

# **ALRC Review of the Family Law System**

Submission

May 2018



Federation of  
Community Legal Centres  
VICTORIA

## About the Federation

The Federation of Community Legal Centres is the peak body for Victoria's Community Legal Centres (CLCs).

The Federation aims to contribute to a fair and inclusive Victoria, support CLCs to deliver quality services and ensure more people have access to the legal help they need.

At the Federation, we pursue our vision of a fair, inclusive, thriving community through being a respected and influential advocate. Together with our members and communities, we work to dismantle unjust systems that perpetuate racism, sexism, homophobia, ableism, economic injustice and other inequalities.

The Federation:

- Enables a strong collective voice for justice and equality;
- Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- Leads and supports ongoing learning, reflection and evaluation across the sector;
- Drives creativity and excellence in delivering services to communities.

We work to build a stronger and more effective community legal sector, we provide services and support to our members, and we represent CLCs to stakeholders and the wider community.

The day-to-day work of CLCs reflects a 40-year commitment to social justice, human rights, equity, democracy and community participation.

# **Key Recommendations**

## **Objectives and principles**

1. Our vision is for a system that provides continuity of legal service delivery for marginalised people, enabling one legal assistance provider to assist a client on their journey through the family law system, from the identification of family violence, to assistance applying for an intervention order (IVO), preliminary advice on family law issues, early advice on any interactions with Child Protection, full representation in family court, assistance to negotiate minor property settlements, and representation in child protection matters. We call on the Commonwealth to support this vision by increasing funding to community legal centres to work in partnership with legal aid commissions to build their capacity to undertake family law and child protection work. We strongly support the key recommendations of the Victoria Legal Aid Evaluation Report for the Child Protection and Family Law pilot.
2. We call on the Commonwealth government to work with state governments to prioritise a joint approach to the intersecting legal issues of family law, family violence, and child protection. In the experience of community legal centres, the best results for parents, children and communities can only be achieved through a coordinated approach to family law and family violence, one that is not siloed by jurisdiction.

## **Access and Engagement**

3. We recommend that the Commonwealth resource CLCs to develop and deliver community legal education on the family law system to people in their communities, and to workers who deliver services to people who are experiencing disadvantage. Community legal centres and legal aid commissions should be resourced to scale up successful programs.
4. We support the submission of National Family Violence Prevention Legal Services Forum, and their position that Aboriginal Community Controlled Organisations are best placed to design and deliver culturally safe community legal education to Aboriginal people.
5. We call on the Commonwealth government to invest in increasing the capacity of FV duty lawyer services, to enable lawyers to provide family law advice and supported referral to get further family law assistance.
6. The Commonwealth should support the focus and commitment of the Victorian government in family violence, and support the provision of legal advice and assistance at the Hubs. The Commonwealth should provide resourcing to enable CLC "hub lawyers" to provide family law advice to people who have experienced family violence, and to provide ongoing casework and representation with family law matters that are connected to family violence. If successful in the five pilot Hub sites, this program could be expanded across Victoria and could provide a model for other states.
7. The Commonwealth should support the continuation of the VLA "CLC Children and Family Law Pilot" and the "Family Violence to Family Law

Continuity of Service Delivery pilot" at the existing locations, and the support the expansion of pilots to other CLCs. It will take time to build the capacity of generalist legal services to provide substantial family law assistance. To achieve this, workforce planning will be needed, and specialist services (such as Women's Legal Service Victoria) will need to be resourced to provide training, secondary consultation and support to generalist centres as they build their capacity.

8. To meet need in rural and regional areas, we strongly recommend expansion of the Family Violence to Family Law Continuity of service pilot at additional regional CLCs, including Barwon CLC (Geelong), Central Highlands CLC (Ballarat), Loddon Campaspe CLC (Bendigo), Goulburn Valley CLC (Shepparton), Gippsland CLC (Morwell), and Murray Mallee CLC (Mildura).
9. As stated in the submission of WLSA and Peninsula CLC, the Commonwealth should support expansion of the Family Advocacy and Support Service (FASS) program to a greater number of locations, including all family law courts. We support the expansion of Family Advocacy Support Services to the court sitting on circuit in regional areas, in locations including Ballarat, Bendigo, Geelong, Morwell, Mildura, Shepparton, Warrnambool and Albury.
10. In recognition of unmet legal need, we urge the Commonwealth government to implement the Productivity Commission's 2014 recommendation for increased legal assistance funding
11. We urge the Commonwealth to provide ongoing funding for the Balit Ngu-lu Service provided by the Victorian Aboriginal Legal Service. This service assists young people with family law issues in the context of multiple other legal issues, and its integrated response represents evidence-based best practice.
12. We call on the Commonwealth to meet the need for interpreter services used by Community Legal Centres to ensure that legal services are accessible to CALD people.
13. We call on the Commonwealth to commit funding to inTouch to enable this service to continue to provide legal assistance to CALD victims of family violence, and expand its capacity to provide casework and representation services on family law.
14. We call on the Commonwealth to provide ongoing funding for St Kilda CLC's and Fitzroy CLC's LGBTIQ legal services, with sufficient resourcing to enable the services to provide family law advice, casework and representation services.
15. We call on the Commonwealth to contribute to the resourcing of legal services at the Pride Centre, to enable community legal centres to provide family law advice, casework and representation to the LGBTIQ community.
16. We call on the Commonwealth to fund pilot projects in Victoria to explore the value of a health justice partnership model of service delivery between a community legal centre and a disability advocacy and support service.
17. We call on the Commonwealth to increase accessibility to free legal advice and assistance with family law matters for people living in rural,

regional and remote areas of Australia, by providing ongoing resourcing for the LINK program run by Women's Legal Service Victoria.

18. We strongly recommend Commonwealth investment in workforce planning to ensure that CLC wages are competitive with legal aid commissions' wages, and to ensure there is a career pathway in family violence, family law and child protection work to attract experienced practitioners.

### **Integration and collaboration**

19. We call on the Commonwealth to resource employment of social workers to provide support with the non-legal issues that co-occur with family law problems at community legal centres to provide this support.

## Introduction

The family law system is, in the words of our member centre Fitzroy Legal Service, “intrinsically judicial, adversarial, and inflexible.” People are often navigating the system at the worst time of their lives, while experiencing significant emotional and financial stress. People who have an average education, an average income, and who are experiencing an average separation are likely to struggle when trying to navigate the family law system. The existing system has complexities of language, process, and jurisdiction that present challenges for anyone.

People who have more complex than average circumstances, such as a low level of education, a low income, an experience of family violence, or a first language that is not English, are even more likely to struggle. The issues in the family law system that affect everyone have a disproportionately harsh effect on people who are experiencing disadvantage.

People experiencing disadvantage face multiple barriers to accessing justice in the family law system. These people constitute the core client group of CLCs: women who have experienced family violence who are also experiencing disadvantage; Aboriginal and Torres Strait Islander people; people who are Culturally and Linguistically Diverse (CALD); people with a disability; and people from other marginalised backgrounds.

Our principal concerns are that members of this group typically have complex legal and social needs. As stated in the submission of Fitzroy Legal Service, “clients of our practice commonly present with multiple, overlapping, and interconnected issues including parenting, family violence, child protection and migration, as well as underlying problems such as homelessness/housing stress, mental health issues, drug use, and involvement in the criminal law system.”

The family law system fails to provide holistic, client-centred support, because the focus is on the family law issues at hand and not the underlying causes and consequences of those legal issues, and connected legal issues (including family violence, credit and debt, and child protection). A holistic client-centred approach is also hampered by numerous disconnects between federal and state agencies, and the fact that legal assistance with different legal issues may be provided by multiple lawyers, including VLA, CLCs and the private profession.

Our submission provides examples of ways in which community legal centre practices support clients to navigate the complexity of the legal system, and calls for increased investment in the services that are proven to work.

## **Community Legal Centres' work**

Community Legal Centres run on limited resources and support those in our community in most need. That means that in family law matters we primarily assist in cases of crisis. Most frequently CLCs provide advice, representation and casework in family law matters where family violence is also an issue. Many women have family law issues that must be considered in the process of applying for an intervention order. Some women will also have legal issues relating to child protection arising from a violent relationship, which may also directly affect family law issues. CLCs' work with victims of family violence provides us with valuable insight into the family law system at some of its most critical moments.

The role of the legal assistance sector in provision of services to victims of FV is outlined in the report of the Royal Commission into Family Violence.<sup>1</sup> The report makes several recommendations that directly affect the intersection between family violence and family law, including recommendations 129-137.

### **Family violence work**

Family violence legal work is currently a shared responsibility between CLCs, Victoria Legal Aid (VLA) and the private profession. Twenty CLCs provide intervention order (IVO) duty lawyer services at 35 courts across Victoria. CLCs provide legal advice to most applicants for intervention orders (mostly women), and VLA duty lawyers assist most respondents (mostly men). The demand for these services has grown significantly over the last five years.

### **Civil law work**

CLCs also provide casework assistance on the civil law issues that are common consequences of family violence, including infringements, debt and tenancy.

### **Family law work**

Several CLCs provide ongoing casework assistance and representation to clients with family law issues, including Women's Legal Service Victoria (WLSV), Moonee Valley Legal Service, Darebin CLC, Peninsula CLC, Hume Riverina CLC and Victorian Aboriginal Legal Service (VALS).

However, not all of the CLCs that currently provide legal assistance to victims of family violence have the resources to provide family law assistance. The Family Law Council (FLC) stated in its 2016 final report on "Families with Complex Needs and the Intersection of Family law and Child Protection",<sup>2</sup> that more than 50 percent of children's matters in the family law courts involve family violence and other safety concerns for children. It is our submission that CLCs, as specialists in assisting people who are victims of family violence, are well placed to build capacity to also provide assistance to this cohort with family law issues and child protection issues that are linked to their experience of family violence.

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<sup>1</sup> State of Victoria, Royal Commission into Family Violence: Report and Recommendations, Volume III, Parl paper No 132 (2014-16), at page 169-70.

<sup>2</sup> FLC Final report at page 22, referring to R Kaspiew, r Carson, J Dunstan, I Qu, B Horsfall, j de Maio, S Moore, L Moloney, M Coulson and S Tayton, *Evaluation of the 2012 family violence amendments: Synthesis report*, Australian Institute o Family Studies (2015), pp. 16-17.

The value of increasing CLC capacity to undertake this work has recently been explored in two Victoria Legal Aid pilot programs, the “CLC Children and Family Law Pilot”<sup>3</sup> and the “Family Violence to Family Law Continuity of Service Delivery pilot”. The evaluation of the “Children and Family Law Pilot” has been released and demonstrates positive outcomes for clients.<sup>4</sup> We discuss the value of extending these pilots and building the capacity of CLCs to undertake family law and child protection work for people who are experiencing family violence in more detail below.

We call on the Commonwealth government to work with state governments to prioritise a joint approach to the intersecting legal issues of family law, family violence, and child protection. In the experience of community legal centres, the best results for parents, children and communities can only be achieved through a coordinated approach to family law and family violence, one that is not siloed by jurisdiction.

### **Reference to other submissions**

We have reviewed and support key recommendations made by our member centres, including submissions made by Fitzroy Legal Service, Peninsula Community Legal Centre, Women’s Legal Services Australia (WLSA), and the National Family Violence Prevention Legal Services Forum.

We note that many other CLCs in Victoria provide specialised legal assistance to victims of family violence, in addition to IVO duty lawyer services. Centres with a specialist casework service to support victims of family violence include Homeless Law, Mental Health Legal Centre, Inner Melbourne Legal Service, Eastern CLC and Law and Advocacy for Women.

## **Objectives and principles**

### **Question1: what should be the role and objectives of the modern family law system?**

Our vision is for a system that provides:

- Continuity of legal service delivery for marginalised people, enabling one legal assistance provider to assist a client on their journey through the family law system. This would include support from a single legal assistance service, from the identification of family violence, to assistance applying for an intervention order (IVO), preliminary advice on family law issues, early advice on any interactions with Child Protection, full repre-

<sup>3</sup> See [www.vla.vic.gov.au/about-us/news/new-pilot-to-close-gap-between-family-violence-and-family-law-help-for-parents-and-children-0](http://www.vla.vic.gov.au/about-us/news/new-pilot-to-close-gap-between-family-violence-and-family-law-help-for-parents-and-children-0).

<sup>4</sup> See “Evaluation of Children and Family Law Pilot” (September 2017) at <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-evaluation-of-the-community-legal-centre-children-and-family-law-pilot.pdf>.

sentation in family court, assistance to negotiate minor property settlements, and representation in child protection matters.

- Support with the non-legal issues that co-occur with family law problems, including financial counselling, housing support, and support from a social worker to manage access to other services. Ideally the non-legal support should be integrated with the legal assistance. Some centres, such as VALS, are also well placed to manage brokerage funding to support clients.

Such a system would mean that people:

- can exit family violence and make informed decisions early about what family law assistance they need;
- will not have the family law system used against them as a tool of ongoing control;
- can access any assets to which they might be entitled (thus reducing long term inter-generational poverty);
- will be supported with non-legal needs (housing, financial counselling, drug and alcohol treatment) to ensure they can safely exit the cycle of FV and reduce possible involvement of child protection.

In our view, a system that considers family law issues in the context of other connected legal and non-legal issues in a person's life would lead to more appropriate resolution of family law matters, with outcomes that are more sustainable. As a result, family law matters could be resolved more quickly, and would be less likely to be returned to court multiple times. Ultimately this would reduce the pressure on the Family Court.

The evaluation of the VLA Children and Family Law Pilot provides evidence for the need for and value of a model in which the legal assistance sector provides integrated, wraparound services for clients. The evaluation states:

*"In both regions, it was clear that the Pilot has started to provide continuity of service for individuals facing multiple legal issues and improve support for non-legal matters. Both CLCs provided legal referrals to at least 90% of their duty lawyer clients. The majority of these were referred internally for child protection matters but 19% at WLSV were referred internally for another identified legal issue, and at least 70 clients across the CLCs were supported with both child protection and another legal matter (e.g. family law). The Pilot has also had some early success in delivering a more holistic service with clients referred for non-legal support. In the case of WLSV, this involved referring to their in-house financial counsellor and social worker while at Loddon Campaspe CLC this involved cross-referrals with other local service providers such as the Bendigo Community Health Service and Family Inclusion Network. The total numbers of non-legal referrals were not high and this likely reflects the high number of support services with which child protection clients are usually linked. However these are often mandated by the Court or DHHS and there was evidence from both clients and Court/DHHS staff that referrals made by the CLC lawyers were more likely to be taken up."<sup>5</sup>*

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<sup>5</sup> Ibid at page 11.

In addition, an analysis of the pilot found that funding CLCs to deliver these services resulted in significant cost efficiencies, and that services were delivered by CLCs at a lower cost than services delivered by private practitioners on grants of aid.<sup>6</sup> We strongly support key recommendations of the Evaluation Report, including the recommendation that VLA undertake a “readiness assessment” with any potential CLCs that may wish to undertake these services, and consideration be given to funding non-lawyer staff to support clients alongside lawyers and provide a more holistic service.<sup>7</sup>

We note that recruitment of experienced child protection practitioners can be challenging, particularly in light of the comparatively low wages paid to CLC lawyers. We strongly recommend an investment in workforce planning to ensure that CLC wages are competitive with VLA wages, and to ensure there is a career pathway in this work to attract experienced practitioners.

We also support consideration of a new model of family courts drawn from the experience of the Neighbourhood Justice Centre (as outlined in the submission of Fitzroy Legal Service). The aim of such a model is also to provide an integrated case-managed approach to complex family cases in an environment that prioritises a problem-solving approach to prevent family violence and protect partners and children, but in the forum of the court rather than the legal service. The proposed approach they propose sees judicial intervention as the finalisation of the case management approach, or a last resort in cases where other interventions have not worked.

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

We support the principles outlined in the submission of Victoria Legal Aid at page 10. In particular, we suggest there will be a substantial benefit if the system is designed with a client focus and includes:

- Coordination of the family law system with other systems that affect family law, including family violence and child protection;
- Integration of legal services with non-legal social support services;
- Accessibility of the family law system, including geographical and technological accessibility, regardless of location;
- A commitment to ensuring safety, including cultural safety and physical and emotional safety, acknowledging that the family law system can be used as a tool to perpetuate violence.

## **Access and engagement**

We note that there are substantial barriers to access to justice for many groups facing structural disadvantage, and some of these barriers have been well-

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<sup>6</sup> Ibid at page 13-14.

<sup>7</sup> Ibid at page 17.

documented and are supported by a strong evidence base.<sup>8</sup> Common barriers include:

- People not recognising that what they are experiencing is a legal problem and that they could benefit from legal advice;
- A lack of understanding of where or how to access legal help;
- A fear of how interaction with the family law system may affect a dynamic of family violence;
- A fear that interaction with the family law system may lead to intervention by child protection services;
- A disconnect between the family law framework and other frameworks for resolving family disputes that may exist in some cultures and communities;
- High demand for legal services and a lack of capacity to provide free legal help due to lack of resourcing for CLCs.

These barriers can be addressed through:

- Availability of accurate and accessible legal information;
- Availability of multiple pathways to legal assistance services for the most disadvantaged, including duty lawyer services, outreach services, community legal education for people and workers, and community development activities;
- Ensuring that the family law system is culturally safe for all groups;
- Ensuring that all practitioners in the family law system develop cultural competency;
- Providing appropriate resourcing to both specialist and generalist CLCs to build and expand their capacity to provide accessible legal services to people who face barriers seeking legal assistance.

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

Information about the family law system is currently fragmented and difficult to find easily. There may be excellent resources available, but they are on the websites of different organisations in different states. We support the submission of Peninsula Community Legal Centre, which suggests centralisation of family law and family violence information in one central web site, accompanied by an awareness raising campaign to alert people to its existence. This web site would need to be developed in partnership with organisations that have a specialisation in providing legal information and education to the community, including community legal centres and legal aid commissions. These organisations are best placed to develop resources that provide accurate legal information in accessible language, informed by the needs of clients.

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<sup>8</sup> See, for example, the research of the Law and Justice Foundation of NSW, including Coumaleros, C, Macourt, D, People, J. Macdonald, HMWei, Z, Iriana, R & Ramsay, S 2012, *Legal Australia-Wide Survey: Legal need in Australia*, Law and Justice Foundation of NSW, Sydney. The reasons people took no action in response to legal problems are discussed at page xvii.

We note websites are accessible to a large cohort of people, and will assist many people to navigate the family law system. However, information of this kind is often not accessible to people who are experiencing disadvantage, including people with low literacy, lack of access to the internet, lack of access to a smart phone or computer, and inability to speak or read English. This includes people who are geographically isolated, older people, people with disabilities, people who are experiencing poverty, and people from a non-English speaking background.

Community legal centres use community legal education and community development strategies to provide legal information to people who are experiencing disadvantage. We recommend that CLCs be resourced to develop and deliver community legal education on the family law system to people in their communities, and to workers who deliver services to people who are experiencing disadvantage. Often the aim of community legal education is to dispel myths about how the system works, and to provide access pathways into legal assistance services. Community legal centres and legal aid commissions should be resourced to scale up successful programs.

We support the submission of National Family Violence Prevention Legal Services Forum, and their position that Aboriginal Community Controlled Organisations are best placed to design and deliver culturally safe community legal education to Aboriginal people.

### **Case study: A community development approach to legal education**

Footscray Community Legal Centre developed a resource called '*Getting to Know the Law in my New Country*', in partnership with the settlement service AMES. The project used photos and text to create "digital stories" to describe some of the common problems experienced by newly arrived migrants and refugees. The project responded to legal needs that were emerging among newly arrived migrants, including issues relating to traffic fines, credit and debt, consumer contracts, and family violence. The aim of the resource was to encourage settlement workers and teachers in the Adult Migrant English Program help recently arrived migrants and refugees identify when they had a legal problem, and seek timely legal help. The resource was subsequently taken up and developed into a national resource by National Legal Aid. The development of this resource showed best practice in development of community legal education: it was informed by casework; developed in collaboration with a non-legal agency and people from migrant and refugee communities; and delivered by teachers and settlement workers who were trained to make effective referrals to people who identified that they had a legal issue.

The same strategies could be employed to develop appropriate resources for the public—including groups experiencing disadvantage—on the family law system.

Community legal centres are also well placed to deliver legal assistance to people who are entering the family law system, but this ability is currently under-resourced.

In Victoria, for example, CLC lawyers provide duty lawyer services to people who are victims of family violence when they appear at Magistrates' Court on the first return date to apply for an intervention order. VLA lawyers provide duty lawyer assistance to most respondents. This is a time at which people are often in crisis and experiencing significant stress. Due to time pressures of a busy court list, duty lawyers do not have time to take full instructions and provide detailed advice on family law and child protection matters that may be connected to family violence. CLC duty lawyers always endeavour to identify other legal issues and make referrals where possible. But lack of capacity at this stage means a vital access point and opportunity for early intervention is sometimes missed.

We call on the Commonwealth government to invest in increasing the capacity of FV duty lawyer services, to enable lawyers to provide family law advice and supported referral to get further family law assistance.

#### **In the words of the Royal Commission into Family violence:**

"It must be emphasised that the availability of duty lawyer services is just one aspect of the role played by community legal centres and Victoria Legal Aid. They also provide services outside of court—notably, Victoria Legal Aid's Legal Help service, in-person consultations, and community legal education services. These services (and perhaps community legal education in particular) are an invaluable aspect of ensuring that the community—and in particular, potentially vulnerable or isolated members of the community—are aware of their legal rights and how to exercise them. Educating and equipping people before they come to court lessens the burden on court staff and court-based services when people do attend court, and improves the ability of court users to initiate and participate in proceedings."

Volume III, page 169

As a result of the Royal Commission into Family Violence, the Victorian state government is investing in "Support and Safety Hubs", which will be a primary access point for victims of family violence to access services. All people who have "L17s" (issued by police who have applied for an intervention order on behalf of a victim) will be referred to the Hubs, before the first court appearance. The Hubs provide an ideal opportunity for early intervention, and access to legal advice before court.

In 2015, the Victorian Attorney General announced an "Access to Justice Review" in Victoria, the aim of which was to "Improve access to justice for Victorians with an everyday legal problem or dispute, and ensur[e] the most disadvantaged and vulnerable in our community receive the support they need when engaging with the law and justice system."<sup>9</sup> The *Access to Justice Review Report* recommended that legal assistance be included in the Hubs.<sup>10</sup>

At this point, Family Safety Victoria has not yet articulated a role for legal assistance in the Hubs. The Federation and Victoria Legal Aid are working with state

<sup>9</sup> *Access to Justice Review*, Summary report, Terms of reference at page iii.

<sup>10</sup> *Access to Justice Review*, Volume 1 Report and Recommendations (August 2016) at page 190.

government to support implementation of the *Access to Justice Review* recommendation. A lawyer located in the Hubs could provide legal triage, information, and advice to people who have experienced family violence. We have also suggested that the Hubs provide an ideal opportunity for non-lawyers to be trained to “spot a legal issue” and make a timely referral to a “Hub lawyer”.

The Hubs provide a valuable opportunity to provide early intervention legal advice and support, which is integrated with advice provided on FV. We anticipate that people who access to Hubs for legal advice on FV will also seek ongoing legal assistance with family law matters.

The Commonwealth should support the focus and commitment of the Victorian government in family violence, and support the provision of legal advice and assistance at the Hubs. The Commonwealth should provide resourcing to enable CLC “hub lawyers” to provide family law advice to people who have experienced family violence, and to provide ongoing casework and representation with family law matters that are connected to family violence. If successful in the five pilot Hub sites, this program could be expanded across Victoria and could provide a model for other states.

We know that CLCs are effective when they are integrated in early intervention support services, enabling families to receive advice prior to attending Court. Opportunities to co-locate vital support services for family law matters should be supported by the Commonwealth.

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

Community legal centres are well placed to support people to navigate the family law system. Some CLCs currently provide specialist family law casework services, including WLSV, Hume Riverina CLC, Peninsula CLC, Djirra and VALS. Several generalist CLCs provide family law advice, including Moonee Valley Legal Service, Darebin CLC and Fitzroy CLC. Some advice is provided through night services provided by volunteer lawyers at the CLC. The provision of legal advice by volunteers is one way in which CLCs are able to leverage their limited resources to deliver a large number of legal services. However, this kind of service can only be maintained if there are sufficient resources to support and supervise volunteer lawyers.

Most family law matters are dealt with by Victoria Legal Aid, either through in-house solicitors, or through referrals to private practitioners who are willing to undertake matters on a grant of legal aid. This system perpetuates the disconnection between family violence and the family law system. As noted above, community legal centres often provide assistance to victims of family violence through intervention order duty lawyer services, and may assist with some civil matters, such as tenancy, fines and debt. It is disruptive when a client who has received legal assistance with family violence and related civil matters from a CLC is then referred to VLA and a private practitioner for legal assistance with their connected family law matter.

One client is likely to have interconnected family violence, family law, and child protection issues, and potentially a number of non-legal issues that may contribute to legal problems. Instead of requiring a client to navigate this complexity, the legal assistance sector should be funded to provide legal support through one service, integrated with social work supports. This model is likely to result in better family law outcomes for clients; earlier support with child protection issues that will reduce the chance that a child will be removed into the care and protection system; and reduce pressure to return to a situation of violence. This is a long term strategy that will require long term funding and will lead to gradual change over time.

Not all of the CLCs that currently provide legal assistance to victims of family violence have the resources to provide family law legal advice, casework and representation. The value of increasing CLC capacity to undertake family law work has recently been explored in two Victoria Legal Aid pilot programs, the "CLC Children and Family Law Pilot" and the "Family Violence to Family Law Continuity of Service Delivery pilot".<sup>11</sup>

The "Family violence to family law continuity of service pilot" has not yet been completed. CLCs that are participating in the pilot inform us that as a result of an increase in resourcing, they have been able to provide coordinated legal assistance to clients experiencing connected family violence and family law issues, including ongoing casework across family law, and that this has resulted in better outcomes for clients. We strongly support the continuation of the pilots at the existing sites and suggest the Commonwealth should invest in their expansion across CLCs.

The evaluation of the "Children and Family Law Pilot" has been released and demonstrates positive outcomes for clients.<sup>12</sup> The Children and Family Law project funded two CLCs to undertake child protection and family law work for people experiencing disadvantage. This has resulted in improved outcomes for clients. We support continuation of this funding at the pilot sites, and the imminent planned expansion of the program to one other CLC. We support continued expansion of the program to build capacity of CLCs to assist clients (particularly those who have experienced family violence) with child protection matters. Building this capacity will also take time, workforce planning, and support from specialist organisations. In our view, this is a long term strategy that will prove valuable and worthy of investment: it will enable the legal assistance system to wrap around people with complex needs and cross jurisdictional issues.

It is our submission that CLCs, as specialists in assisting people who are victims of family violence, are well placed to build capacity to provide legal assistance to this cohort with family law issues and child protection issues that are linked to their experience of family violence. This capacity building requires:

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<sup>11</sup> See [www.vla.vic.gov.au/about-us/news/new-pilot-to-close-gap-between-family-violence-and-family-law-help-for-parents-and-children-0](http://www.vla.vic.gov.au/about-us/news/new-pilot-to-close-gap-between-family-violence-and-family-law-help-for-parents-and-children-0).

<sup>12</sup> See "Evaluation of Children and Family Law Pilot" (September 2017) at <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-evaluation-of-the-community-legal-centre-children-and-family-law-pilot.pdf>.

- Investing in community legal centres to enable them to recruit specialist family lawyers who can provide advice, representation, and casework assistance, and build the capacity of other lawyers within the service to provide family law advice;
- Resourcing WLSV to provide training and secondary consultation to new family lawyers in generalist CLCs.

Given the clear benefits of this approach and the better outcomes evidenced in the evaluation, the Commonwealth should support the continuation of the VLA pilots at the existing locations, and the expansion of pilots to other CLCs. It will take time to build the capacity of generalist legal services to provide substantial family law assistance. To achieve this, workforce planning will be needed, and specialist services (such as WLSV) will need to be resourced to provide training, secondary consultation and support to generalist centres as they build their capacity.

The need for family law services are great, and the value of continuity of advice and representation for clients with multiple legal issues significant, that such capacity building would be efficient use of resources, streamlining the process and decreasing pressure on the Family Court.

Building capacity of CLCs to provide family law assistance will take time. In the interim, and to meet the urgent need, we support the submissions of WLSA and Peninsula CLC that call for an expansion of the Family Advocacy and Support Service (FASS) program to a greater number of locations, including all family law courts. As stated in the submission of WLSA:

*"The FASS service is provided to people affected by family violence with family law issues. It is being piloted in family law registries across Australia. It consists of a duty lawyer as well as social support services... it is early days but the early signs are encouraging that this is an effective way to help people affected by family violence to navigate their way through their family law issues and access non-legal support. Consideration of evaluation findings will be important as well as recognition that such a model needs to be responsive to the needs of the local people and so if rolled out to each registry needs to consult locally about what is needed and may provide the service differently. Equity of access to legal and support services in regional, rural and remote communities is also important."*

We note that VLA has funded two CLCs to deliver FASS services, at WLSV and Peninsula CLC. We understand that these services have only been successful because the ability of CLCs to form effective local partnerships has been recognised by the funding body, VLA.

If investment was made to build capacity of CLCs to provide family law representation and casework assistance in accordance with the pilot model outlined above, we believe this would enable CLCs to provide earlier legal assistance to victims of family violence, and this would reduce pressure on the FASS model over time.

In order to meet the urgent need for more family law services for people who are experiencing disadvantage, particularly people who have experienced family violence, we urge the Commonwealth government to implement the Productivity Commission's 2014 recommendation for increased legal assistance funding.

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

We refer to the recommendations of the National Family Violence Prevention Legal Services Forum submission, including:

**Recommendation 3:** Increase secure and long-term resourcing of FVPLSs to address the multitude of barriers experienced by Aboriginal and Torres Strait Islander victims/survivors within the family law system through holistic, culturally safe legal and non-legal support, including national coverage

**Recommendation 6:** Ensure adequate, secure and long-term investment in culturally safe community legal education and outreach programs to increase awareness and understanding of family law issues in Aboriginal and Torres Strait Islander communities that is designed and delivered at a regional level in response to identified local issues. This must include appropriate resourcing for community legal education and outreach programs specifically targeting Aboriginal and Torres Strait victim/survivors of family violence which is designed and delivered by specialist Aboriginal and Torres Strait Islander legal service providers with family violence expertise, such as FVPLSs;

**Recommendation 7:** Increase Federal and state and territory legal aid funding for counsel to attract and retain skilled and culturally competent barristers to represent Aboriginal and Torres Strait Islander parties in family court.

**Recommendation 8:** Employ Aboriginal and Torres Strait Islander Liaison Officers within Family Law Courts in order to provide culturally appropriate support, referral pathways and act as a conduit for communication in a culturally sensitive manner for all Aboriginal and Torres Strait Islander family law clients;

**Recommendation 9:** Employ Aboriginal and Torres Strait Islander Family Consultants and within Family Law Courts;

**Recommendation 10:** Develop and implement a practice direction which specifies that in cases involving Aboriginal or Torres Strait Islander parties or children there is a preference for the Family Consultant engaged in the matter to be an Aboriginal or Torres Strait Islander professional and, where this is not possible, a requirement that family reports in these cases must only be prepared by Family Consultants who have undergone cultural awareness training and who have experience working with Aboriginal and Torres Strait Islander children.

We understand that the Victorian Aboriginal Legal Service intends to make a submission to this Review. We support their advocacy for funding for their Balit Ngulu service, which provides legal assistance to children in youth justice, child

protection, family law, and civil law issues to ATSI youth across Victoria. This service currently provide integrated and culturally appropriate services to 100 ATSI youth to address issues such as recidivism, cultural needs, connection to family, educational and employment needs, and leadership so that they can be assured that they are not a lost cause and they can have a strong voice in their own affairs. This service is currently funded until July 2018.

We urge the Commonwealth to provide ongoing funding for this service. It assists young people with family law issues in the context of multiple other legal issues, and its integrated response represents evidence-based best practice.

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

Many community legal centres, such as WestJustice, Fitzroy Legal Service, Moonee Valley Legal Service and Springvale Monash Legal Service, have developed expertise in working with local CALD communities, through community development, community legal education, and the creation of specialist legal services to provide legal assistance to recently arrived groups. This work is often undertaken with the assistance of a community liaison worker from that community, and in partnership with local organisations, including community groups, public schools, public hospitals, and settlement agencies that provide services to newly arrived refugees. These services provide a model for ways in which family law information can be provided to CALD communities, and demonstrate how community legal education can be used as a pathway to legal advice.

There is also a specialist service, inTouch Multicultural Centre Against Family Violence, which provides services, programs and responses to culturally diverse women experiencing family violence. The inTouch Legal Centre (iLC) provides advice and casework on a range of legal matters as part of an integrated support service. The legal assistance is culturally informed as a result of the employment of workers from CALD backgrounds, and is provided in language. The iLC receive most referrals from the inTouch Client Services team. Other referrals are made from health care staff at Monash Health and Dandenong Hospital, through their Health Justice Partnerships. As part of this service, health care workers can access secondary consultation, education and information on family violence in the CALD setting.

The legal service provided by inTouch currently receives no Commonwealth government funding, and extremely limited state government funding. As a result, the service is able to provide legal advice and assistance on family violence, but has extremely limited capacity to provide assistance with family law litigation. The iLC does not have the ability to pay disbursements such as barristers' fees and expert reports. Increased funding would alleviate this barrier.

Some inTouch clients, especially those with property disputes, are referred to private lawyers who will accept payment on a deferred basis. Problems arise however where disbursements are required up front and the client cannot fund the payment of her own interpreter, barrister's fees and expert reports.

InTouch's clients have shared that their experience is that they are worn down and re-traumatised by the court process. Most of their clients have attended at least four court hearings over several months for contested Intervention Orders. They then have to undergo another court process, which is even more complex and lengthy, for family law disputes.

We note that access to interpreter services is crucial to enable CLCs to provide legal referrals, information, advice, representation and casework assistance to people from a CALD background who have family law issues. Until 2015, interpreter services were funded by the Commonwealth government through the Translating and Interpreting Service (TIS National). Allocation of TIS funding was not capped. After the introduction of the National Partnership on Legal Assistance Services (NPA), a capped amount of funding was distributed from the Commonwealth to the states to provide interpreter services. The funding allocated to CLCs to provide interpreter services is not sufficient to meet the current need, and as a result the cost of meeting the need for interpreter services has been shifted to the state. The Commonwealth should meet the need for interpreter services to ensure that legal services are accessible to CALD people.

A lack of information in languages other than English, inadequate translating and interpreting services as well as a lack of cultural competency among family law professionals and other service providers in the family law system also accentuates the difficulties of people who are culturally and linguistically diverse.

We call on the Commonwealth to commit funding to inTouch to enable this service to continue to provide legal assistance to CALD victims of family violence, and expand its capacity to provide casework and representation services on family law.

### **Case study: Family violence victims pressured into agreeing to unfavourable and inappropriate consent orders**

A 19-year-old Cambodian woman arrived in Australia on a spousal visa. She had met her fiancé, who was in his 40s, on two previous occasions while he was travelling in Cambodia. Soon after her arrival, she fell pregnant and the family violence began. For the following four years, she was hit, kicked, pushed, sexually violated and sworn at regularly. During this time, she was isolated from her family in Cambodia and her local community, relying solely on her husband. The woman fell pregnant again but left her husband before the second child was born.

When court proceedings commenced, she was represented by a lawyer. Shortly before the final hearing, her lawyer informed her that he could no longer represent her and she was unable to find alternative representation. Suddenly, the woman found herself navigating an unfamiliar court system in a foreign language.

During the negotiation, her ex-partner's lawyer provided her with consent orders. Her case manager helped her to translate the orders but she did not receive legal advice. The power imbalance during the negotiation process – along with her ignorance of her legal rights, fear of further proceedings, and need to pay bills and look after the children – meant that she felt pressured to agree to the orders even though they were not favourable to her or in the best interests of the children. The orders included shared-parental responsibility and allowed her husband to have unsupervised contact with the children.

Since the making of the final orders, her ex-partner's involvement in the children's lives has been sporadic. When he has been in contact with the children or the woman, he has been violent. One of the children, who has witnessed this violence throughout his life, is now perpetrating the same violence against the woman and his mental health has deteriorated to the point of self-harming. Our client is attempting to obtain assistance and support for the child but she requires her ex-partner's consent due to the shared-parental responsibility in the orders. Her ex-partner is refusing to provide consent and is extending the family violence cycle through this unreasonable control.

Five years after the making of final consent orders, the client is seeking to vary the orders, which were not appropriate to begin with.

### **Case study: Lack of coordination between intervention order and family law systems**

A 30-year-old woman was living with her partner and their two-year-old son. She was in contact with a local family violence agency as her partner had become verbally abusive and controlling.

The woman was on medication following major surgery but was otherwise healthy, both physically and mentally. She was able to work part-time while her partner, who was on Newstart Allowance, took care of their child. Her partner was a regular marijuana user and occasionally sold it.

The client became increasingly scared of her partner and, on the advice of the local family violence service, obtained an interim family violence intervention order. The father contested the making of a final order. The woman left the house with their son and moved in with her brother. The woman's ex-partner applied in the Federal Circuit Court for a recovery order claiming the client was not capable of taking care of the child as a result of her medication and mental health issues.

The matter was listed urgently in court. The woman denied her ex-partner's claim that she was unable to care for their child, and that she had made false allegations of family violence to prevent her ex-husband from spending time with the child. The recovery order was made with the father obtaining orders that the children live with him, and the matter was set to return to court in six months. The client was not able to obtain legal assistance from a duty lawyer due to a conflict of interest and incurred significant legal expenses to obtain private representation.

### **Case study: Legal assistance for people from CALD communities**

Farhana is from a CALD background and speaks very limited English. She has experienced significant family violence, her husband has left and his whereabouts is unknown, she has a low income and is not currently working, and she is the sole carer for her young child. She is receiving support from a health and welfare focused community organisation.

Farhana wants to secure an intervention order, parenting orders, and seek a divorce. She also wants to obtain a passport for her young son. Because she does not know where her husband is, each of these matters requires quite complex paperwork, including applications for substituted service of court documents. Farhana is stressed and overwhelmed by the complexity of the legal processes she has to navigate. The community health and welfare supports can only provide limited help.

Farhana is not eligible for a grant of legal aid. The health and welfare organization has a relationship with the local CLC, and makes a supported referral. Her local CLC is able to assist her with all of her legal needs, including civil law issues (fines in her name that were incurred by her husband) that she didn't even know were legal problems. As a result of the CLC's assistance, Farhana is able to travel overseas with her son and connect with her extended family. She says this is healing for her. The fact that a lawyer is providing help with fines and a number of other civil debts also removes a significant source of stress.

## **Question 7: How can accessibility of the family law system be improved for lesbian, gay, transgender, intersex and queer (LGBTIQ) people?**

We refer to and support the submission of Rainbow Families Victoria. In our view, reform to the family law system should begin from a perspective that understands the experiences and diversity of the LGBTIQ community. We support the recommendation from the SPLA Family Law Report noted in the Issues Paper at page 32, that family law professionals receive "training on working with these groups to ensure that the family law system is accessible and responsive."

It is also crucial to develop pathways to family law advice for people in the LGBTIQ community, and that this is an area of high level need. A 2010 investigation into the legal needs of LGBTI people found:

"In 2009-2010, Inner City Legal Centre [Kings Cross, Sydney] provided legal advice and representation to over 2,000 clients. GLBTIQ people again comprised a significant proportion of clients, with assistance provided in 139 GLBTIQ-related matters and an additional 74 general matters. GLBTIQ legal assistance was most commonly sought in relation to family law matters (47%), followed by discrimination matters (5%), and employment matters (4%)."<sup>13</sup>

We note that St Kilda Legal Service has recently established a new LGBTIQ legal service in partnership with the Victorian AIDS Council, with small amount of philanthropic funding from the Victoria Law Foundation and an anonymous donor. This will enable them to provide a legal service targeted at the LGBTI community for 2 years, with limited capacity to provide family law advice. Fitzroy Legal Service also provides LGBTIQ legal services by way of a monthly family law clinic at their night service (staffed by volunteer lawyers) and fortnightly outreach at Queerspace (currently second round of 12month state family violence funding).

There are examples of dedicated community legal services in other states, such as the LGBTI service at Inner City Legal Centre in NSW, and the LGBTI Legal Service in Queensland, which provides advice in relation to family law, domestic violence, surrogacy and parenting rights, criminal law, discrimination, and employment.

We call on the Commonwealth to provide ongoing funding for St Kilda Legal Service's and Fitzroy CLC's LGBTIQ legal services, with sufficient resourcing to enable the services to provide family law advice, casework and representation.

We commend the Attorney General's commitment to implementing Recommendation 3.6 of the Access to Justice Review:

*"The Victorian Government should include legal triage and services in the design of the proposed Pride centre, in order to provide tailored and specialist legal in-*

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<sup>13</sup> Public Interest Law Centre, "Equal Access to the Law System: Report on Legal Services and Information for Gay, Lesbian, Bisexual, Transgender, Intersex and Queer Victorians" (November 2010), citing Inner City Legal Centre, *Annual Report 2008-2009* (2009).

*formation, education, referrals, and legal advice to lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) people and to deliver LGBTI cultural competency training to legal service providers.”*

St Kilda Legal Service and Fitzroy CLC are both involved in the consultations being undertaken in the development in the Pride Centre. We call on the Commonwealth to contribute to the resourcing of legal services at the Pride Centre, to enable community legal centres to provide family law advice, casework and representation to the LGBTIQ community.

**Question 8: How can the accessibility of the family law system be improved for people living with a disability?**

We note the success of Health Justice Partnerships in providing access to legal services for people who are users of the health system. The Health Justice Australia website provides an overview of health justice partnerships at <https://www.healthjustice.org.au/hjp/health-justice-partnerships-in-australia/>. Several health justice partnerships have been established to provide a pathway for people who are experiencing family violence to the legal system. For example, the Health Justice Partnerships provided by Inner Melbourne Legal Centre, Eastern CLC's MABELs project, and the partnership between InTouch and Monash Health, are designed to enable health professionals to make a referral into a legal service if they identify that a patient is experiencing, or at risk of, family violence.

We are not aware of any CLC that currently has a health justice partnership aimed specifically at assisting people with a disability with family violence or family law issues. However, we can see value in health justice partnerships with disability organisations (such as MS Connect) providing a pathway to legal assistance, including family law, for people experiencing a disability. We call on the Commonwealth to fund pilot projects in Victoria to explore the value of this model of service delivery.

The Australian Human Rights Commission has published a report that documents barriers to access to justice for people with a disability in the criminal law system.<sup>14</sup> While this report is focussed on the criminal law system, many of the recommendations may also be relevant for the family law system, such as the call for each jurisdiction in Australia to develop a holistic, over-arching response to the issues that affect people with disabilities in the justice system through a Disability Justice Strategy.

Barriers to access for justice for people with a disability include the way in which assumptions are made about a person's credibility or competence. For example, a person who has a cognitive or psychosocial impairment may be assessed by police as having reduced credibility, and this may affect the actions taken by po-

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<sup>14</sup> Australian Human Rights Commission, "Equal before the law: towards disability justice strategies", (February 2014) at <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>.

lice. A case study provided by the Australian Federation of Disability Organisations is included below.

### **Case study: Credibility of a person with a disability**

Laura is a young woman with a mild intellectual disability who lives with her partner who also has a mild intellectual disability. They live independently with support from Laura's family. Laura is employed in an Adult Education Centre and both are on the Disability Support Pension. Recently Laura's partner has admitted to having a gambling problem and there are tensions within the relationship about financial stress.

Last week during an argument about money, Laura's partner physically assaulted her. A neighbour who heard the conflict called police. The police arrived but by then the situation had calmed down and both Laura and her partner denied that there was any family violence occurring. Police made a referral to a family violence agency. In talking to the family violence worker Laura disclosed that her partner had a history of violence and that she had been subject to that violence for many months.

Family Violence workers supported Laura to make a report to the police who came and interviewed her. Some weeks later, after no further contact was made, the family violence worker contacted police to ask what was happening. The police explained that due to Laura's cognitive impairment it would be difficult to proceed with the case. They explained that they interviewed Laura's partner who denied the allegations. In these circumstances, with a lack of evidence and differing stories from each of the parties the credibility of Laura was being questioned. The case failed to proceed past the initial investigation by police.

Issues about credibility are relevant to the ALRC Review because the credibility of family violence allegations may have a direct impact on family law proceedings. If people with a disability do not have the support of a disability advocacy service and a lawyer with competency in working with people with disabilities to assist them in their interactions with police and lawyers, then allegations of family violence may not be viewed as credible, and as a result family violence may not be considered by a court.

Disability advocacy services also provide crucial support when child protection services are involved in investigating whether a person with a disability is able to parent their child. Again, there is a need for lawyers with appropriate training to provide timely legal advice, and provide legal advocacy on behalf of people with a disability. We call for the Commonwealth to support CLCs to provide legal advice, casework and representation to people with a disability on family law and child protection matters.

We understand that the ALRC will be meeting with the Australian Federation of Disability Organisations, and that they are well placed to make specific recommendations for other ways in which the accessibility of the family law system might be improved, including accessibility of the courts and the court process.

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

In the short term, we support the expansion of Family Advocacy Support Services to the court sitting on circuit in regional areas, in locations including Ballarat, Bendigo, Geelong, Morwell, Mildura, Shepparton, Warrnambool and Albury.

We note that some CLCs have successfully used technology to provide legal advice to women who are in regional or remote areas, to fill the urgent gaps in legal assistance. For example, WLSV runs the LINK program. This involves women who are victims of FV receiving a skype appointment WLSV, organised through a FV service. Legal information and advice can then be provided via phone. Advice is often provided to a woman in the presence of a family violence worker, who can then support the woman to address her legal issues. WLSV also takes on casework for vulnerable women through this service. This program, which provides a crucial safety net for women in regional areas, does not currently receive any ongoing funding.

We call on the Commonwealth to increase accessibility to free legal advice and assistance with family law matters for people living in rural, regional and remote areas of Australia, by providing ongoing resourcing for the LINK program in Victoria.

As noted above, we also strongly recommend expansion of the Family Violence to Family Law Continuity of service pilot at additional regional CLCs, including Barwon CLC (Geelong), Central Highlands CLC (Ballarat), Loddon Campaspe CLC (Bendigo), Goulburn Valley CLC (Shepparton), Gippsland CLC (Morwell), and Murray Mallee CLC (Mildura).

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

Community legal centres are chronically underfunded, as a result of decades of underinvestment in the legal assistance sector by the Commonwealth government. There is significant and increasing demand for legal assistance. CLCs are able to assist some of the most vulnerable and disadvantaged people, but they are still not able to meet the demand. As a result, many people who are experiencing disadvantage—including people with a low income, low education, disability, CALD background—are not able to get legal assistance with their family law matter and are forced to self-represent.

Many middle class people are also unable to access community legal centres or legal aid, but are unable to afford full representation by the private profession. Often self-representation is the only option for these people too.

With this in mind, the family law system should be redesigned from a client-centred perspective, rather than the perspective of court staff and lawyers. Family law legislation and rules should be written in plain modern English. Court websites should contain information that is in plain English, and can be navi-

gated on a smart phone rather than a computer. Our member centre Darebin CLC notes:

*"As a general rule much of our advice service time is taken up with explaining basic documents to clients. Our time would be more effectively used giving advice on legal matters rather than myriad procedural complexities. We remain enthusiastic and supportive of a whole scale review of the Family Law System and recommend that any resultant procedural and legal changes be viewed primarily through the lens of "lived client experience" as well as being informed by the legal services sector.*

*A well-designed family law system, should enable any person in commonplace, non-complex circumstances, including the client (with limited lay community support, and the provision of interpreters and translators), to obtain a divorce and appropriate parenting orders, including a passports order, without a need for lawyers.*

*Straightforward applications should be able to be entered from a smartphone, questions answered once, and the resulting data made available to the parties and the courts as necessary. Data should be gathered intuitively, by interactive processes, rather than by form filling. Some steps along this road have already been achieved in the Federal Circuit Court, in the Commonwealth Courts Portal. Much more might be done. An example of a useful information gathering tool is Settify (<https://www.settify.com.au>), which interactively collects information from, and provides feedback to, client users and, in turn, the sponsoring law practice. This is intended to achieve efficiency and support to both lawyer and client. It is designed to encourage participation."*

We support the measures suggested in the issue paper at pages 37-38, including the suggestion that specialist clinics be developed "within the courts or legal aid commissions to provide pro bono training and advice for parties who self-represent." We emphasise that specialist clinics that provide pro bono training and advice should be in addition to, and not instead of, adequate funding of legal assistance service providers. For a good articulation of the role of pro bono legal services, we refer you to the submission of DLA Piper to the Access to Justice Review in February 2016. In the words of the submission:

*"Pro bono services are provided to improve access to justice for all people by providing free legal assistance to those who would otherwise be unable to obtain such assistance. Pro bono providers, such as DLA Piper, rely on effective, well resourced, frontline services such as CLCs, Legal Aid and Justice Connect to:*

- 2.2.1 connect pro bono providers to clients;*
- 2.2.2 ensure pro bono resources are targeted to the greatest areas of need;*
- 2.2.3 build up and share expertise and skills in specific areas of law or specific communities, such as homeless persons or prisoners; and*
- 2.2.4 undertake law reform and advocacy work based on their knowledge and expertise gained in frontline services."<sup>15</sup>*

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<sup>15</sup> See [https://engage.vic.gov.au/application/files/4414/8609/4198/Submission\\_33\\_DLA\\_Piper.pdf](https://engage.vic.gov.au/application/files/4414/8609/4198/Submission_33_DLA_Piper.pdf).

## **Legal principles in relation to parenting and child support**

We refer to the submissions of our member centres and alliance partners. We have reviewed and support the recommendations of WLSA, Fitzroy Legal Service, Peninsula CLC, and the National Family Violence Prevention Legal Services Forum.

The presumption of equal shared parental responsibility has been in place for more than a decade now (since introduction of the framework for decision making in Part VII of the *Family Law Act* in 2006), and it has continued to place people and families experiencing family violence at risk. We call for the legal presumption to be removed, due to the lack of appropriate risk identification and assessment of family violence, and the burden that the presumption places on victims to provide evidence of family violence. We support a continued emphasis on safety and the best interests of the child.

In particular, we note WLSA's submission that:

*"The presumption of equal shared parental responsibility is not meant to apply in cases of violence and abuse [...] However, the family law system has difficulty identifying and assessing the risk of family violence early. Many victims-survivors can be unrepresented in court because of limited legal aid and many matters are settled in family dispute resolution, often without legal assistance. It is often difficult to prove violence/abuse to the satisfaction of the court because it occurs behind closed doors."*<sup>16</sup>

We support the position of WLSA and FVPLS that, in accordance with the recommendation of the recent House of Representatives committee report on family violence, the ALRC remove the presumption of equal shared parental responsibility, on the basis that it is "improperly being applied to many cases involving family violence and that is giving rise to court orders and consent orders which put people affected by family violence, including children, at unacceptable risk."<sup>17</sup>

We also note the suggestion by Peninsula CLC that a separate and dedicated management pathway for family law matters involving family violence should be established by the family law courts. We also support the submission of WLSA that a separate a distinct legislative pathway in the Family Law Act be developed for cases involving family violence.

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<sup>16</sup> WLSA p. 22

<sup>17</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Report on Parliamentary Inquiry into a better family law system to support and protect those affected by family violence, 2017, para 6.125.

## Resolution and adjudication processes

We support the submission of Fitzroy Legal Service, in particular its statement that:

*"The family law system is intrinsically judicial, adversarial, slow, and inflexible. While mediation has long been a requirement in parenting matters, it operates as an adjunct to the courtroom process and is often dispensed with or circumvented. Perpetrators of family violence are frequently adept at manipulating the system to frustrate or delay processes, and victims of violence are repeatedly brought back into contact with perpetrators throughout a long and often grinding litigation process. We believe the family law system should be flexible enough to make use of different forms of alternative dispute resolution (ADR) according to the different needs of different families. Moreover, we argue the system should be reoriented to centralise problem-solving and protection of children and vulnerable parents, with formal court processes used only in the final stages of the process, when there is immediate risk to children or parties, or as a last resort when other processes have failed. It should be a system of mediation/ADR with court orders as an option, not the other way around."*

The submission of Fitzroy Legal Service suggests that one way to resolve this problem is to establish a national network of Family Justice Centres (FJCs), on a similar model to the Neighbourhood Justice Centres, "to link dispute resolution, violence prevention, support and related services under a single roof... the FJC would operate on a case management model, with capacity to link applicants into a range of relevant services (including housing, drug and alcohol treatment, mental health as well as parenting, post-separation services, legal advice and representation, supervised contact and interpreters."

We support this vision. Such an initiative would require a commitment to a person-centred approach to resolving multiple, connected legal issues and their causes. This would take significant investment, but we believe it would resolve legal and social problems earlier, and result in a reduction in recurring cycles of violence. There would be positive impacts on health, employment, housing, parenting, and education, and flow-on economic benefits.

If the Commonwealth is not willing to make such an investment, then we support the inclusion of elements of the Neighbourhood Justice Centre model in and around the existing family law system. This could include, for example:

- Greater use of orders diverting family law matters to legally assisted family dispute resolution such as VLA's Family Dispute Resolution Service (per the submission of Peninsula CLC);
- As suggested in the submission of WLSA, improved early screening processes for family violence to identify cases that may not be suitable for mediation due to power imbalance;
- Increased investment in integrated services, particularly through the inclusion of social workers into community legal centres;

- Establishment of a small claims property list for the resolution of small property matters. We support all the recommendations in the WLSV report, *Small Claims, Large Battles*.<sup>18</sup>

## Integration and collaboration

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

Several integrated service approaches undertaken by CLCs have been effectively piloted and evaluated. For example, the Women’s Homelessness Prevention Project at Homeless Law (part of Justice Connect) involved lawyers and social workers assisting women who have exited family violence to address ongoing risk of homelessness. An evaluation of the first twelve months of the service showed:

*"In its first 12 months of operation, the WHPP's integrated model has proven highly effective in preventing homelessness amongst women and children: 62 women, with 102 children in their care, have been provided with legal representation and social work support and 81% of finalised matters have resulted in women maintaining safe housing or resolving a tenancy legal issue (eg a housing debt) that was a barrier to accessing safe housing. Ninety-five percent of the WHPP's clients have experienced family violence. Almost 70% are facing eviction for falling behind in their rent."*<sup>19</sup>

WLSV's "Stepping Stones" Project tested a model of service in which free legal advice and financial counselling was provided to women experiencing family violence and financial hardship. The financial counsellor and lawyers worked together to provide a holistic and responsive service. Services commenced in June 2014, and a report on the service was published in 2015. In this time, the service had been able to help more than 170 women reduce their collective debt by more than \$250,000.<sup>20</sup>

The legal service at inTouch, described above, is another excellent example of an integrated legal/family violence service.

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<sup>18</sup> Women's Legal Service Victoria, *Small Claims, Large Battles: Achieving Economic Equality in the family law system* (2018), accessed at [www.womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf](http://www.womenslegal.org.au/files/file/WLSV%20Small%20Claims%2C%20Large%20Battles%20Research%20Report%202018.pdf)

<sup>19</sup> "Women's homelessness prevention project: keeping women housed: Twelve month project report" (September 2015) at [https://www.justiceconnect.org.au/sites/default/files/Homeless%20Law%20-%20Women%27s%20Homelessness%20Prevention%20Project%202012%20month%20report\\_0.pdf](https://www.justiceconnect.org.au/sites/default/files/Homeless%20Law%20-%20Women%27s%20Homelessness%20Prevention%20Project%202012%20month%20report_0.pdf).

<sup>20</sup> Smallwood, Emma, "Stepping Stones: Legal barriers to economic equality after family violence" (September 2015) at <http://www.womenslegal.org.au/files/file/1.%20Final%20-%20Stepping%20Stones%20Report.pdf>.

Existing services provide an excellent model of how integrated services can be most effective. The *Access to Justice Review* undertaken in Victoria stated:

*"Evidence suggests that as well as diverting people from unnecessary civil litigation, integrated and collaborative forms of service delivery foster service co-ordination, better target services for disadvantaged and vulnerable groups, and can have a positive impact on health. Integrated service delivery enables legal and non-legal workers to deal with multiple problems faced by a client, rather than considering the legal issue in isolation."*<sup>21</sup>

### **In the words of the Royal Commission into Family Violence**

"The high cost of legal services, the limited availability of free or subsidised services, and the pressure on existing services, are perennial concerns. Limited services are particularly concerning in the context of family violence, when the parties may have unequal access to resources and legal processes can be used by the perpetrator to continue dominating the victim. Victims may also endure significant financial hardship to engage legal representation, including depleting their savings, incurring debt and selling or mortgaging property and assets. Yet these assets and resources may be a protective factor, and their depletion may inhibit a victim's autonomy and increase their vulnerability to further violence."

Volume III, page 169

We already know what works. CLCs have led the way in piloting integrated services, and in gathering evidence on the outcomes of what such services can achieve.

Yet many integrated services are "pilot" programs that receive philanthropic funding, and are unable to secure ongoing government funding. For example, the Women's Homelessness Prevention Project has sought funding from government, but has been unsuccessful to date. As a result, the service has had to seek more than four years of funding from philanthropic organisations. This is a program that is ripe for expansion into other regions of Victoria and other jurisdictions, but it struggles to continue as a "pilot."

As a result of the Stepping Stones project, increased funding was announced for financial counsellors to work with people who have experienced family violence. However, the success of the pilot Stepping Stones project can be clearly attributed to the integration of financial counselling advice with legal advice, with lawyers and counsellors working in the same service and collaborating to meet the needs of the client. Unfortunately, the new funding for financial counsellors has been granted to existing organisations that have financial counsellors, rather than to CLCs or family violence services. This has meant that the financial counsellors are not located in CLCs, and legal and financial counselling services are not integrated. As a result of this error of implementation, clients have to continue to navigate multiple agencies to get assistance with their family violence matter, family law matter, child protection matter, and financial counselling assistance.

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<sup>21</sup> *Access to Justice Review*, Volume 1 Report and Recommendations (August 2016) at page 152.

It is time for the successful models listed above, and other proven “pilot” services, to be provided with ongoing government funding from both the state and the Commonwealth. It is also time for these successful programs to be scaled up and established in other regions across the state and the nation.

The Commonwealth has a crucial role to play in resourcing these successful programs. These kinds of services represent one part of a shift from a fragmented system in which matters are split between jurisdictions, to a client centred system in which services wraparound the person who needs them. The resourcing we recommend for CLCs will enable people who are experiencing disadvantage to receive early legal advice on family law issues, which is integrated with other support.

The legal system—and legal advice—should take account of the complexity of webs of legal problems. If we deal with each legal problem in isolation from the others that connect to it, and one person has to access four or five different services to get the legal help they need, then we will not resolve the wicked complexity of legal and social issues arising from family law and family violence.