent, despite there being every reason to treat each parent fairly. The principle of the best interests of the child should serve to outweigh decision-making based on fairness to parents. We make further comments below on the need to properly assess the interests and views of the child, as well as to encourage parents to mediate and come to agreement on meeting their children’s needs, as they might have done if they had not separated.

Further to this, decisions about “nights spent” or access to the child should not be based on payment of child support or financial capacity, provided that the child is safe.

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

Mallee Family Care concurs with the findings of the Issues Paper relating to Part VII of the Family Law Act and the suggestions to address them. Critical to achieving the best outcomes for children are:

* Paying attention to the voices of children;
* Having a clear understanding of the needs of particular children and their relationships with each parent, as well as with siblings and extended family members;
* Having an understanding of the manifestations and impact of family violence on children;
* Having family court practitioners attuned to and educated about family violence
* Having allegations of family violence assessed expertly and early in any proceedings.

*Anecdote: Of concern, however, is the sometimes insidious nature of family violence, in that the violence or intimidation cannot be proven. Allegations then can sometimes be vexatious. Similarly, however, allegations can sometimes be unproven and inappropriately thought to be vexatious. For this reason, the court should be careful in making any potential determinations about perjury or costs against the alleging partner.*

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

Mallee Family Care has also noted lengthy delays in the resolution of family law disputes and concurs with the reform strategies suggested in the Issues Paper.

Recommendation

We recommend that the requirement for mediation prior to proceeding to court be strengthened, with mediators encouraged to use other adjudication processes and to explain what attempts were made and why mediation was not appropriate or successful. Further, mediation needs to be available earlier in the process, and involve a number of sessions where necessary.

The Mallee Family Care Family Relationship Service also provides information workshops for parents which helps them to be prepared for mediation, and to focus their attention on the needs of their children.

*Anecdote: Negotiations conducted between solicitors at court should be limited and include the parties being represented.**Mallee Family Care is aware of agreements made at call-over between magistrates and solicitors that neither party has agreed to, with resulting confusion and sometimes the need to return to court again for an adjustment to an order.**This approach may at times be expedient, but if often not efficient.*

**Question 22: How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?**

We concur with the suggestions made in sections 173-175, and also suggest that Court staff receive further training around mediation, to increase awareness of the dynamics and risks associated with often emotionally charged matters, even with small claims.

In Victoria, the Victorian Civil and Administrative Tribunal (VCAT) is a low cost tribunal that has jurisdiction to deal with joint property. VCAT has the power to stay or dismiss proceedings on application of either party or of its own motion if it considers that the family law jurisdiction is the more appropriate forum to deal with such matters. It is challenging in family law matters that for low asset pools less than $20,000.00 the family law jurisdiction is the only real option to address joint property matters.

We see clients where the parties have separated and they want to remove their names from vehicle registrations, loans, land titles and mortgages. Unless the matter is dealt by consent it is hard to get any compliance from the other party unless it is taken to court. The discussion in the Issues Paper at Question 26 points out that there is currently no mandatory referral to any FDR process in property applications. A requirement to have taken such steps in respect of all property matters will at the least expose the parties to the chance of early resolution. In order to work such a step would also require full disclosure of all relevant assets, liabilities and income at the very beginning of that process.

Legal Aid authorities should also be encouraged to widen the scope of parties entitled to legally assisted FDR processes with appropriate arrangements to repay contributions over time or from the assets obtained on settlement. The comments at paragraph 204 of the Issues Paper regarding Legal Aid Queensland’s arbitration model are relevant to this issue.

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

Family dispute resolution processes should be used wherever possible to resolve family law matters. Enhanced, or legally assisted dispute resolution processes can also be of benefit in cases where there is family violence or abuse, but only if it is safe to do so, and if all parties have a genuine desire to resolve existing disputes. Parties in these cases can have other motivations, can be manipulative, vindictive, belligerent and bullying, and mediators need to have a strong skill set to manage this. A complicating factor is the potential litigious approaches taken by lawyers who can be un-used to mediation and dispute resolution and more focused on winning, and in extreme cases, dragging out a process. For this reason, we would prefer to see specialist publically funded lawyers or indeed other suitably trained professional mediators, in these roles, or at least incentives for the legal profession to support mediation.

The family violence aspect of a matter is not always material to the legal issue at hand, for example property settlement and parenting arrangements. The legal issues may be simplistic and not warrant tens of thousands of dollars on professional fees and Federal Circuit Court time but the relationship between the parents is high conflict and agreeing on the best interests of the children is impossible without third party intervention. In such cases, legally assisted mediation may be appropriate or helpful.

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

Recommendation

We suggest that outcomes of mediation could be strengthened by allowing for Parenting Agreements reached to be binding, thus reducing the need for court attendance.

**Question 28: Should on-line 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?**

Mallee Family Care would welcome further exploration of on-line approaches to dispute resolution. This approach could be useful, for example, where there is a high level of conflict but a relatively simple legal issue regarding parenting arrangements, and would mean less time off work for parties, reduced legal fees, accessibility for all parties, particularly in regional and remote areas, and could be a less intimidating forum. For example passport applications where one parent does not consent, formalising an existing parenting care arrangement into orders by consent for peace of mind, Airport Watch List applications for addition and removal of Child Recovery Orders. Such online applications would need comprehensive supporting Affidavits and relevant documents for consideration. Online matters would need to have the capacity to request additional material from parties where necessary, or to refer matters into the Magistrates’ Court or Federal Circuit Court if too complex to resolve online or where an ICL is appropriate. Application forms and documents would need to be very prescriptive regarding the information required to be filed so that the applications contain information material to the decision being made. The parties to online applications would likely need access to consultation with legal practitioners for advice along the way.

**Questions 34: How can children’s experiences of participation in court processes be improved?**

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

**Question 36: What mechanisms are best adapted to ensure children’s views are heard in court proceedings?**

Mallee Family Care agrees that Independent Children’s Lawyers have an important role to play to ensure that children’s interests are considered, and given priority in Family Court proceedings. However we also suggest that while the ICL may advocate for the child’s interests, they are not always in the best position to assess and understand what those interests are, and do not always have the capacity, nor the “follow-through” to engage the child or children in the process of putting their views or to explain to them the recommendations and outcomes being made. It is not necessarily the case that a good lawyer is a good communicator with children. We therefore concur with the discussion in Sections 255-261 of the Issues Paper suggesting additional and broader options for consultation and communication with children.

Important to the discussion however is the timeliness of Family Court decision-making. While it can be many months between hearings, both in order to seek assessments and reports, but also in rural locations because of the length of the lists for the limited number of sitting days, children, especially young child, need to have certainty and stability in as short a space of time as possible. Developmentally young children do not have the capacity to wait months or even years for decisions affecting them to be made, and where this has to occur, an advocate for the child needs to explain this, to keep explaining and to reassure the child during the waiting time.

Similarly, children’s circumstances change over time, sometimes necessitating changes to access arrangements. Where these cannot be resolved by the parents concerned (and there should be information and support available to parents to resolve matters themselves) the Family Law system needs to make provision for matters, and mediation, to be re-opened for a timely adjustment, rather than one or both parties having to make a new application, and the children’s advocate needs to be available again when necessary.

Mallee Family Care also notes that the financial status of the parents should not be a barrier to the child’s receipt of proper representation or advocacy.

Recommendation

We recommend that in any determinations regarding children, the Family Court Magistrate or Judge be required to state that he or she has taken the wishes and interests of the children concerned into account, as well as how this has been done. And in addition to a debriefing with the child, the ICL, the Magistrate or Judge, or another court appointed official should write to the child to explain the decision, in simple terms that a child can understand. Some age-appropriate materials could also be developed to assist with explaining court decisions to children. These could include brochures, children’s story books, and video animations.

Mallee Family Care is funded by the Attorney General’s department to provide a Child Contact Service in Mildura. This service supports parents who are in conflict with each other through provision of supervised changeover arrangements, as well as both supervised and unsupervised but on-site child contact services. Some supervised contact is court ordered. The service currently operates on Wednesdays, Fridays, Saturdays and Sundays at hours convenient to families, and for Mildura, there is a waiting time of approximately 6-8 weeks for high vigilance clients and of 4-6 weeks for low vigilance clients. Reporting requirements for supervised contacts are onerous, and make provision of service to non-English speaking families almost impossible.

*Anecdote: A father who does not speak English attended to have a supervised contact visit with his children. The supervising practitioner asked the father to speak English to the children, as the interaction with the children needed to be recorded word for word. The father could not speak in English and so the contact visit could not go ahead. There are very few face to face interpreter services available in Mildura, and the Telephone Interpreter Service was not considered suitable as the interactions with the children and their non-verbal as well as verbal responses need to be recorded as well. Further, the supervising practitioners must be able to attest to the accuracy of their reports so could also not rely on a third party interpretation of the interactions and were doubtful that a transcript of the interactions would suffice if presented in court.*

Further, this program is consistently underfunded to provide the services required, and Mallee Family Care has both limited the times of the service and supplement the funding each year in order for the service to continue. It is understood that this is a common problem for Child Contact Centres across Australia.

Recommendation

We recommend that the Attorney General’s Department review the funding allocation to Child Contact Centres to better match the required services and make the service accessible to more families in conflict, including families from CALD backgrounds.

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

While safety concerns and appropriateness of matters discussed must be addressed it is important for children’s voices to be heard in mediation processes. The experience of Family Group Conferencing has shown that children, teenagers especially, often value being able to have their say about who they want to live with or how their lives are to be shaped, and can benefit from understanding some of the considerations which are being taken into account. However, the experience of our family relationship and mediation programs is also that children need to be protected from feeling responsible for their parents’ break-up or for making decisions about their lives that they are not yet able to make. Further, children should not be exposed to any further violence or parental conflict, and should not be forced to make a choice between their parents.

Recommendation

Child inclusive family dispute resolution processes should be structured to include children, either in person or by video, for the purpose of hearing their views, and of demonstrating that the process has their interests at its heart. If it is not safe to include the children, then their views should be represented by a children’s advocate – either the ICL or qualified children’s specialist.

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

It should be expected that professionals from all disciplines working in the family law system should know what the constraints of the family law court system are and that they work within those constraints and their duty to the court.

Adherence of all professionals to the fundamental principles mentioned at Question 2 is critical, as well as:

* an understanding of and respect for each other’s roles;
* a respect for mediation processes
* good communication skills; and
* an understanding of trauma and the impact of stress on individuals and relationships, as well as on children.