Relationships Australia® VICTORIA

Review of the Family Law System: Discussion Paper

Submission by Relationships Australia Victoria (RAV)

Discussion Paper 86 (DP 86) October 2018

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13 November 2018

Contents

RAV Response[1]

Relationships Australia Victoria (RAV) welcomes this opportunity to contribute to the Australian Law Reform Commission's review of the Family Law System.

Response to Executive Summary

Action Plan for Change and a Public Health Approach.

RAV strongly supports the ALRC's adoption of a public health approach in the proposed action plan for change, especially in relation to preventing negative impacts on children and the entrenched disadvantage that can result from prolonged engagement in family law disputes.

A public health approach, which seeks to devolve justice to families, is consistent with the access to justice principles and methodology recommended in the 2009 *Strategic Framework for Access to Justice in the Federal Civil Justice System* report prepared by the Commonwealth Attorney-General's Department, to which we referred in our previous submission to this review (Issues Paper Submission no. 129, dated 7 May 2018). That report emphasised the primary importance of "Everyday Justice" and "Informal Justice" and of focusing on:

> "helping to build resilience in individuals, the community and the justice system by reinforcing access to information and supporting the cultural changes necessary to ensure improvements….This includes equipping people with the basic skills necessary to resolve their own issues, including by accessing appropriate information and support services….and innovative opportunities for improving general conflict resolution skills, including through school education"[2].

RAV continues to argue that a public health approach needs to be integrated with the Access to Justice Framework recommended in the 2009 report. It is important that the action plan, while emphasising education, culture change, resilience, informal dispute resolution, and interest based approaches, does not inadvertently overlook a jurisprudential concept of rights as part of its theory of change. Change in the family law system will be achieved by a combination of psycho-social and public health approaches *and* rights-informed approaches. The proposals emerging from this review that seek to increase opportunity for children's voices to be better heard and for victims of family violence to be less disadvantaged in court processes are underpinned by a legitimation of rights. Rights asserted and upheld have an impact on both behaviour and redressing social harm in combination with primary education and psycho-social interventions. There is a necessary interplay between the two. In our experience, having an accurate understanding of what is a reasonably likely outcome if their matter was adjudicated by the courts often helps to equip parties to make their own decisions in Family Dispute Resolution (FDR). More crucially,

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[1] **Please note** that Dr Andrew Bickerdike, CEO Relationships Australia Victoria, and part-time Commissioner of the Australian Law Reform Commission since June 2018, was not involved in the preparation of this submission.

[2] Attorney-General's Department (2009), *Strategic Framework for Access to Justice in the Federal Civil Justice System*, Commonwealth of Australia

realistic understanding of likely outcomes in court assists in redressing imbalances of power. Equally, a better understanding of the impacts of ongoing conflict on children can bring about real shifts in parents' behaviour and capacity to negotiate in the best interests of their children.

There is a pressing need to put more emphasis on primary interventions, as proposed in the ALRC action plan, but legal assistance, ensuring that people obtain legal advice and representation when they need it, will continue to be a fundamental part of an integrated system. Improving the justice quality of the relations and transactions in the family law system using a range of approaches and interventions and systemic improvements will lead to better social outcomes. See Figure 1 below.

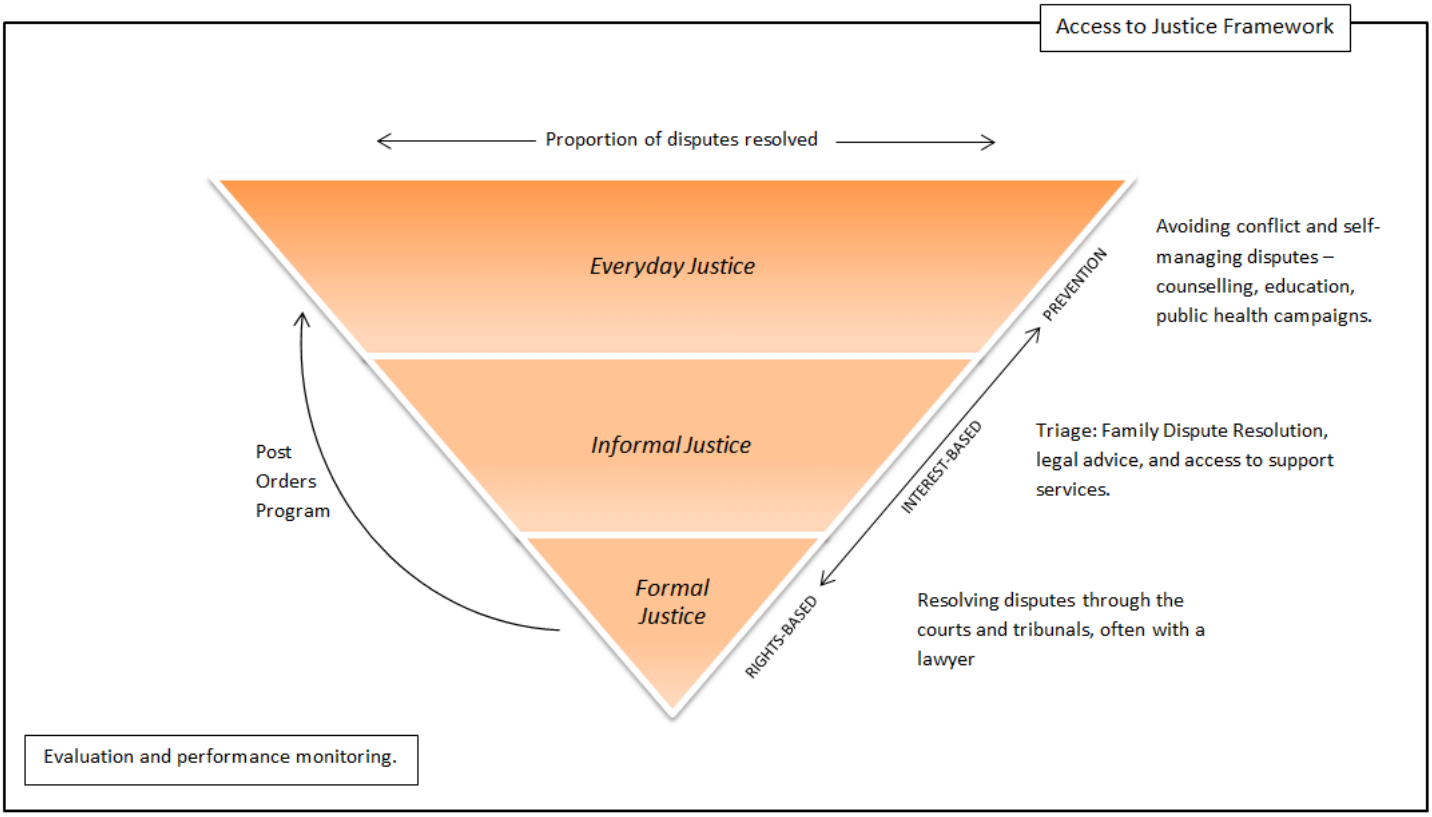

Figure 1: RAV's proposed model for the Family Law System (building on the Attorney-General's Department 2009 Report)

Section 2: Education, Awareness and Information

Proposals 2-1 – 2-8

RAV strongly supports proposals to develop a national education and awareness campaign and we endorse all proposals in this section. We support these proposals both as:

- primary intervention strategy/ies to shift the risk profile positively at a population level
- strategy/ies to help people better navigate the family law system at the point of entry, including children and young people[3].

RAV believes that a coherent, inclusive, and consistent approach to education and information that is well maintained and updated, making use of multi-media and digital options, will contribute to addressing the fragmentation challenge in the current system. Accurate and well-curated information can lead to earlier action and better outcomes. The proposed national education and awareness campaign should aim to:

- improve the quality of everyday justice through education, family counselling, and public health campaigns that seek to prevent disputes escalating and promote better self-management of disputes.
- enhance people's capacity to understand their position and where possible, to resolve matters themselves.
- encourage the resolution of family disputes at the earliest opportunity and in the least costly and harmful manner.
- ensure equality of access to justice through providing high quality information, support, and advice that is accessible to all people regardless of age, disability, socio-economic, linguistic, cultural, and educational background; or sexual orientation and gender identity. Information for children and young people should be matched to different developmental stages, and made accessible in ways that appeals directly to them. Resource development should be informed by input from the proposed Children's and Young People's Advisory Board.
- redress imbalances of power by seeking to empower those at risk of violence and intimidation, or vulnerability as a result of impaired capacity, through the provision of timely information, specialist advice and support.
- minimise harm to children and ensure that their needs, wishes, and preferences are given due consideration.
- direct attention to the underlying psycho-social issues that people might be facing, and what they need to do to address them.
- when court is necessary, ensure processes are well understood, fair, and affordable and simple as possible.

[3] Provided privacy concerns are addressed, the sharing of consumer testimonies of family system users, including positive experiences of what helped and identification of mistakes or what they would do differently, can be a powerful education tool. Such 'peer education' should be considered as part of the campaign.

In addition to the provision of accurate and accessible information about the family law system, we would also advocate for inclusion of information and education about effective stress management and conflict management, in keeping with the ALRC's proposal to use a public health approach in its plan for change. Assisting people to manage their internal states through effective stress management, education and information at the point of entry into the family law system could, in our view, greatly enhance decision-making and assist in building resilience in those using the family law system.[4]

Strong evidence from neuroscience supports observed behaviour of people using the family law system, that prolonged exposure to stress impairs decision making. Elevated stress tends to have the effect of undermining a balanced, logical approach to decision making[5], reduces the capacity of working memory, and causes "premature closure in evaluating alternative options."[6] Cognitive resources such as executive functions required for making adjustments (in decision making) are deteriorated by stress.[7] Those affected respond to habitual cues, are less able to distinguish important from less important detail, become insensitive to changes in outcome value, and are liable to become fixated on themselves, ignoring the negative consequences of their choices to others[8]. Those exposed to stress show a significantly stronger tendency to offer solutions before all available alternatives have been considered and to scan their alternatives in a non-systematic fashion compared to those not exposed to stress, diminishing effectiveness of problem solving[9]. However, longitudinal assessment of stressed individuals has shown that both the structural and functional changes triggered by stress are reversible and that decisions become again goal-directed when stress is reduced.[10]

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[4] Varvogli L. & Darviri C. (2011), "Stress Management Techniques: evidence-based procedures that reduce stress and promote health", *National Health Science Journal*, Vol 5:2: "After a thorough literature review in major databases (MEDLINE, Scopus, Science Direct) the following techniques were identified and are presented and briefly discussed here: progressive muscle relaxation, autogenic training, relaxation response, biofeedback, emotional freedom technique, guided imagery, diaphragmatic breathing, transcendental meditation, cognitive behavioral therapy, mindfulness-based stress reduction and emotional freedom technique. Conclusion: These are all evidence-based techniques, easy to learn and practice, with good results in individuals with good health or with a disease."

[5] Association for Psychological Science (2009), "Under Pressure: The Impact Of Stress On Decision Making", *ScienceDaily,* 16 September 2009, accessed at: www.sciencedaily.com/releases/2009/09/090915174459.htm>.

[6] Kontogiannis, T. & Kossiavelou, Z. (1999), "Stress and team performance: principles and challenges for intelligent decision aids", *Safety Science*, Vol. 33, Issue 3. December, pp. 103-128.

[7] Katrin S. & Brand M. (2012), "Decision making under stress: A selective review", *Neuroscience and Biobehavioral Reviews*, Vol 36, pp. 1228-1248.

[8] Bendahan, S., Goette, L., Thoresen, J. C., Loued-Khenissi, L., Hollis, F., & Sandi, C. (2017), "Acute stress alters individual risk taking in a time-dependent manner and leads to anti-social risk", *European Journal of Neuroscience,* Vol *45*, pp. 877-885

[9] Keinan G. (1987) "Decision Making Under Stress: Scanning of Alternatives Under Controllable and Uncontrollable Threats", *Journal of Personality and Social Psychology,* Vol. 52, No. 3, pp. 639-64

[10] José M. Soares J.M., Sampaio A., Ferreira L.M., Santos N.C., Marques F., Palha JA, Cerqueira J.J. & Sousa N. (2012), "Stress-induced changes in human decision-making are reversible", *Translational Psychiatry,* Vol 2, no. 7: e131, doi:10.1038/tp.2012.59.

Psycho-education about better conflict management is incorporated into a number of post-separation group programs, particularly in the context of parenting. 'Divorce' and conflict coaching has had a niche role in the family law system for some time. However, the effectiveness of these interventions in helping individuals develop less confrontational/positional stances and more solution-focused, interest-based, and respectful negotiation skills and approaches in dispute resolution settings has not been independently evaluated. In RAV's experience, many clients attending FDR are assisted in moving away from confrontational and positional stances and are able to progress effectively to 'co-developing' solutions with the other party without additional focused intervention. However, there is a cohort of people (where high conflict personality and borderline personality disorder are *not* in play), who might make this progression sooner with additional coaching and support. We therefore think that consideration should be given to including education and information resources to assist people to think about and approach conflict differently, in conjunction with stress management resources, as soon as they engage with the family law system.

In line with a public health approach, consideration should be given to encouraging innovative initiatives aimed at improving general conflict resolution skills in the community, and through tertiary and school education.

Section 3: Simpler and Clearer Legislation

Proposal 3-7 – 3-8 and Question 3-1

RAV supports the further clarification of the decision making framework for parenting arrangements. We agree that replacing the term 'parental responsibility' with 'decision-making responsibility' is more easily understood. In our submission, such a change should be accompanied by definitions of Parallel Parenting and Cooperative Parenting being incorporated into the Act, linked to evidence based guidelines. Parallel Parenting, in our submission, is a useful, well established, and easily understood term that can be graded to different situations and levels of dysfunction in parenting cooperation.

Parallel Parenting is generally understood as an arrangement in which divorced parents are able to co-parent by means of disengaging from each other, and having limited direct contact, in situations where they have demonstrated that they are unable to communicate with each other in a respectful manner or in an effective 'business-like' manner. The Ontario Court of Appeal has held that parallel parenting should only be ordered where there is evidence that the parents can communicate effectively with each other. However, it has also upheld orders for parallel parenting where the parents have had serious difficulties dealing with each other. Notwithstanding these difficulties, the parents in these cases were caring, competent, and beneficially involved in their child's life.

Parallel Parenting Orders may also be considered when the parents' relationship is too conflicted for them to share decision-making with one another, but not so conflicted that the parents are unable to make the right decisions concerning major issues for their child. In such cases the allocation of clear areas of responsibility may work best, with one party to have exclusive say over areas of decision making for the child such as health, education or religion despite sharing joint custody of the children. This can be in the form of sole parental decision-making responsibility or the allocation of responsibilities between the parents. Through allocating clear areas of decision-making between the parents, parallel parenting can give the child the benefit of maintaining each parent's involvement in decisions in his or her life. For this arrangement to be successful both parents must be equally competent and their lack of cooperation must not affect their child's best interests.

In our view, when parallel parenting is indicated, it is better that each parent is as fully in charge during the time they exercise the care and control of the children as possible, and that specified exceptions are as few as possible, as is considered in the best interests of the children in their situation. In our experience, children are regularly denied access to therapeutically-indicated individual counselling or family therapy, because both parents need to give consent, and one parent objects. One parent, through power of veto, can exercise undue control over the other parent's parenting relationship.

Where Parallel Parenting is indicated, the court could refer to the proposed Parent Coordinator to assist parents to make decisions and/or to make recommendations about the best allocation of decision-making responsibility in their situation.

Where parallel parenting is not considered in the best interests of the children, even with the option of sole-parental responsibility, then sole custody should be considered.

Proposal 3-9

We are in favour of this proposal, with some reservations. The aim of such resources should be to better equip parents to make decisions in the best interests of their children in their situation and to enable the devolvement of decision making about parenting arrangements to families. Resources should be provided in the form of guidelines, options, and examples, not prescriptions. In our experience, highlighting commonly experienced difficulties, challenges, and pitfalls with tips about how to avoid or navigate past them are often very useful and appreciated by clients. Concepts such as attachment theory, where the evidence or the interpretation of the evidence is highly contested, should be very cautiously included.

Proposal 3-10

In our response to the ALRC Issues Paper (no.129), RAV submitted that the time has come to reconsider a more prescriptive regime for property division under the *Family Law Act* 1975 (Cth) (FLA). In that submission, we outlined the reasons why. The ALRC is indicating (at 3.106 DP) it is not persuaded that this approach is warranted without further research.

Therefore, as the 'next-best' alternative that would assist consistency of legal advice and early resolution, RAV supports measures that more clearly articulate the legal approach to division of property. Although in the historic decision of *Stanford (2012),* the High Court neither endorsed, nor disapproved of, the '4 step' process followed by the family law courts since the commencement of the FLA in 1976, the Courts have developed this structure to assist them in the practical implementation of s 79 FLA. Explicit reference to this approach in the legislation would at least create certainty about this approach. At the same time, consideration could be given to legislative direction around some common contentious issues, especially pre and post-separation financial contributions and the significance of the length of the marriage/de facto relationship.

Proposal 3-11

In the Issues Paper response (no.129), RAV was supportive of family violence being taken into account in family law property division in relation to contributions and future needs – but this is easier said than done. Case law would no doubt, in time, create legislative direction about the weight to be given to different kinds of family violence, which will assist parties to reach agreement in negotiations in family dispute resolution (FDR) or with family lawyers. However, we would anticipate that progress will be slow in the early stages of this legislation, until sufficient precedent is created through cases that proceed to trial and to appeal. In this connection, it would be extremely important for persons affected by family violence to have access to legal aid to pursue their property division matter through the Court. This would also enable them to have extra power in pre-Court negotiations. However, legal aid in property division matters has been conspicuously absent, at least in Victoria. Without it, victims will be obliged to settle without family violence being given any weight if (as anticipated) most perpetrators deny or minimise the violence.

Section 4: Getting Advice and Support

Proposals 4-1 and 4-2

Establishment of Community Based Families Hubs & Use of Digital Technologies to support assessment of client needs.

RAV strongly supports the proposal of establishing community based Families Hubs and the integration of the Hubs with a national education and awareness campaign. (**Proposals 2–1 to 2-8)**. The Hubs, as proposed and properly resourced, will assist in reducing the fragmentation of services and enhance the role of FRCs and Community Legal Centres in addressing common barriers to obtaining help with family law issues, namely: getting through on the phone, delay in getting a response, difficulty in getting an appointment, 'referral fatigue', and incorrect referral.[11] We believe that the Hubs could significantly advance an effective information, advice and support strategy in the family law system, ensuring not only that such services are available, but that people can access them when necessary, tailored to their particular situation. Accurate, well-curated information and effective intake and assessment will lead to earlier action and better outcomes. Digital technologies can improve the efficiency and scope of service delivery on a cost-effective basis and should be part of the mix, but the importance of frontline human first point of contact should not be underestimated as critical to engagement, especially for vulnerable clients.

We regard the development of the proposed Hubs as an augmentation of the current role of Family Relationship Centres (FRCs) and existing large Family Relationship Services (FRS) centres, where FDR, Family Law Counselling, and Specialists Family Violence programs are already co-located. As argued below, we see their function as different from family violence crisis support services, such as the Orange Door Family Violence Hubs introduced in Victoria, which are focused on providing services to women, children and young people experiencing family violence; and families who need support with the care of children or young people as a result of family violence. Families Hubs, as we understand it, would have a broader remit as an entry point for family law system with the purposes of:

1. Assisting families to restructure their relationships and finances
2. Assisting couples and caregivers to repair their relationships with each other and their children
3. Reducing the emotional, psychological, economic and social costs of separation and divorce
4. Improving safety outcomes for vulnerable clients
5. Wherever possible, facilitating and supporting self-determination.

Assertive case management within Families Hubs would ensure that women and children experiencing family violence were supported in accessing Orange Door and other crisis services, which are better located away from generalist services known to and accessed by perpetrators.

As an entry point to the family law system, we believe that the Hubs should focus on providing effective information, triage, and early intervention. Post-orders parenting programs, designed to help families

[11] Law and Justice Foundation (2006), "Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas", p. 99.

implement orders and move on to self-manage without repeat recourse to court, can be regarded as a second entry point for resetting and 'early intervention' approaches. As such, the proposed purposes and functions of the Hubs should be geared to the following outcomes:

- **Information**: People understand their position and the options they have, and can decide what to do.
- **Triage:** Matters are directed to the most appropriate destination for resolution and support.
- **Effective early intervention**: Legal and psycho-social problems are prevented from escalating and becoming entrenched. The risk of prolonged disputes and entrenched disadvantage is reduced. Clients' engagement with multiple services is coordinated. Assertive case management ensures vulnerable clients are kept safe.
- **Equity:** The risk of cost being a significant barrier to justice is minimised. Fees are matched to people's assets and income.
- **Resolution**: People are empowered and supported to resolve family disputes at the earliest opportunity and in the least costly and harmful manner, minimising resort to litigation. Where court is necessary, people have a clear understanding of what is involved and vulnerable people are effectively supported.

Figure 2 (below) illustrates RAV's understanding of the role of Hubs within the Family Law System.

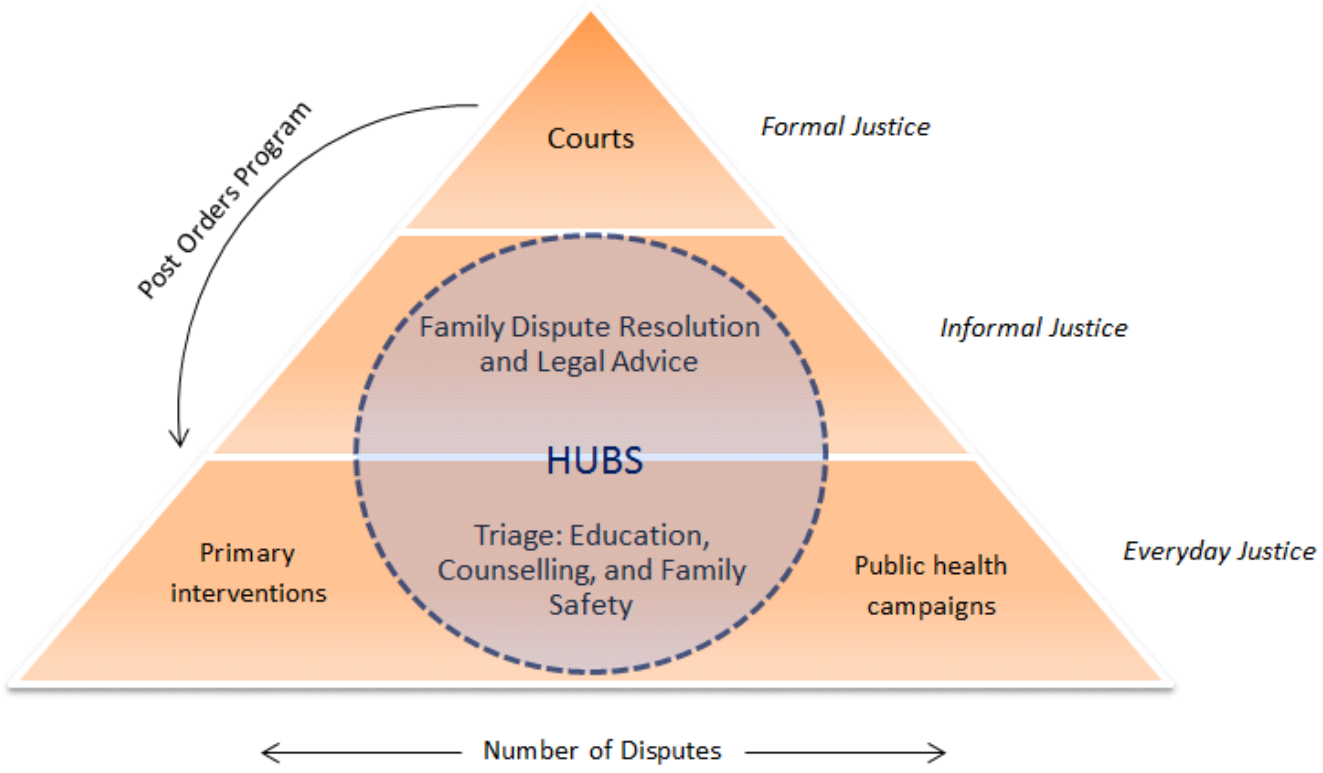

Figure 2: RAV's Understanding of the Role of Families Hubs in the Family Law System

Proposal 4-3

RAV strongly supports the multi-disciplinary, multi-agency model proposed. If properly implemented, we believe that the co-location and effective integration of relevant services on a single, accessible site will significantly advance the safety and wellbeing of separating families and children and lead to better dispute resolution outcomes.

However, in order to achieve optimum and sustainable outcomes, careful thought needs to be given to the governance, funding, and management structure of the Hubs[12]. We strongly support the proposition that the proposed Families Hubs are modeled on integrated care models developed in the health sector [13]. Complex health needs match the complex needs of many clients in the family law system: relevant principles and guidelines can be extrapolated and applied to the family law sector.

Common to theories of collaboration are a conceptualisation of the way professionals interact, leadership processes, information sharing, professional autonomy, shared goals among other factors[14]. For the purposes of this submission we would draw attention to D'Amour et al.'s *Structuration Model of Collaboration*[15] and Minkman's *Development Model for Integrated Care*[16]as they comprehensively address essential elements of collaborative practice as well as the ways in which collaboration can occur in stages, potentially becoming more seamless over time. These approaches have undergone a degree of empirical evaluation[17]. The Structuration Model of Collaboration addresses inter-professional and inter-organisational collaboration. This model is based on principles of collective action, which are derived from organisational sociology, and outlines four dimensions of collaboration:

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[12]RAV's response to this section is informed by our extensive experience in participating in various collaborative service models and a recent literature review of effective collaboration models we have conducted in partnership with Swinburne University, as the first stage to developing more effective workforce and corporate training and strengthening collaboration theory and practice content in tertiary education.

[13] For a non-healthcare example, Risk Assessment and Management Panels (RAMPS) in Victoria may be seen as integrated service model initiative.

[14] Valentijn, P. P., Schepman, S. M., & Bruijnzeels, M. A. (2013). Understanding integrated care: A comprehensive conceptual framework based on the integrative functions of primary care. *International Journal of Integrated Care, 13*, pp. 1-12.

[15] D'Amour, D., Goulet, L., Labadie, J. F., Martin-Rodriguez, L. S., & Pineault, R. (2008). A model and typology of collaboration between professionals in healthcare organisations. *BMC Health Serv Res, 8*, 188. doi:10.1186/1472-6963-8-188

[16] Minkman, M., Ahaus, K. T., & Huijsman, R. (2009). A four phase development model for integrated care services in the Netherlands. *BMC Health Serv Res, 9*, 42. doi:10.1186/1472-6963-9-42

[17] e.g., D'Amour et al., 2008, op cit,; Longpre, C., & Dubois, C. A. (2015). Implementation of integrated services networks in Quebec and nursing practice transformation: convergence or divergence? *BMC Health Serv Res, 15*, 84. doi:10.1186/s12913-015-0720-8; Minkman, M., Vermeulen, R. P., Ahaus, K. T., & Huijsman, R. (2011). The implementation of integrated care: the empirical validation of the Development Model for Integrated care. *BMC Health Serv Res, 11*, 177. doi:10.1186/1472-6963-11-177

(1) Shared goals and vision

(2) Internalisation

(3) Formalisation

(4) Governance

These dimensions are displayed in Figure 3 (below). On a relational level, team members taking on board shared goals and values, and having an understanding of their professional responsibilities and allegiances, are theorised to be important (Shared goals and vision). A sense of belonging to the team, knowledge of others' values and training, and forming trust are captured as part of Internalisation. Within the organisational culture, clear procedures and responsibilities within the team are hypothesised to be supportive of collaboration (Formalisation) and leadership that encourages professionals to deliver innovative practice (Governance) are proposed to be essential according to this model.

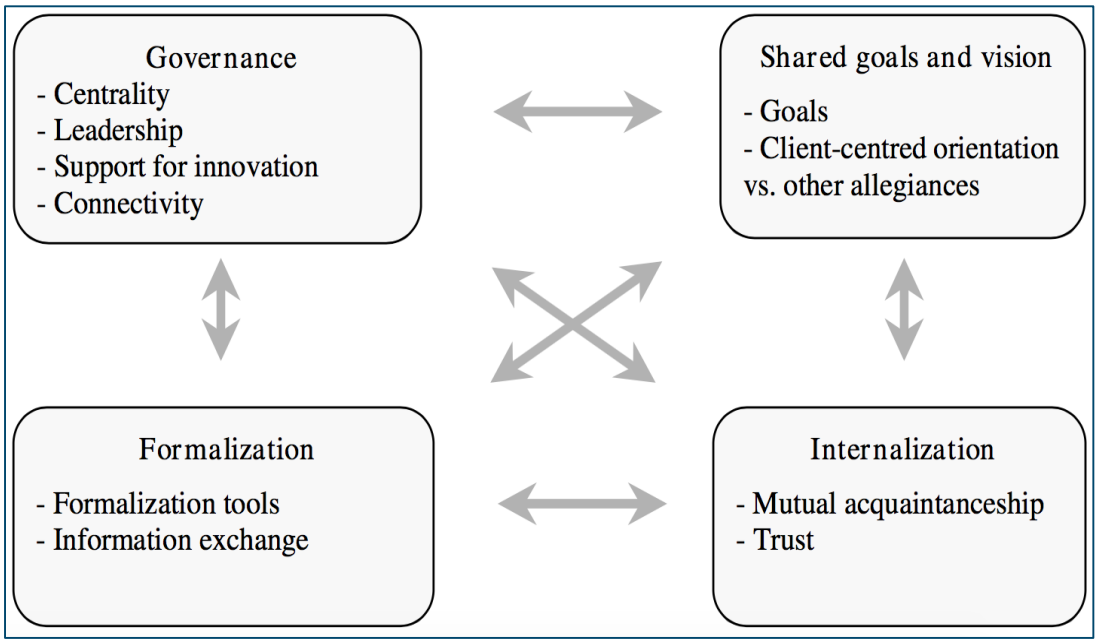

Figure 3: Structuration model of collaboration (reproduced from D'Amour et al., 2008, p 3)

Whereas the structuration model focuses on identifying indicators of collaboration that can be beneficial in assessing the processes at a particular setting, Minkman's *Developmental Model* identifies ways in which collaboration evolves over time. The Developmental Model (refer Figure 4 below) outlines four distinct phases of implementation of a collaborative model proposed to occur in the workplace.[18]

[18] Minkman, M. (2016). The Development Model for Integrated Care: a validated tool for evaluation and development. *Journal of Integrated Care, 24*(1), 38-52. doi:10.1108/jica-01-2016-0005.

- In *Phase 1, the initiative and design phase*, service providers begin or intensify their collaborative efforts. This phase is characterised by exploring new options and possibilities and designing and agreeing on a collaborative project.
- In *Phase 2, the experimental and execution phase,* new processes and procedures are implemented and reflected upon, and knowledge is exchanged. The collaboration is considered experimental and a process of evaluation occurs.
- During *Phase 3, the expansion and monitoring phase,* clearer agreements on the tasks, roles, and content of the care system are formed, and the collaborative efforts develop and mature.
- During the *consolidation and transformation phase* (*Phase 4*) integrated care becomes accepted as the normal way of working. Information is shared and the collaborative entity co

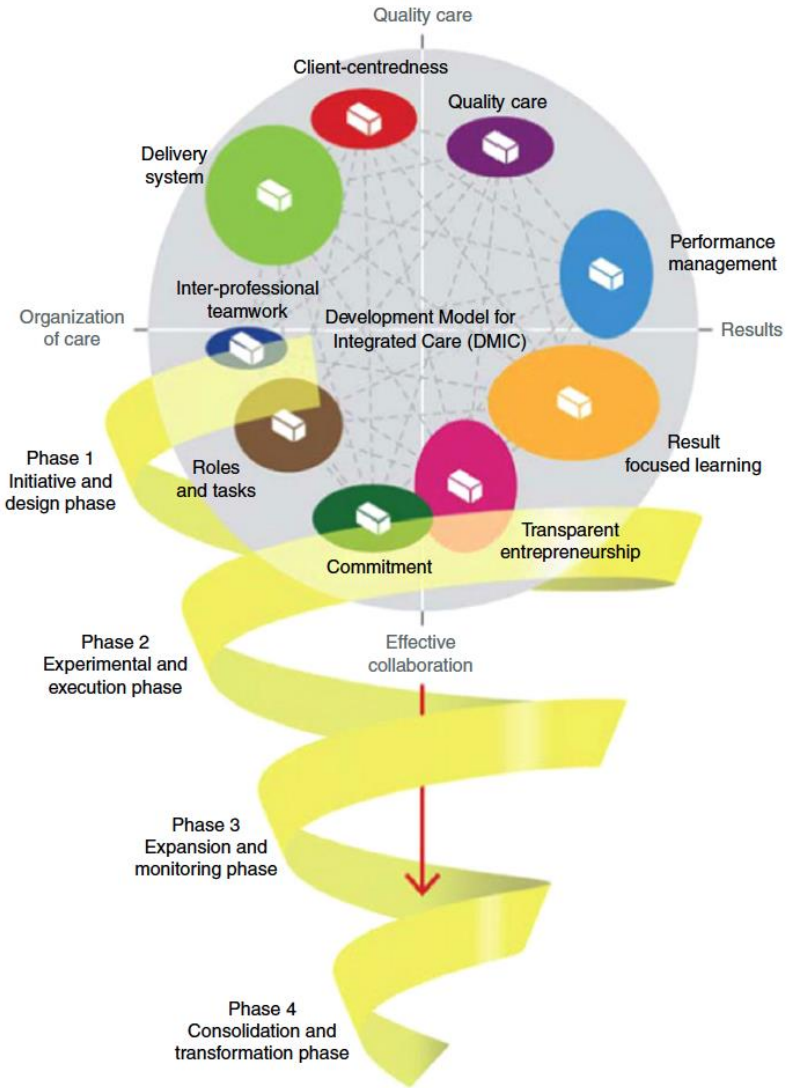

Figure 4: Developmental Model of Integrative Care
(reproduced from Minkman, 2016, p. 42)

In summary, integrated service models are more likely to succeed if collaborative goals are formalised to ensure that:

- all partners are aware of what to expect from others involved in the collaboration, and what their responsibilities are to improve accountability
- there is a strong and active central body enabling the existence of a consensus
- there is shared consensual inter-agency leadership
- client centred approaches supersede other allegiances
- client management systems are integrated, with clear information-sharing protocols established
- inter-agency trust leading to effectiveness (and therefore efficiency) is built from opportunities to meet and by shared activities, such as professional development
- information is shared between the organisations to monitor progress.

Applying these theories of effective collaboration, a simple co-location model does not, in our submission, lend itself to effective integrated service delivery because communication and collaboration between the providers is not formalised within a shared case-management framework or an overarching governance structure. Co-location sites are generally dependent on service providers seeing an advantage in co-locating and having the resources available to do so. As a result, the mix of providers tends to be unpredictable. The sustained presence of services on site and ongoing effective collaboration are vulnerable to changes in funding, rent increases, and turnover in personnel.

A consortium structure, such as that used by **headspace**,[19] offers a more suitable model. Under the headspace model a lead agency heads a consortium in a tender process. In order to be eligible the consortium must be comprised of specific types of service providers.[20] The lead agency receives block funding to establish a site and deliver core services. The Consortium partners undertake to co-locate a worker at the hub site out of their existing services for a minimum 0.2 FTE. Senior representatives of the lead agency and consortium partners form a management committee, with an independent chair. There is a service agreement between the lead agency and each consortium partner and a joint MOU is signed between all Consortium partners[21].

The advantage of this structure over a simple co-location arrangement is that the service model and governance requirements are clearly defined. The service is delivered within clear operational guidelines, with the lead agency responsible for reporting and meeting Key Performance Indicators which, in this case, are overseen by the **headspace** National Youth Mental Health Foundation. The consortium management

[19] Youth mental health support services (12 - 25 year olds). with a focus on early intervention.

[20] Clinical Mental Health, Drug Treatment, Primary Health Care, Vocational, Homeless Support Services etc.

[21] The MOU sets out the commitments, governance structure, and responsibilities of the lead agency and consortium partners, but is not a legally binding document.

committee allows for joint oversight and accountability and for continuous improvement initiatives to be proposed and implemented.

Whilst the **headspace** model offers a good starting point for structuring the proposed Families Hubs, it has some shortcomings and limitations, which could, in our view, be improved upon. The **headspace** model is highly dependent on the lead agency culture and style of approach and its organisational structure, as well as on individual personalities of consortium partner representatives on the management committee and practitioners. As a result, there is considerable variability under the model of effective collaboration, information sharing, and communication. Consortium practitioners can find outreach work of one day a week a disruptive and unsatisfying work-pattern, leading to staff turnover. There is a risk of the lead agency becoming more dominant overtime, leading to 'collaboration inertia', unless there is a conscious strategy to counter this. Further, the non-legally binding nature of the MOU means that it is relatively easy for service providers to pull out of the consortium and reassign resources elsewhere. This does not mean that **headspace** is ineffective, (consortium partners generally remain committed because of the benefit of achieving better outcomes for young people) but it has a structural weakness.

In summary, we would recommend the following:

1. The Australian Government and state and territory governments should agree to a joint funding approach that effectively resources an integrated service model, in line with best practice, allowing for joint case-management and effective information sharing as needed.
2. The Families Hubs should operate under a clearly defined service model within a consistent national performance framework, overseen by the proposed Family Law Commission.
3. The service model should incorporate collaborative practice guidelines. Collaborative goals and outcome measures should be included in the national performance framework.
4. The service model should allow for appropriate flexibility to meet specific local conditions and needs, including the co-location of appropriate private services to expand consumer choice and provide a source of additional revenue.
5. In each location a lead agency should provide site management and co-ordinate integrated service delivery, with oversight from a consortium/inter-agency management committee and an independent chair. Management committees should include consumer representation. The formations of local Children's and Young People's Advisory Groups should be part of the service model, augmenting local service delivery and contributing to the proposed national Children's and Young People's Advisory Board. (**Proposal 7-13).**
6. Co-located core service agencies should commit to a minimum 0.6 FTE outreach or seconded position. This should be independently funded or made a requirement of current funding. Ensuring core service providers are present on site for a minimum of three days is vital to establishing effective, sustainable non-hierarchical, inter-agency collaboration, and to energising a continuous improvement culture.
7. Commonwealth, State and Territory government funding bodies should adapt reporting requirements of existing funded service providers who co-locate in hubs to take into account the collaborative service model within Hubs.
8. Hubs' activities and services should be supported by an integrated case management IT system, that facilitates information sharing and service coordination, whilst meeting appropriate privacy and confidentiality requirements.

9. Families Hubs should be funded to employ:
    - Client Service Officers (CSOs) to provide frontline intake, risk and needs screening and triage, as well as providing information and resources.
    - CSO Case managers who coordinate service responses to families and individuals with multiple or complex needs other than family violence, ensuring a staged approach to service provision, based on a priority needs assessment.
    - Family Safety Practitioners, using the Family Safety Model (FSM), providing assertive case management to support adults and children affected by family violence, ensuring that they are linked into relevant legal and financial advice, specialist family violence services, and therapeutic programs, whilst helping them navigate FDR or legal processes.
    - A community liaison officer, to provide community and stakeholder engagement, promotion, and education activities, with a particular diversity focus.
    - A Hub manager, responsible for operational oversight, quality and risk management, stakeholder and service co-ordination, site management, community engagement, budget management, and reporting.
10. Required co-located multi-agency services should include:
    - Legal assistance services
    - Family dispute resolution services
    - Therapeutic services (such as family counselling and specialised services for children - although see point 14 below)
    - Financial counselling and financial advice services
    - Parenting support programs and parenting education services (including a programs for fathers)
    - Post-Orders support services
    - On-site child care, to enable parents without social support to access services
    - Multi Media advice and information.
11. Additional services could include:
    - Housing assistance
    - CALD support services
    - ATSI support services
    - LGBTQI support services
    - Health (such as adult and child and adolescent mental health services, and specialist drug and alcohol services)
    - Gambling help
    - Centrelink and Child Support advice
    - Youth support.

12. ***Specialist Family Violence Services***: In our view, careful consideration should be given as to whether specialist family violence services, other than family violence counselling and support groups, should be co-located at the Hubs, given the Hubs' proposed open point of entry and early intervention function. Specialist FV crisis and case management support services operate more safely and effectively away from open door, general service centres, known to and easily accessed by perpetrators using services in the same location. The family violence support function may be better provided by Family Safety Practitioners under the Family Safety Model, ensuring that victims and children are safely linked into the specialist family violence services they need.
13. ***Child Contact Services***: Whilst Child Contact Services could be co-located at the hubs, Child Contact Centres need to have specific features to operate effectively and safely and this might be too restrictive in identifying suitable Hubs sites.
14. ***Direct service to children and young people***: We strongly support increasing support services for children and young people affected by parental separation and divorce. Consideration should be given to creating child and youth friendly spaces within Hubs, perhaps with separate entrances, or annexes located close to Hubs, with strong links to headspace and Child and Adolescent Mental Health Services.
15. ***Co-location of private allied health and support services.*** In addition to funded services Hubs could generate rent from private psychologists, registered mental health social workers, and other professionals offering relevant services to people using the family law system.
16. ***Legally Assisted FDR (LAFDR) & Property Mediation:*** In line with the one stop shop concept, Families Hubs sites should include mediation suites that allow for a range of FDR approaches, including LAFDR.
17. ***Legal advice regarding property and financial matters:*** In line with assisting parties resolve family disputes at the earliest opportunity and in the least costly and harmful manner, minimising resort to litigation, consideration should be given to providing separating couples with independent legal advice on property and financial matters. Currently parties can only really obtain advice from private practitioners, who have an inherent interest in retaining them as an ongoing client. As such, there may be reluctance on the part of private legal practitioners to give practical advice in a format that sufficiently equips parties to make their own decisions in FDR informed by an understanding of what is a reasonably likely outcome if their matter was adjudicated by the courts. Consideration should be given as to how to best provide effective, practical legal advice in Hubs that enables clients to come to fair and equitable decisions in FDR without unnecessarily prolonging disputes. For example, advice could be provided in Hubs on Collaborative Law terms. Private legal practitioners giving advice on property or children's matters in Hubs would be disallowed from subsequently representing clients should they fail to reach agreement in FDR.

Proposals 4–5 – 4-8

Family Advocacy and Support Service (FASS)

RAV strongly support the expansion of FASS, subject to evaluation, as proposed in the discussion paper.

RAV commenced participation in a pilot of Family Advocacy and Support Services at the Dandenong Registry of the Federal Circuit Court of Australia in 2016. The partnership included Victoria Legal Aid (VLA), RAV and Westernport Accommodation & Youth Support Services (WAYSS) and court staff.

This is a collaborative partnership that works across jurisdictions to safely and effectively respond to families with critical needs and in our experience is yielding positive results. In the Dandenong model, VLA provides the Duty Lawyer, RAV provides the Men's Support Worker, WAYSS provides the Women's Support Worker and Court staff initiate the referrals to the program.

An informal meeting with Judges in the Dandenong registry took place shortly after the pilot's commencement to advise them of the work of FASS and provide examples of client's outcomes when they had engaged with the social support worker. This has enabled Judges to understand how FASS has been operating and to encourage further FASS referrals. For example, Judges have agreed to encourage clients (and their lawyers) to attend for FASS support where allegations of family violence are identified. The FASS support worker at court also liaises with the Dandenong Multidisciplinary Centre (MDC). This includes liaising with Victoria Police family violence teams, child protection and social support services based in the MDC when risk of family violence has been identified within FASS. This contributes to a whole of service approach for the management and prevention of family violence.

An arrangement for the provision of services from Relationships Australia Victoria for FASS clients is in place, which ensures there is a streamlined process for referral, assessment and engaging of FASS clients in mainstream RAV services and programs, including referrals and engaging men with parenting programs, counselling and Men's Behaviour Change Programs (MBCPs). Working closely with the Court and Court staff, RAV FASS offers links into MBCPs, counselling and parenting programs such as *Tuning into Kids* and *Tuning into Teens*, *My Parents'n'Me* and *Parenting After Separation*. These programs further support men who have been violent in their relationships to reduce the risk of further family violence; supporting healthy relationships between parents and children.

RAV's participation in Dandenong FASS has provided us with first hand insight into the value of the service. RAV endorses the proposal to develop a consistent structured FASS model as described in the discussion paper. The embedding of case management in the model to help clients navigate the system is consistent with RAV's Family Safety Model, the efficacy of which we have described in previous submissions. (see **Attachments C** and **D** for further evaluation of RAV's model).

Section 5: Dispute Resolution

Proposal 5-2

While, under Reg. 25, a competent Family Dispute Resolution Practitioner (FDRP) would already routinely explore the parties' respective levels of knowledge of the matters in dispute and take it into account in their assessment of appropriateness for FDR, RAV would support an explicit reference to power balance in respect of knowledge, especially of financial matters.

Proposal 5-3

In general, as an organisation that has provided family mediation/FDR in financial matters for many years, RAV strongly supports proposal 5-3, but would make the following comments:

- We do not consider that complexity, in and of itself, is a factor that should automatically give rise to an exception to attend FDR. While circumstances involving third parties may indeed be complicated, the parties may not be un-cooperative, and may have constructive discussions in FDR. We submit that complexity requiring a Court process is a matter that can be assessed by the FDRP as one of a number of considerations for appropriateness. Conversely, parties may have a very simple, straightforward asset list, but be highly conflictual, and not negotiable.
- Likewise, RAV does not consider that a party's perception of an imbalance of power should automatically give rise to an exception. Power imbalance is one of the most fundamental considerations for every FDRP in assessment for appropriateness, so this is not a matter that is likely to be overlooked. Sometimes the FDR process can be modified to counteract an imbalance of power in ways that a party is not aware of before meeting the FDRP (e.g. a 'shuttle' process, support person, legally-assisted), so a party may believe that Court is the only other option.

  We would submit that the existence of a power imbalance is not decisive in considering whether FDR is inappropriate in property matters, any more than in parenting matters. It is a question of whether the power imbalance can be mitigated to enable parties to freely negotiate. RAV has been conducting property mediations for over 30 years, involving relatively simple and complex asset pools. There are frequently pre-existing power imbalances in relation to the parties' levels of knowledge, but there are a number of available strategies and safeguards that redress imbalances of power, for instance: access to legal and financial advice; full disclosure of assets as a precondition of FDR progressing; the use of independent valuations; ensuring that less knowledgeable parties have time to consider financial information and proposals and are not pressured into making decisions too soon; agreements are drawn up as consent orders by the parties' lawyers. In determining whether FDR is appropriate, the FDRP considers all these factors, including the willingness of the parties to proceed, and holding in mind the risk of harm and costs associated with prolonged disputes.
- Family violence is already an exception to FDR in parenting matters – see s 60I (9)(b) FLA. This specific exception could remain. However, our experience is that, except where the impact of the violence is severe, persons affected by family violence usually prefer to attempt FDR to resolve their issues, rather than proceed directly to Court. FDRPs are not infrequently required

to make a difficult decision about appropriateness in a situation where a client wants to do FDR notwithstanding a history of violence, but there are concerns about her capacity.

- It is not clear that a party would be able to delay or frustrate the resolution of a matter, when there is a clear legislative requirement to attempt FDR (outside of the specific exceptions).

  FDRPs are used to dealing with situations in which P1 suspects that P2 is delaying the FDR process, and FDR services have had to develop internal policies and procedures that are fair to both parties to ensure that the process progresses without undue delay. Once there is a requirement to attend FDR in property/financial matters, a party will no longer be frustrated by attempts to delay resolution that they might experience in another context e.g. when letters are exchanged between lawyers over a period of time with no progress, and the exception for urgency can be relied on to by-pass the FDR process where necessary.

  RAV submits that the same procedure should apply to property as applies to parenting matters i.e. that the FDRP is in control of the process once FDR has commenced, and should issue a certificate to indicate the outcome of that process. If FDR is assessed as appropriate, FDR must be attempted but, as with parenting matters, a party could decide to leave FDR after the first session of joint/shuttle FDR if they are unhappy with the process. It would therefore be unnecessary to have an exception for the situation where one party believes that the other party is frustrating resolution. If this heading remains as an exception, there is a risk that FDR will be by-passed when it cannot fairly be said that resolution has been frustrated.
- RAV supports strongly the other exceptions listed in this Proposal, and would submit that the list of exceptions should be limited, so that the FDR requirement is not easily by-passed.
- Implementation of this Proposal would need to be carefully considered, because it is unlikely that there would be a sufficient number of FDRPs in community-based FDR services who are experienced in property and financial FDR, to cope with a sudden, significant increase in demand. Implementation may need to occur in stages, over a period of time, during which additional specialist FDR training can be provided to equip more FDRPs to provide property and financial FDR. (See also RAV's Response to Question 10-2.) During this time period, parties could be given the option of demonstrating 'genuine steps' towards resolution in ways other than via FDR.

Proposal 5-4

RAV strongly supports the requirement for the parties to make a 'genuine effort' prior to making an application to Court in property/financial matters (subject to the defined exceptions).

While RAV recognises that the Court needs to be satisfied that 'genuine steps' to resolution have been taken, we question the necessity of a separate 'genuine steps' Statement once mandatory FDR in property/financial matters is in place. When commencing parenting matters currently, the Court Registry requires either the s 60I certificate, or specific affidavit material supporting an exception to FDR. There would seem to be no reason why the same procedure could not apply in property/financial matters, thereby providing evidence of 'genuine steps'. To assist self-represented applicants in particular, there could also be a clear reference/warning about this at the beginning of the Court property/financial application form.

We submit that a 'genuine steps' Statement makes sense if it is envisaged that a party can take 'genuine steps' to resolve issues outside the FDR (or LAFDR) process e.g. by negotiation directly between the parties' lawyers. But if FDR is to be mandatory (apart from the exceptions), the Statement would be superfluous unless it is intended to replace the current affidavit requirement for exceptions. This Statement would also make sense if mandatory FDR in property matters is introduced over a period of time, during which other pre-Court negotiation processes are also being used.

Proposal 5-5

Response:

- RAV considers that there should be 5 categories of FDR certificates, as follows:
  (a) (insert name – P1) attempted to initiate a FDR process but the other party (insert name – P2) did not respond to the invitation to participate in FDR
  (b) (insert name – P2) responded to the invitation to participate in FDR, but was either not willing to attend, or failed to attend the assessment session or first FDR session
  (c) The matter was assessed as 'not appropriate' for FDR
  (d) FDR commenced but terminated because at least one of the parties did not wish to continue the FDR process
  (e) FDR commenced but terminated because the FDRP assessed that FDR was no longer appropriate.
- RAV submits that these categories are appropriate both for parenting and property/financial matters. They could also be expanded for use for lawyer-assisted FDR (LAFDR), so the Court would be clear whether FDR or LAFDR had been attempted.
- RAV submits that there is nothing to be gained in retaining a 'genuine effort/no genuine effort' assessment by the FDRP. These 2 categories are current options for parenting FDR certificates. Our experience is that, quite frequently, they lead FDRPs into conflict with a client who is unhappy with the 'genuine effort' certificate that is issued, as the client believes that the other party has not made a genuine effort. RAV strongly supports the comments made by Relationships Australia South Australia in the Issues Paper (at paragraph 5.51 of this DP), that the category is antithetical to the principles of mediation and the role of the mediator, with potential for unnecessary further conflict and complaints. Further, an assessment of genuine effort is highly subjective and therefore inherently problematic.
- RAV submits that there is no useful purpose served by having a category of 'partial resolution', particularly given the general inadmissibility of FDR communications – s 10J FLA. Agreement on some issues may be contingent on other matters, and even if parties agree on some matters in FDR, the court still has to deal with the entirety of the property. Such a category would need further details on the certificate to be in any way helpful, and in any event, the parties may change their minds about any partial 'agreements' once legal proceedings have been issued.

Question 5–3

RAV submits that there is a need to review this process. Please see our response to Proposal **5-5** (above). We submit that the FDR certificate options in parenting matters should generally be aligned with the options proposed for property and financial matters, but in these latter matters, a 'genuine steps' Statement would be useful if parties are permitted to demonstrate that 'genuine steps' to resolve have been taken outside the FDR process e.g. directly between lawyers.

Proposal 5–6

While full and frank disclosure has long been a standard requirement for property/financial FDR to be appropriate, an explicit reference in the FLA would be welcome and would emphasise the point. A party to FDR will sometimes strongly resist disclosure of details of a pre or post cohabitation asset, or of a family asset that involves other members of their family (e.g. a family Trust) because they do not believe that it should even form part of the discussion.

Proposal 5–7

RAV supports this Proposal.

Proposal 5–8

RAV supports this Proposal.

Proposal 5–9

RAV supports this Proposal.

Proposal 5–10

RAV supports this Proposal.

In its FRC Centres, RAV has conducted LAFDR in parenting matters for a number of years, with the support of organisations such as local Community Legal Centres, Victoria Legal Aid and Womens' Legal Service. RAV is in the process of introducing LAFDR in property/financial matters as a standard program. In our experience, it is a process that has indeed supported parties with complex needs (e.g. family violence, mental health, unrealistic legal expectations) to participate effectively in FDR when the process might otherwise be assessed as 'not appropriate' or where the prospect of a successful outcome with standard FDR is doubtful.

The advantages of LAFDR are many, and considerable experience of LAFDR already exists within the FDR sector. This experience would greatly assist the development of these Guidelines, but the development of LAFDR within the ATSI, LGBTIQ and CALD communities requires further consultation and attention.

RAV would submit that these Practice Guidelines should not be too directive, as this may affect the capacity of FDR services to use LAFDR in a way most appropriate to the parties' needs.

Proposal 5–11

RAV supports this Proposal.

Section 6: Reshaping the Adjudication Landscape

Proposal 6–4

RAV supports this Proposal for the reasons outlined by many submissions in the Issues Paper. While parties are understandably keen to resolve property division in FDR when they have a small property pool, resolution can be more difficult when every dollar counts. If there is no resolution in FDR, access to a simplified Court procedure would greatly assist these parties.

Proposal 6–5

RAV submits as follows:

- While there may be cases where the large size of the asset pool might lead to exclusion from a simplified court procedure, this is not necessarily so, whereas an asset pool of great complexity would probably need to be excluded.
- The capacity of the parties to participate in Court proceedings is a factor that could be added, since we know that many parties are without legal representation in Court proceedings.
- Given that it is hard to be definite about all the factors the Court may consider relevant when making this decision, the introduction should be worded differently e.g. "Without limiting the factors the Court may take into account in considering whether a simplified court procedure should be applied in a particular matter, the Court should have regard to:"

Question 6-1

The criteria for a matter to be listed in the family violence list would need to include the presenting issues of high and extreme risk. Of importance is the need to define what variables indicate 'high risk' that then requires consideration for the family violence list. The list of inclusion criteria in relation to what constitutes 'high risk' can be drawn from the social science evidence base in relation to the *key risk indicators* associated with homicide[22]. Specific information about Key Risk Indicators is located at **Attachment E**.

Information about risk needs to be sourced from formal and reliable sources and may include:

- A Form Four that is supported by either an interim or final order Intervention Order
- Information about relevant criminal matters on foot, criminal history and current matters relevant to family violence, monitoring by child protection, participant in a DHHS-funded MBCP, reports and support letters from Orange Door or RAMPs (Risk Assessment and Management Panels)
- Formal information sources identify a level of family violence that meets the criteria for significant injury or lethal harm towards impacted family members including children and young people. This

[22] Campbell J (2004), Helping women understand their risk in situations of intimate partner violence', *Journal of Interpersonal Violence*, vol 19, no. 12: pp. 1464-1477 and Campbell J (2003), 'Risk factors for femicide in abusive relationships: Results from a multi-site case control study', *American Journal of Public Health*, vol. 93, no. 7: pp. 1089–1097.

may include potential risk of serious injury, historical and current criminogenic information that indicates attempts as well as convictions to seriously injure, threats to kill or abduct children and other family members and serious attempts to kill or abduct children.

In saying this however, it must also be recognised that high and extreme risk family violence occurs in the context of an inability to report to authorities due to the level of significant risk presented by disclosure. In these cases, the criteria can draw from information and analysis of risk by a specialist risk assessment conducted by a family violence specialist organisation, support letter from family violence agencies as well as a specialist risk assessment from an MBC provider. **It is critical to understand that not all risk is known to the family violence system and high/extreme risk may be present despite no prior history of reporting**.

The inclusion criteria can also draw from a Primary Aggressor risk assessment undertaken by a specialist agency (either women's services or an MBC provider or a magistrate's court advocate). Further formal sources of information can also include:

- Police report template and/or police prosecution briefs outlining significant concerns for the safety and wellbeing of children.
- Child Protection report and family violence risk assessment outlining significant concerns for the safety and wellbeing of children.
- Single expert witness formal report (having undertaken a specialist family violence risk assessment consistent with the Multi-Agency Risk Assessment and Management Framework (MARAM).
    - This is a critical area for review as single expert witnesses can be sourced from a range of sectors and professional disciplines – some of which do not have the experience or expertise for specialist family violence assessment.
    - Single expert witnesses must be professionally experienced, trained and competent at undertaking a primary aggressor risk assessment and specialist FV risk assessment to inform a referral to the family violence list.
- External stakeholders with forensic skills and reporting concerns (child abuse units etc.).

Question 6-4

Consideration should be given to referring parties to Parenting Co-ordinators (proposed in the discussion paper as part of a post-order parenting support service) as a prehearing option, either on a voluntary or mandated basis. Parenting Coordinator recommendations (and their reasoning) if disputed should be admissible in subsequent hearings.

Proposals 6–9 – 6-11: Post-order parenting support service.

RAV strongly supports these proposals. In our experience the period following the issuing of orders presents a window of opportunity to interrupt patterns of entrenched conflict, allowing families to reset, repair, and move towards self-management if provided with the appropriate scaffolding, support, and education. As previously argued, we believe there is a strong case for introducing a Parenting Coordinator role, as developed in the U.S.A. and Canada, into the Australian Family Law System, with relevant adaptations, to address a current service gap.

We support the proposed process for developing appropriate intake assessments and for developing accreditation and training requirements.

Section 7: Children in the Family Law System

In recognition of the *United Nations Convention on the Rights of the Child* RAV supports the inclusion of children's voices in all aspects of the family law system to the extent that it is safe and practicable to do so. RAV generally endorses the approach taken by the ALRC in its support of these important principles in this section.

RAV is committed to ensuring the Rights of the Child are upheld at every opportunity and believes that better including children's voices and improving their participation in the family law system will help in assessing their true situation and deliver more child focused outcomes.

Proposal 7-1

RAV *endorses* this proposal as it is consistent with empowering and supporting children who are impacted by the family law system.

RAV further supports, as part of a systemic approach to prioritising the needs and interests of children, parental education and early intervention programs of a psycho-educative and skills-based kind. Such programs can assist parents focus on their children's needs and improve the parental alliance following separation and are routinely part of the model of service delivery at RAV's FRCs. The evidence is clear about the importance of reducing a child's exposure to conflict as early as possible to promote better adjustment after separation. (See **Attachment A**: Reducing a child's exposure to conflict (excerpts from RAV response, no.129, to Issues Paper, May 2018).

Proposal 7-2

RAV supports the proposal to develop Families Hubs and the inclusion of services for children. As argued in our response to proposal 4-3, we would advocate for separate child and youth friendly spaces, preferably with separate entrances.

Expanding Supporting Children after Separation programs and co-location of specific post- separation support workers at existing child and youth services, such as **headspace**, could immediately augment the supports offered to children.

Proposals 7-1 to 7-7: including the Voice of the Child

RAV strongly supports the ALRC's proposals that seek to better include the voices of children in matters that so fundamentally impact their lives as post-separation parenting and other Family Law matters, consistent with its support for the Rights of Children under the *United Nations Convention*. (Proposals 7-3 and 7-4).

RAV also agrees with the ALRC that there are currently significant limitations and barriers to children's participation in the family law system and that children report being unheard and unsupported in this system. Recent studies by AIFS and South Australia Family Pathways Network support this view[23] [24].

However, based on our extensive experience in working with children in this context RAV understands that the creation of effective opportunities for children to express their views needs to be nuanced; to take into account and balance two vital elements of children's rights, the:

- empowerment and participation of children
- protection of children from harm.

Child-inclusive processes need to strike the right balance between protection and empowerment and have flexibility as to how, when and if the voice of child can be safely and effectively incorporated. Different processes and options in FDR and the courts will be necessary to achieve this end.

In our Issues Paper submission, RAV referred to British and German models that have created both sensitive assessment processes and nuanced ways for children to participate both directly and indirectly in formal legal proceedings (RAV Submission no 129, pp. 30-31).

The importance of the child's right to be heard and for their wishes and feelings to be acknowledged is now accepted as an integral part of the family law system in the UK, where children are supported through the Children and Family Court Advisory and Support Service (CAFCASS), which represents children in family court (and child protection) cases.

In the German family law system, there is a long history of judges directly interviewing children in family law proceedings. Indeed, in matters dealing with custody or access rights judges are obligated to personally hear the child if the feelings, ties, or will of the child are significant for the decision. The findings of a study published in the Family Court Review challenged the view that children are placed under too much stress when involved in judicial interviews and, furthermore, that quite young children can be effectively and safely interviewed by judges. (For more details refer **Attachment B** excerpts from RAV Issues Paper Submission no 129).

As a number of other jurisdictions are already implementing reforms aiming to give children a greater voice in a safe and appropriate way, RAV recommend that such models be given careful consideration and inform the development of best practice in Australia.

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[23] Carson, Dunstan & Roopani (2018), 'Children and young people in separated families; Family Law System experiences and needs. Final Report' AIFS. https://aifs.gov.au/publications/research-papers-reports, accessed 8/11/18

[24] Young People's Family Law Advisory Group (YPFlag), SA Family Pathways Network Pilot Project 2016/2017, found at https://www.pathwaysnetworksa.com.au/wp-content/uploads/sites/12/2018/09/YPFLAG_REPORT-FINAL3_web-2.pdf, accessed Oct 2018

Although the emphasis is on FDR, our comments on issues such as the need for comprehensive assessments and mechanisms for indirectly advocating for the child, are also applicable to more formal proceedings.

Child Inclusive Practice (CIP) has long been a part of FDR services both at RAV centres and other Family Relationship funded services.

RAV notes that CIP is currently underfunded and underutilised. It is a resource intensive process and the Family Relationship services sector would require additional funding for ALRC's **Proposal 7-4** to be implemented.

RAV strongly supports ALRC's **Proposal 7-5**, to develop best practice guidelines for CIP. RAV considers that it can make a positive and useful contribution to this exercise because of its significant experience of working with children in this manner.

Assessment

RAV considers there are certain key steps involved in creating effective and safe processes for children to express their views in the family law system and supports **Proposal 7-6.**

A comprehensive assessment of the child in the family context is necessary to protect the safety of the child, obtain informed consent and to guide the best method of the child's participation. This would ideally include and take into account:

- **Assessment for risk and safety**
  - Separation and divorce are associated with a high level of risk factors including family violence, drugs and alcohol and mental health issues. Protecting children from harm requires both initial and ongoing risk assessment.
  - RAV's prior submission explained in some depth a Family Safety Model that is used with identified families in FDR to monitor risk and support participation/capacity of all concerned. (**Attachment C**: Use of integrated service approaches (Excerpt from RAV Response to ALRC Issues Paper no 129)
  - Where a child wants to express their views it is important they do not have the pressure of being the decision maker; to be mindful to protect the child/ren from being inadvertently inserted into the adult conflict.
- **Informed Consent/Parental Consent**
  - Ascertain parental consent and capacity: criteria for how and if parental consent is required in FDR or other proceedings needs to be developed.
  - Ascertain if a child wishes to participate as this needs to be a matter of informed choice. Explore how the child wishes to express their views, directly or in some other way, or not at all **(RAV agrees with Proposal 7-7)**
  - Ensure children have a clear understanding of the process and reasonable expectations as to how their views or feedback may (or not) be utilised.
  - Ensure children are 'in charge' of deciding which messages are shared with the parents (excepting issues of risk).

- **Methods of Incorporating Children's Views**
  - Determine the best method to elicit and communicate the views of the child to the parents (in FDR) or the decision makers (in Family Law proceedings) Where children's views cannot be expressed directly, deciding what other processes are best placed to keep their wishes and interests at the heart of the proceedings. (Refer comments on **Proposal 7-8** below).
  - Ascertain the content and purpose of the child's input.
  - Ensure the wishes and feeling expressed by the child are those that authentically belong to the child, rather than to their parents, siblings or others.

Response to proposals for the role of a Children's Advocate

RAV supports ALRC's **Proposals 7-8 -7.11**. This is because the role of a Child Advocate creates a mechanism to support and inform children navigating the family law system, something the available evidence shows is lacking. RAV agrees that a Child Advocate should have a variety of options where it is unsafe or impracticable for children to provide their views directly, to keep a child's experience and needs at front and centre of decision making about them.

- The concept of the children's advocate proposed by the ALRC has an affinity with the role of Child Consultant in RAV's current model of Child Enhanced FDR. A Child Consultant is used to provide parent/carers with information about child development and other appropriate information that fosters child focused appropriate post separation agreements in FDR. This can be particularly useful where because of age or parental presentation the direct participation of children is unsafe or impracticable.

A Child Advocate (and Child Consultant) needs to be appropriately qualified and skilled and be able to bring the child's voice into the process in a variety of ways, depending on the age, wishes, and safety of the child/ren.

Proposal 7-13

RAV supports the creation of Children and Young Persons' Advisory Board and notes the utility of such a group in contributing to the design of a child friendly space in the Family Court in South Australia (refer FPFlag report 2018)[25].

RAV suggests that such a board be created early in the reform process, as its input would be useful in the implementation of some of the ALRC's proposals that impact children. The physical spaces of the Courts and its relevant processes need to be accessible and user-friendly for children.

[25] Young People's Family Law Advisory Group (YPFlag), SA Family Pathways Network Pilot Project 2016/2017, ibid.

Section 8: Reducing Harm

Proposal 8-6

RAV is an organisation designated to provide "family counselling "- s 10C (1)(b) *Family Law Act* 1975 (FLA). This counselling is defined as counselling in connection with marriage, or, alternatively, the counselling of adults or children in connection with separation or likely separation – s 10B. This counselling, by an authorised employee of a designated organisation, is not admissible, with the possible exception of an admission by an adult or disclosure by a child of child abuse or risk of abuse - s 10E. RAV employs Family Dispute Resolution Practitioners (FDRPs) who are individually accredited with the Commonwealth Attorney-General's Department to provide FDR, which is likewise not generally admissible – s 10J. RAV's family counsellors and FDRPs are already mandated to report reasonable suspicion of child abuse or risk of abuse to the Victorian State child welfare authority (DHHS - Child Protection) – s 67ZA. Quite apart from s 67ZA, family counsellors and FDRPs have discretion to disclose information where necessary to lessen or prevent the risk of harm – s 10D (4) and s 10 H(4).

Our experience is that these provisions work well to provide reassurance to clients (confiders) to allow them to engage in these programs with a reasonable degree of certainty about when disclosure may occur and what is, and is not, admissible in the family law jurisdiction. (It should be noted that the FLA inadmissibility provisions do not operate to prevent admissibility in other jurisdictions e.g. in Children's Court or criminal matters.) Our practitioners frequently need to report to Child Protection (CP) pursuant to s 67ZA, and under our internal policies, FDR is not commenced, or is suspended, pending the outcome of the CP investigation. In our submission, the current FLA provisions (in their application to designated family counselling organisations and accredited FDRPs) strike a reasonable balance between the parties' desire for a confidential place to resolve their issues and the Court's need to ensure that matters relating to risk and safety, highly relevant to the best interests of children, are before the Court and/or CP.

This Proposal seeks to support "protected confidences", but at the same time, it allows room for argument about admissibility. While the Proposal may operate to provide a disincentive to seek a Subpoena (an extra Court appearance for the leave application, cost, etc.), it introduces more uncertainty about the outcome, and it may also result in more appearances in Court for practitioners as they are required to respond to applications for leave to issue a subpoena. This becomes very time-consuming and costly for not-for-profit organisations such as ours, quite apart from the additional uncertainty for clients about admissibility. Without some evidence that there is information disclosed by parties in family counselling and FDR in relation to safety and risk that never finds its way before the Court or CP, we consider that these "confidences" should have more definite protection in legislation, rather than be a matter that may be the subject of an application for leave to issue a subpoena.

The current provisions also offer a safeguard against the manipulation of family counselling by a party seeking to plant distorted or false evidence, with the possibility of later seeking a subpoena.

For all these reasons, we support the general legislative protection of "confidences" in the context of the work done by family counsellors and FDRPs within the family law system. We understand that counsellors and other professionals in private practice providing therapeutic services to separating people do not currently have the same general protection from admissibility, and this should be reconsidered.

Section 10: A Skilled and Supported Workforce

RAV fully supports the development of a workforce capability plan for the Family Law System and endorses the proposed role of the Family Law Commission.

We support all proposals in this section.

Proposal 10-1

RAV supports this proposal.

Proposal 10–2

RAV supports this proposal. As far as FDRPs are concerned, the current Graduate Diploma – FDR, which provides the basis for accreditation as a FDRP, has been operating for a number of years now, and is the outcome of considerable experience and reflection by Registered Training Organisations that train future FDRPs. This should serve as a good starting point for the future development of FDRP training and accreditation.

It can only be to the benefit of separating families for all professionals working in the family law sector to have a sound understanding of the experience of those families, especially in regard to family violence, mental health and high conflict.

Proposal 10–3

RAV supports this Proposal.

Question 10–1

There are additional core competencies that should be considered in the workforce capability plan for the family law system. Consideration should be given to include an understanding of common stages of child development, the factors that contribute to individual variations, and the relevance of developmental stage to post-separation parenting arrangements.

Clearly, for family law system professionals who are not family lawyers, an understanding of the main legal principles relevant to family law, family violence and child protection, is very important. Understanding how to work with high conflict personalities should also be a core competency for professionals in the family law system.

Proposal 10–5

RAV supports this Proposal.

Question 10–2

RAV submits that additional specialist training and experience is necessary for those FDRPs who intend to conduct FDR in property/financial matters. In our view, a legal qualification, while helpful, should not be mandatory. Some FDRPs have tertiary qualifications in psychology or social work and prove to be very

effective in this work. What is essential is an aptitude for dispute resolution and an interest in this particular form of FDR. The knowledge of the general legal principles and other necessary financial knowledge is acquired relatively easily by those who have a particular interest in this FDR work. Some FDRPs have no interest in property/financial matters, but are very committed to conflict resolution in children's matters, while some are comfortable working in both areas. Specialisation in these 2 general areas should therefore be available.

RAV is clear about the additional core competencies that must be demonstrated by its FDRPs in property/financial matters. These competencies include the accurate identification and valuation of the property and debts, an understanding of family law and financial matters (including superannuation, Trusts) necessary to help clients understand and consider options, the necessary micro skills (e.g. with calculations, use of the whiteboard), and the incorporation of the parties' legal and financial advice before final decisions are made. In summary, RAV submits that, with proper training and experience, FDRPs with non-legal tertiary qualifications can be well-equipped to conduct this particular form of FDR. It is important to note that property FDR is generally conducted in conjunction with parties obtaining independent legal and financial advice and agreements reached in FDR are routinely drafted as consent orders by parties' lawyers. RAV always advises clients to seek the advice they need so that they understand their position and the options they have in order to come to good decisions that work in their situation.

In our view, a fundamentally important aspect of FDR training is practical, hands-on experience working alongside an experienced FDRP in a co-mediation model. At RAV, this experience is provided as part of our Graduate Diploma – FDR course. We would submit that this experience is particularly important in property/financial conflict resolution, which for obvious reasons, requires some different, additional skills. This practical experience should be an essential component of the training, or alternatively, a necessary additional requirement before specialist accreditation in this particular form of FDR. We regard the property/financial training and experience provided to the students in our course as a starting point, and we still work with new employee FDRPs in a co-mediation model until we assess that they are ready to work alone.

Section 11: Information Sharing

Proposal 11-1

RAV agrees with this proposal and would add an additional recommendation:

- "relevant" agencies **must** include Men's Behaviour Change service providers given their:
  - unique and incomparable ability to weekly/twice weekly monitor the risk of harm posed by men using abuse/violence
  - engagement and work with families experiencing abuse through family safety models and the Navigation Model.

  MBCP providers are critical elements of the family violence system that can at times be overlooked — these providers include family safety practitioners who are consistently assessing and sharing information about safety and risk with family violence systems and court systems throughout a significant time period.

Question 11-1

RAV contends that:

- police should request information regarding family law proceedings before they issue or renew a gun license. The use of weapons (and particularly firearms) is a well-document key risk indicator for risk of homicide/multiple homicides.
- family law professionals should be able to notify police if they fear for the safety and life of a person, and should be provided with immunity on the basis of their professional status and best of intention regarding notification.

  An additional recommendation would be that they would need to 'fit' a criteria for notification based on a specialist family violence risk assessment and/or a belief in an imminent threat to the life of an adult or child or young person.

Proposal 11-2

RAV agrees with this proposal, with an additional recommendation:

- for a specialist family violence risk assessment and a Primary Aggressor assessment to be additional criteria components in the national information sharing framework. Further to this is the need for clarity in relation to the analysis of information for 'what' purposes. Gathering information is only one element of establishing risk: the prediction of risk requires analysis of the information to ensure the court receives timely, relevant and evidence-based recommendations that assist in safety management of high risk family violence.

Proposal 11-3

RAV agrees with all elements of this proposal.

In addition, we argue for adequate funding to ensure training to all relevant systems in the national information sharing framework.

Question 11-2

RAV considers that the information sharing network should only include mental health records and only if there is an imminent threat to life.

Question 11-3

RAV considers that records should be shared with family relationships services such as family dispute resolution services, Children's Contact Services, and parenting order program services.

Proposal 11-4, 11-5

RAV agrees with these proposals.

Proposal 11-6

RAV agrees with this proposal, which is critical to counter the manipulations of perpetrators who misuse information (tactics of 'disinformation') through using court processes to further psychologically abuse children, young people and ex partners.

Proposal 11-7

RAV agrees with this innovative proposal.

Proposal 11-8

RAV agrees with this proposal, and contends that Men's Behaviour Change providers are a 'relevant entity'.

Proposal 11-9

RAV agrees with this proposal, for collaborative work in developing a template document to support the provision of a brief summary of child protection and police involvement with a child/family to family courts. We would also recommend that the template document:

- has specific criteria relevant to an analysis of risk relative to family violence
- provides brief recommendations in relation to the ongoing safety and wellbeing of women and children
- provides appropriate recommendations for referrals to services for those assessed as the primary aggressor of abuse, coercive control and violent incidents.

Section 12: System Oversight and Reform Evaluation

Proposals 12-1 - 12-11

RAV strongly supports the establishment of the proposed statutory body, the Family Law Commission (FLC), and we endorse all the proposed functions. The proposed FLC is necessary, in our view, to improve and maintain accountability and professional standards; to monitor outcomes; and to improve and maintain the integrity and coherence of the family law system as a whole, recognising that it is multifaceted and comprised of:

- Services that provide advice, information, counselling, therapeutic support, and education
- Specialist services that provide support to victims of family violence and services that assist FV perpetrators change their behaviours
- Providers of legal and related services, including legal advice, assistance, advocacy, dispute resolution, and representation
- Courts.

Expanding on our previous submission, we propose that the FLC should explicitly operate within an access to justice framework as recommended in the 2009 *Strategic Framework for Access to Justice in the Federal Civil Justice System* report prepared by the Commonwealth Attorney-General's Department, to which we have referred at the beginning of this response (p. 2).[26] **Refer to Figure 1** (reproduced below).

[26] For example, the objects of enabling legislation could include the requirement that the FLC strive to maintain, facilitate and improve the justice quality of the relations and transactions in which people are engaged in the family law system.

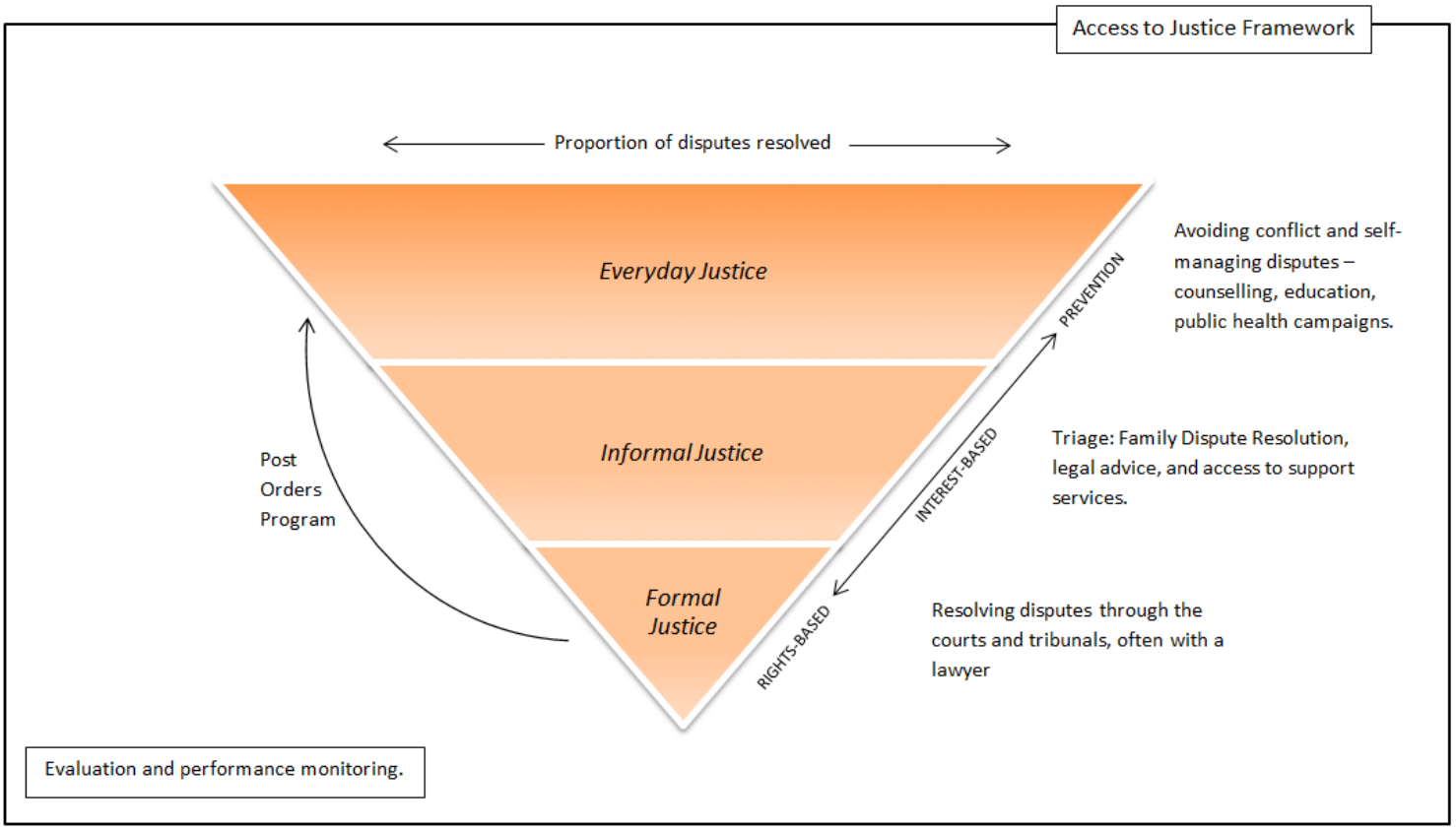

Figure 1 (reproduced from p.2): RAV's proposed model for the Family Law System

Attachment A: Reducing a child's exposure to conflict (excerpts from RAV response, no.129, to Issues Paper, May 2018)

Introductory response to Questions 29, 34 and 37, and response to Question 29

In considering how the needs, wishes and interests of children are better addressed in the family law system, in our view, it is important to take a systemic approach. Whilst the Issues Paper does not specifically ask questions about parenting education and early intervention programs, the role these programs can play in ameliorating the impact of parental separation on children should be held in mind. Improving children's participation in court processes and family dispute resolution, and the broader question of introducing problem-solving decision making should be addressed as part of an integrated approach to improve outcomes for children in the family law system. RAV supports the need for the family law community to work collaboratively to integrate research-supported models for resolving family disputes that focus on the welfare of children. "The goal of the family law system should be to give the parties the tools to restructure their lives. Central tenets of this system should be to reduce conflict, assure physical security, provide adequate support services to reduce harm to children, and enable the family to manage its own affairs"[27]. We believe that this is in line with increasing recognition of adverse effects of the traditional legal process ("juridogenic harm") in domestic relations matters[28].

The effects of separation and divorce on children have been studied extensively since divorce rates began rising in the last century. While children are resilient and can endure fundamental changes in family structure due to divorce and even death, and most children adapt normally, parental separation can have a detrimental impact. Many forces contribute to the risk faced by children. These include loss of contact with a parent, stress of adjusting to changing living situations, lack of psychological resources, parents' psychological health and parenting ability, and economic decline. However, whilst all of these play a role, exposure to high levels of conflict between parents and caregivers has consistently been identified as the most significant predictor of poor outcomes for children. As a group, these children are likely to have significant adjustment, academic, and relationship problems, and exhibit indications of psychological maladjustment, lower academic achievement, social difficulty, and poor self-esteem, with higher levels of anxiety and depression. The literature indicates that not all parental conflict is harmful. Parental conflict which children are not privy to ("encapsulated conflict") does not affect well-being.

Reducing children's exposure to conflict therefore remains a critical goal of the family law system, and should be regarded as a priority outcome at every stage of a family's engagement with it, whether trying to repair relationships or when engaged in informal or formal legal processes.

At all stages parenting programs and education can play a role in ameliorating the impacts of separation on children. Parenting programs following parental separation have been shown to be effective in treating and preventing a wide variety of child adjustment difficulties. These interventions have essentially focussed on psycho-education and skills-based programs for parents following separation, with program content based on demonstrating the links between separation, parental behaviour and child adjustment. Prevention and early intervention parenting programs for ameliorating the impact of separation on children have been supported throughout the literature: outcomes include the reporting by parents of increased parental

[27] S.H. Ramsey, 'High-conflict custody cases: reforming the system for children', Wingspread Conference Report and Action Plan, *Family Court Review* (U.S.), vol. 39, no. 2, 2001, p. 147.

[28] S.Ergun, *Evaluating Parenting Coordination: Does it Really Work*, Institute for Court Management, ICM Fellows Program, 2016.

cooperation, restoration of parental alliance, improved children's well-being, and a belief that early attendance at separated parenting programs will prevent or reduce enduring parental conflict. In addition, research comparing collaborative forums for dispute resolution with litigation following separation, found that parents who mediated their dispute had significantly lower conflict with each other, and that both parents were significantly more involved in their children's lives[29]. The integration of informal dispute resolution with psycho-education and coaching programs focused on improving conflict management skills and capacity should continue to be strengthened.

To effectively address the exposure of children to conflict in different forums of the family law system, the nature of conflict needs to be assessed. For example, labelling the parental relationship as 'high conflict' can be problematic and misleading, because it implies that both parents are equally driving the conflict, when it can be that one parent is unilaterally creating and maintaining it, especially in the context of a history of family violence. At the most persistent and recalcitrant end of the spectrum, high conflict is likely to be personality driven. Eddy asserts that high-conflict legal disputes are driven more by personality than by legal or financial issues. He describes individuals with "high conflict personalities" as having exaggerated emotions and repeatedly engaging in inappropriate behaviour. They typically deny responsibility for their problems, place blame on others, persist long after others let go, and make minor problems into major disputes. In his view, courts attract individuals with personality disorders, or traits of personality disorders, because the court process resembles their thought structure. The commonalities of high conflict personalities and the adversarial nature of the court process make adversarial court proceedings, particularly domestic relations matters, the ideal environment to play out the drama.[30] These observations strengthen the argument for assertive forms of conflict assessment, which include the voice of the child, and further exploration of problem solving approaches.

In general, we would argue that better including children's voices and improving their participation in the family law system will help in assessing their true situation. Where there is a lack of a good quality relationship between parents, the views of a child should be an essential part of determining parental caring capacity and a child's capacity to thrive in a conflictual situation. This in turn will assist in matching interventions and decisions to achieve the best outcomes for children, especially in reducing their exposure to damaging levels of conflict.

Question 29

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

RAV believes that there is scope for problem solving decision-making processes to be developed within the family law system, especially in dealing with families where there is entrenched conflict in cases involving children. In particular, we believe that the Parenting Coordinator role developed in the USA, provides a model that should be considered for the Australian context.

The last 15 years have shown parenting coordination to be a complex and distinctive process that integrates the fields of law, mental health, and conflict resolution, and which is practiced by attorneys, psychologists, and social workers. It is at once an intervention, a dispute resolution process, and an

[29] J. McIntosh and E. Tan, *Family Court Review,* vol. 55, no. 3, 2017, July, pp. 329-344.

[30] B. Eddy, *High Conflict People in Legal Disputes,* Scottsdale, AZ: High Conflict Institute Press, 2012.

innovative form of case management. In contrast to the court process, which culminates in a one-time ruling, it is ongoing until terminated. Services are provided informally without making a record, in a non-adversarial but court-sanctioned environment on an as-needed basis.[31]

In 2012, the American Psychological Association *Guidelines for the Practice of Parenting Coordination* for psychologists who practice parenting coordination provided the following definition:

> "Parenting coordination is a non-adversarial dispute resolution process that is court ordered or agreed on by divorced and separated parents who have an ongoing pattern of high conflict and/or litigation about their children. The underlying principle of the parenting coordination intervention is a continuous focus on children's best interests by the PC in working with high-conflict parents and in decision-making. Parenting coordination is designed to help parents implement and comply with court orders or parenting plans, to make timely decisions in a manner consistent with children's developmental and psychological needs, to reduce the amount of damaging conflict between caretaking adults to which children are exposed, and to diminish the pattern of unnecessary re-litigation about child-related issues"[32].

To comprehend fully the nature of the dispute presented, the first task of a parenting coordinator is to gather information from the parents and, if appropriate, collateral sources. The coordinator then works to educate and facilitate the communication of the parents to help them reach a solution. If the parents reach impasse, a parenting coordinator will proceed to make an arbitrative decision that is as binding as one issued by a court of law. This progression may occur over the course of time or within a single session, depending on the nature of the dispute. Decisions remain in effect unless set aside a court through a formal review proceeding. There is no judicial involvement unless an appeal is filed. The intervention is thus gradual, with the parenting coordinator taking greater control, only if necessary.[33]

A multidisciplinary role, the five major functions of parenting coordination are:

1) Education
2) Conflict management
3) Assessment
4) Coordination/case management
5) Decision-making.

Ideally, a parenting coordinator will possess expertise in conflict resolution theory and techniques, including:

- mediation
- child development and psychology

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[31] S. Ergun, *Evaluating Parenting Coordination: Does it Really Work*, Institute for Court Management ICM Fellows Program, 2016.

[32] American Psychological Association, 'Guidelines for the Practice of Parenting Coordination', *American Psychologist*, vol. 67, no. 1, 2012, p.64

[33] Ergun, op. cit.

- adjustment to divorce
- family dynamics and family systems theory
- domestic relations law
- the dynamics of domestic violence and associated safety and intervention considerations
- parenting education and techniques.

Evaluation of the model in Ohio indicated that Parenting Coordination was very effective in reducing litigation in the American context. Whilst not universally successful, "the results are sufficiently encouraging. The strong desire for an alternative to the court process warrants establishing an affordable pilot parenting coordination program within the Court. By addressing participants' concerns and removing perceived barriers to success, the Court can also better support the private provider model"[34].

In our view, there is sufficient evidence to consider introducing a pilot program in the Australian family law context. We believe that consideration should be given to both mandatory and voluntary Parenting Coordination models. The model has been developed to reduce conflict and re-litigation by assisting parents to implement and comply with court orders. However, some conflicted parents may voluntarily seek the assistance of a parenting coordinator in implementing a parenting plan following Family Dispute Resolution (FDR) or even in assisting in developing a parenting plan. We see great potential benefits in this for children, especially if recommendations by a parenting coordinator were available to courts in the event of subsequent litigation.

In forming this view, we note that in the US Parenting Coordination models vary from state to state, and that whilst guidelines exist there appear to be no established requirements for training and accreditation. If the model was to be trialled in Australia there should be clear professional, ethical and procedural guidelines and training requirements commensurate with the multidisciplinary nature of the role, to ensure uniform standards of practice, program integrity, and meaningful evaluation.

[34] Ibid.

Attachment B: Improving children's experiences of participation in court processes (Excerpt from RAV Response no. 129) to ALRC Issues Paper)

Where a good quality relationship between parents is lacking, the views of a child should be an essential part of determining parental caring capacity and a child's capacity to thrive in a conflictual situation.

We believe that there are currently significant limitations in children's participation in the family law system:

1. With a statutory presumption of equal shared parental responsibility, the need for a thorough assessment of the child is often limited to a single interview and fails to factor in background influences, especially unrealistic parental demands for shared care arrangements.
2. Interviews with children are limited and often depend on significant parental cooperation with the interviewee.
3. In Child Protection investigations, staff must interview children but no such pre-requisite exists in the family law system, making good outcomes for children less likely. For example, shared care is more likely to work better when a child is able to contribute to the development of realistic agreements.
4. The adversarial nature of the legal process is more focussed on delivering outcomes for parents rather than benefits to the child or protection from future conflict for the child.
5. Child interviews may not cover all the issues and psycho-social domains relevant to the child.
6. Family consultants see children in a court environment which, for many children, can be unfamiliar and overwhelmingly uncomfortable.
7. Views of children may at times be unrealistic, but there is limited time to undertake detailed exploration of the reasons a child holds those views.
8. The system can be dismissive of a child participating in the court process simply because of their age and perceived lack of maturity. A child's capacity and competence to express their views should be the default position.
9. Independent Children's Lawyers (ICLs) are limited in the time they can spend with children and in there is no requirement that they must meet with children to hear their views.
10. The lack of appropriate funding for ICLs also contributes to children's voices not being heard or included in court proceedings.
11. Lengthy delays in the court hearings can see major changes in a child's life and circumstances. Delays are further prolonged by the length of time taken to release court judgments which can be six months or more after a trial ends. Delays can add to post-separation conflict and contribute to further negative impacts on children.
12. Children are not consulted about their views of the court outcome.
13. Many cases do not include the views of children who are sufficiently mature to be able to form a submission in their best interests; often due to time constraints or parental conflict.
14. Legal process takes too long – a child's wishes and feelings may be affected and altered by ongoing parental conflict associated with unresolved disputes before the courts.

RAV recognises that addressing these limitations is by no means straightforward. However, we believe that there needs to be more emphasis on children's empowerment in the Australian Family Law system in cases of divorce and separation, especially where parental relationships are conflicted, in contrast to the traditional approach, which has emphasised children's welfare and interests.

Children overseas are increasingly being treated as active participants in the processes and decisions that affect them. These developments provide us with tested models and processes that have sought to strike the right balance between protection and empowerment, including established systems, assessment tools, and processes that seek to ensure, for instance, that wishes and feelings expressed by children are those that authentically belong to the child, rather than to their parent, sibling or other.

The importance of the child's right to be heard and for their wishes and feelings to be acknowledged is now accepted as an integral part of the family law system in the UK, where children are supported through the Children and Family Court Advisory and Support Service (CAFCASS), which represents children in family court (and child protection) cases. In our view, there is much that can be adopted and adapted from the UK experience. Even if the creation of an equivalent body to CAFCASS is out of scope, (although we suggest consideration should be given to that proposition) many of the resources and approaches could provide important learnings within Australia: these include the wishes and feelings assessment, the factors that determine whether a Judge or Magistrate will speak directly with a child, and the welfare checklist which the court must take into account when reaching its decisions can be learnt from.

In the UK, courts seek to strike a balance between the expressed wishes and feelings of children and other relevant considerations. each and every one of the following factors must be considered:

a) The ascertainable wishes and feelings of the child concerned, considered in the light of his/her age and understanding

b) His/her physical, emotional and educational needs

c) The likely effect on him/her of any change in his circumstances

d) His/her age, sex, background and any characteristics which the Court considers relevant

e) Any harm which he/she has suffered or which he/she is at risk of suffering

f) How capable each parent (or other relevant person) is of meeting his/her needs.

In the German family law system, there is a long history of judges directly interviewing children in family law proceedings. Indeed, in matters dealing with custody or access rights judges are obligated to personally hear the child if the feelings, ties, or will of the child are significant for the decision. The findings of a study published in the Family Court Review challenged the view that children are placed under too much stress when involved in judicial interviews and, furthermore, that quite young children can be effectively and safely interviewed by judges[35]. In our view the German model should be further considered for adoption here. In particular, an understanding of the interaction between the judge's level of experience and professional development and the children's experience of being interviewed would be of value.

[35] M. Karle and S. Gathmann, 'The State of the Art of Child Hearings in Germany. Results of a National Representative Study in German Courts', *Family Court Review*, vol. 54, no. 2, April 2016, pp 167-185.

Attachment C: Use of integrated service approaches (Excerpt from RAV Response, no.129, to ALRC Issues Paper)

How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported? How might people with family law related needs be assisted to navigate the family law system?

Introduction

Research by the Australian Institute of Family Studies[36] has shown that family relationship services support significant numbers of families who are affected by family violence and have multiple and complex needs. In order to safely and effectively respond to these needs, family relationship services commonly work collaboratively across jurisdictions with other services, such as specialist FV services, legal assistance services, mental health, and drug and alcohol services.

In RAV's experience, FV-affected families who present for FDR and who also have multiple and complex needs require more support than the current FDR model can provide. In addition, there is a gap in services provided for families moving between FDR and Court. In the absence of continuous, linked services and support, women and children affected by FV are at significant risk when they attempt to navigate from FDR to the Court, or post-FDR arrangements. This risk is compounded by the cross-jurisdictional issues that can create barriers to women and children obtaining legal protection from FV.

In particular, complex and protracted negotiations around ongoing co/parenting relationships place women and children at risk. RAV holds the view these ongoing co-parenting or parallel parenting ties result in a set of complex dynamics that require models of service that can cut across jurisdictions and state and national funding priorities.

RAV believes that co-ordinated case management to provide access to therapeutic programs and legal processes simultaneously, will build transparency, capacity and better outcomes for families and children. Comprehensive services to enable families to resolve their disputes safely are required to reduce the heightened risk to safety faced by women and children in particular during the navigation through the FDR environment and in transition to and after Court.

RAV recommends that FDR services be supplemented by a whole-of-family response that is provided by a practitioner who is focused on effectively assessing and responding to presenting FV issues and/or other complex needs. RAV has developed and is piloting one such model at two of our Family Relationship Centres (FRCs) (Melbourne and Sunshine), aimed at ensuring family safety and the wellbeing of children affected by FV throughout their interactions with the family law system.

RAV's Family Safety Model (FSM) supports FDR services at participating FRCs. The FSM provides support to families at what is often a high risk and difficult time for families with complex needs. During separation, conditions can often deteriorate for families—with significant impacts on children. The FSM offers continuity of care, and extends our capabilities to support families through to court processes as required. The model uses a whole-of-family approach and prioritises safety and child wellbeing.

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[36] R. Kaspiew, R. Carson, M. Coulson, J. Dunstan and S. Moore, *Responding to family violence: A survey of family law practices and experiences (Evaluation of the 2012 Family Violence Amendments),* Melbourne: Australian Institute of Family Studies, 2015.

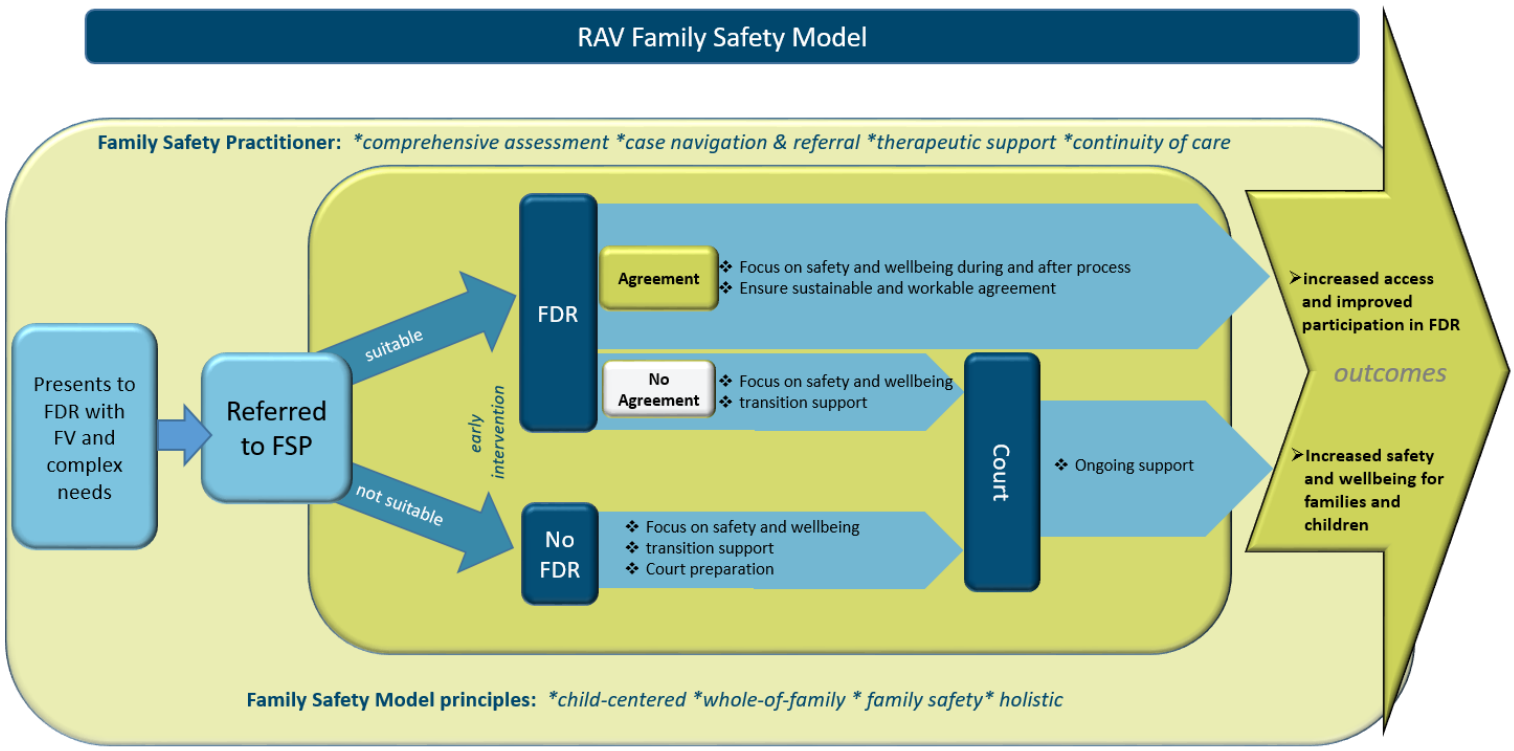
The FSM was recently commended in the Family Law Council's *Families with Complex Needs and the Intersection of the Family Law and Child Protection System* report to the Attorney-General (2016).

The Family Safety Model

RAV has designed the FSM with three intentions, to:

1. support FV-affected families who receive an FDR service which results in an agreement. These families require support during and after the FDR process.
2. support FV-affected families who receive an FDR service which does not result in an agreement/outcome. These families also need support:
    a. during and after the FDR process to ensure their safety and wellbeing. These clients often need support during the implementation and ongoing maintenance of parenting outcomes.
    b. in the transition between FDR and Court - noting that there are often significant delays before an adjudicated outcome.
    c. Post-FDR if the clients for whatever reason chose not to proceed to court.
3. support families who are affected by high levels of FV and/or coercive control, who are screened out of FDR because it is not appropriate for their circumstances. These families also need support in the transition between FDR and Court or during whatever alternative process they undertake.

Attachment A - Figure 1 below represents the alternative pathways for families affected by FV who present to an FRC.



Attachment A - Figure 1: Pathways for families presenting to FDR with FV and complex needs

What needs does the FSM address?

The Family Safety Model caters specifically for families who want to undertake FDR, but who may have multiple FV risk factors that are compounded by complex needs. FDR services typically assess for FV and complex needs in relation to a client's willingness, capacity and safety to participate in mediation. These families would usually be screened out of FDR as part of a standard assessment process, or would be assessed as 'borderline' in terms of the appropriateness of participating in FDR as a result of serious concerns about their safety and capacity to mediate.

These families, if not for an enhanced FDR assessment and response process, would be required to navigate an adversarial family law system, or reach a resolution about parenting or property disputes independently, in an unsafe environment. In addition, families with complex needs face lengthy court processes often up to twelve months with an increased risk to safety and wellbeing, in particular, for women and children during this time[37].

How does it work? Program theory

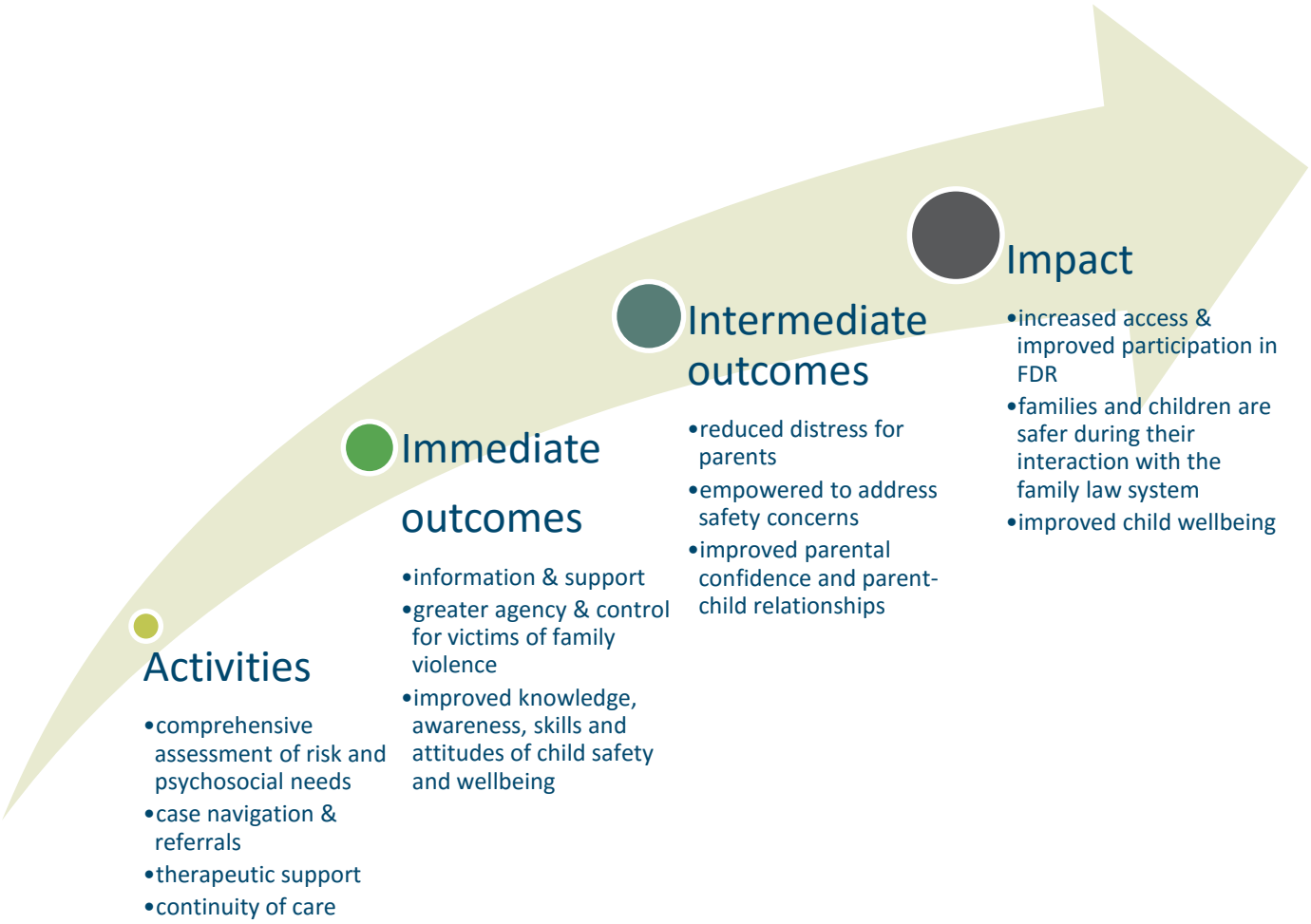
The FSM allows families to participate to a greater extent in FDR, reduce risk and achieve better outcomes. The key targeted outcomes of the FSM are to:

- improve the safety and wellbeing of families, regardless of their pathway in the family law system.
- improve the likelihood that parenting agreements are workable, sustainable and durable (these agreements can be achieved through FDR, with a lawyer, or on their own).

These outcomes are achieved through assigning a skilled Family Safety Practitioner (FSP), or Navigator, who offers case navigation and appropriate referrals, comprehensive assessments of risk and psychosocial needs, continuity-of-care, and therapeutic support in times of need.

Attachment A -Figure 2 demonstrates the program theory for the Family Safety Model.

[37] Family Court of Australia, 'Report on Court Performance', *Annual Report 2016-17,* pp. 36-37 located at http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/2016-17/2016-17-annual-report-part3, (accessed 3 May 2018)



Key principles of the FSM: child-centered * whole of family * family safety * holistic

Attachment A - Figure 2: Program Theory—Family Safety Model

Child-centered: RAV considers child developmental needs, and has a strong understanding of safety and risk. Having a child-centered approach means that we have the same standard of expectation from both parents during this time. By giving parents a voice and listening to their concerns, we are able to guide them to appropriate resources and provide a child-centered lens to their current situation[38].

Whole-of-family & holistic: Integrated case management service models provide an advanced response to FV and enable services to be co-ordinated seamlessly for clients. They provide key elements such as risk and needs assessment, joint planning of interventions, the delivery of services by a range of independent agencies or practitioners but within an overall client plan, case tracking and formal case closure processes. Whole-of-family approaches can support a more integrated and coordinated FV service that works with the victims of FV, addressing the needs of children and young people, as well as engaging perpetrators. In doing this, the safety and wellbeing of families and children is prioritised. Adopting an inter-agency approach

[38] David Mandel and Associates LLC, 'The Safe and Together Model', Canton, CT (USA), 2014, located at http://endingviolence.com/wp-content/uploads/2013/01/st_model.pdf

enables a continuum of services to be provided to the family over an extended period, increasing the overall responsiveness of the wider service system to meet the family's needs.

The Family Safety Practitioner (Navigator)

The FSM is best conceptualised as the delivery of telephone-based consultations. Clients contacting the FRC, identified to be at risk of FV and other complex needs are referred to a highly skilled FSP (Navigator) who maintains contact with the family as needed throughout their involvement in the family law system.

The FSM ensures that all clients identified as FV-affected during FDR screening or throughout the course of service delivery, are offered a comprehensive assessment addressing safety, risk and the psychosocial needs of all family members including children. It is holistic, incorporating a range of psychological, relational and structural domains that inform a collaborative case plan. The knowledge obtained from this assessment is revised and re-shaped throughout the period of support, in collaboration with family members, including former partners. The amount of support that clients are offered and choose to use throughout and after FDR varies according to their needs and current circumstances.

In particular, the ability for an FSP (Navigator) to remain in contact past the point where FDR and/or interaction with the Court has finished provides families with an integrated and continuous support through a period that is well documented to be a high risk time for them.

The FSM's foundational principle is that it is safer to track and coordinate the work for all family members that are affected by FV – either together or separately, but always systemically. The second guiding principle is the importance of actively supporting families in the transition from FDR services (early intervention) to the Court (tertiary/interventionist response), to prevent women and children 'falling through the gaps' and facing increased risk to their safety and wellbeing during the separation process.

RAV's practice experience involves whole families, whether together or separated, presenting for service. Within our practice, clients may attend a service on their own or with family members, and may be living together or separated. However, in any scenario, services are provided using a whole-of-family approach which recognises the needs and wellbeing of all family members. Over many years, RAV has developed robust ways to assess and work safely with these 'whole families' who present with high risk FV presentations. This is particularly pertinent in our work with complex family law matters, where FV is *not* the exception[39].

The Family Safety Navigation model is a trial of an approach that transforms the way dispute resolution and other family law processes intersect with state-based FV responses, including the Courts, for women and children. RAV has been delivering whole-of-family responses through our Family and Relationship Services in several other programs, including Men's Behaviour Change. Demonstratively, the FSP at our Kew Centre takes referrals from our family counselling program. There have been several high risk cases where women attending counselling have disclosed FV and the FSP has provided support at the point where the woman has chosen to end the relationship, known to be a particularly dangerous period. The FSP has supported the development of safety plans, referrals to specialist services and provided information to assist women navigate the Family Law System and access state-based services, including the police. Where perpetrators

[39] A. Bickderdike and H. Cleak (2016), 'One way or many ways. Screening for family violence in family mediation', *Family Matters, 98*, pp.16-25.

have been engaged with our services, we have sought to maintain that engagement using the whole-of-family approach.

Skills and expertise of a family safety practitioner

RAV strongly recommends that the skills required of a FSP (Navigator) are drawn from the social science fields (social work, counselling, family therapy, psychology). FSPs (Navigators) need expertise and experience in assessing for and working with families affected by FV—including working with and engaging perpetrators, victims and affected children. In addition, FSPs (Navigators) need a detailed understanding of FDR processes and the wider family law system in order to tailor interventions to support the clients in the family law processes they are involved in. These interventions will vary significantly according to the FV profile of the case and the family law services. The FSP (Navigator) also needs strong engagement skills as many clients will require a repeated, patient and assertive approach to encourage initial and ongoing engagement.

Attachment D: RAV Family Safety Model – Evaluation Report

Background

Family relationship services support significant numbers of families who are affected by family violence (FV) and have multiple and complex needs[40] In the experience of Relationships Australia Victoria (RAV), FV-affected families who present to the organisation's Family Dispute Resolution (FDR) services require more support than the current FDR model can provide. In addition, there is a gap in services for families moving between FDR and Court, when women and children affected by FV are at significant risk.

RAV believes that co-ordinated case management is required to provide access to therapeutic programs and legal processes simultaneously, and in so doing to provide better outcomes for families. RAV has recommended that FDR services be supplemented by a whole-of-family response provided by a practitioner whose role is to assess and respond to FV issues or other complex needs. To this end, RAV's Family Safety Model (FSM) has been designed to support FDR clients who are affected by family violence.

The RAV submission in May 2018 to the Review of the Family Law System provided background to and program logic for the FSM. Key features of the FSM are that it:

- aims at ensuring family safety and the wellbeing of children affected by family violence throughout their interactions with the family law system
- provides a whole of family response
- assigns practitioners with a specific focus on effectively assessing and responding to presenting family violence issues and/or other complex needs
- allows families to participate to a greater extent in FDR, and achieve better outcomes
- supports families assessed as unsuitable for FDR, or who cannot reach agreement in FDR, in their interactions with the family law system

The program has been piloted in two of RAV's Family Relationships Centres (FRCs) – at Melbourne FRC since January 2017, and at Sunshine FRC since February 2018.

Evaluation

The FSM program is being evaluated for the duration of the pilots at both the Melbourne and Sunshine FRCs using a mixed-method approach. The current document provides updated service delivery data, and qualitative data from interviews with clients for the purposes of evaluating the success of the Program to date. Other data including interviews with Practitioners and Managers were presented in RAV's May submission and are not repeated here.

[40] Kaspiew R., Carson R., Coulson M., Dunstan J. & Moore S (2015), 'Responding to family violence: A survey of family law practices and experiences (Evaluation of the 2012 Family Violence Amendments)', Melbourne: Australian Institute of Family Studies

Service delivery data

Since the commencement of the pilot programs at Melbourne FRC and Sunshine FRC, the number of cases engaged by the Family Safety Practitioners in each location is as follows:

Attachment A - Table 1: Family Safety Model cases by location of pilot

Centre	Pilot commenced	Cases to Sep 2018
Melbourne FRC	January 2017	186
Sunshine FRC	February 2018	62
TOTAL		248

Client demographics

Clients engaged by the Family Safety Program were predominantly female (80%). Men accounted for 12% of clients engaged in the Program, while in the remaining 7% of cases both male and female parties were engaged.

While the ethnicity of the parties engaged was not recorded in all cases, there are 62 cases in which an ethnicity other than Anglo-Australian was recorded, representing 25% of all cases (data not shown). This accords with the proportion overseas-born in the broader Australian population and suggests that the service succeeds in assisting a culturally and linguistically diverse clientele.

FDR assessments and outcomes

The RAV Family Safety Model is designed to support FDR services at participating FRCs. In more than half of all cases (55%), the party engaged in the FSM Program was the initiating party in the FDR process. In a further third of cases (34%), the responding party was engaged in the FSM Program. In the remainder of cases, both responding and initiating parties were engaged in the Program (data not shown).

Cases involving family violence are often deemed unsuitable for FDR, as both parties must be able to negotiate freely. Among clients referred to the Family Safety Program during the pilot to date, 38% had not proceeded to joint mediation. Of these cases, 23% were deemed inappropriate for FDR due to family violence and a further 28% were deemed unsuitable for other reasons (data not shown).

However, the majority of clients referred to the Family Safety Program (62%) had proceeded from assessment to joint mediation, and 38% of these were assessed as having made a genuine effort to resolve their disputes **(Table 2)**.

Attachment A - Table 2: FDR assessment, those who proceeded to FDR (n=144)

Attended – genuine effort	38%
Matter inappropriate for resolution	26%
No certificate issued	16%
Not held due to refusal or failure of other person to attend	15%
FDR began – considered inappropriate to continue	4%
TOTAL	100%

A parenting plan had been reached in 43% of the cases handled by the Program, and an informal or other written agreement had been reached in a further 16% of cases **(Table 3)**. These data suggest that the Program succeeds in supporting FV-affected families through their dispute resolution process in cases where FDR might otherwise prove impossible.

Attachment A - Table 3: Status of parenting arrangements through FDR (n=93)

Parenting plan	43%
No agreement reached	41%
Other form of agreement	16%
TOTAL	100%

Issues and needs of clients

The top three needs of each client are recorded upon engagement with the Program **(Table 4)**. In keeping with the aims of the Program, family violence is the most commonly cited issue (62%), followed by child wellbeing (52%). Other common presenting needs were support through mediation (25%), referrals to therapeutic services (20%), information about intervention orders (17%) and legal advice (15%).

Attachment A - Table 4: Presenting needs of FSM clients
(NB: Multiple responses permitted, therefore percentages do not add to 100%)

Family violence	62%
Child wellbeing	52%
Mediation	25%
Therapeutic services	20%
IVO information	17%
Legal advice	15%
Mental health	7%
Drug & alcohol	6%
Financial counselling	1%
Child contact refusal	1%
TOTAL	100%

Nearly half (48%) of all clients entering the Program had intervention orders in place, while a further 4% had expired orders (data not shown).

Nature of engagement

Family Safety Practitioners are asked to classify their level of engagement with each client. Most commonly, in 46% of cases, the client has 2-3 telephone sessions with the Practitioner. In 40% of cases contact is made only once, while in the remaining 13% of cases there are more than four follow-up calls (data not shown).

The Practitioner may undertake a variety of actions upon engagement with a client **(Table 5)**. Most commonly, this consists of assessment and referral or follow-up, either for the initiating party or for the responding party.

Attachment A - Table 5: Practitioner actions
(NB: multiple response item, therefore percentages do not add to 100%)

Assessment & Referral – Party 1	38%
Assessment & Referral – Party 2	22%
Single consultation – Party 1	14%
Single consultation – Party 2	2%
Information provided by email – Party 1	9%
Information provided by email – Party 2	8%
Follow up – Party 1	29%
Follow up – Party 2	14%
TOTAL	100%

Client interviews

Ten clients who have participated in RAV's Family Safety Program have now been interviewed to provide more insight into how the Program has assisted them. Interviewees had been engaged with the Program for periods ranging from 2 months to one year, and most were still in contact with a Family Safety Practitioner at the time of interview. Interviewees were asked whether and how the Program had helped them and their children, whether and how their safety concerns had been addressed, and what they valued most about the Program.

All clients interviewed praised the Program, and said that they felt safer and better supported as a result of their participation. All felt that their safety concerns had been heard and acted upon, although several remained under considerable stress as a result of ongoing disputes with their ex-partners.

All clients interviewed valued the understanding and support provided by the Family Safety Practitioner (FSP), and mentioned forms of support ranging from referrals to practical help with organising items such as security cameras and screen doors.

Support and understanding

When asked how the Program had assisted, interviewees most often talked about feeling supported at a time when they were feeling overwhelmed by their situations:

- "Someone to talk to who can understand me… someone to listen and provide the right advice"
- "[The FSP] has been and still is an amazing support"

Education and referrals

All interviewees spoke of the help they received from the Family Safety Practitioner through challenging processes such as obtaining intervention orders and going to court. They spoke highly of their Family Safety Practitioners and were extremely grateful for the advice received:

- "Having someone to guide you and organise referrals, it's a program that's just immeasurable [in value]"
- [The best thing about the Program is] "support from people who know what to do."
- "A lot has to do with [FSP] and her knowledge"

Impact on children

All interviewees felt that the Program had an impact on their children, albeit indirect. Clients spoke of regaining confidence in their parenting and becoming more patient with their children as a result of reduced anxiety about their situations. Several clients had been referred to the 'Tuning into Kids' and subsequent 'Opening Doors' programs offered by RAV.

- "Now I can focus more on my son"
- [FSP] "helped me with the children questions to make them feel happier and understand, and helped us all feel safe and content during a time of change and stress."

Summary

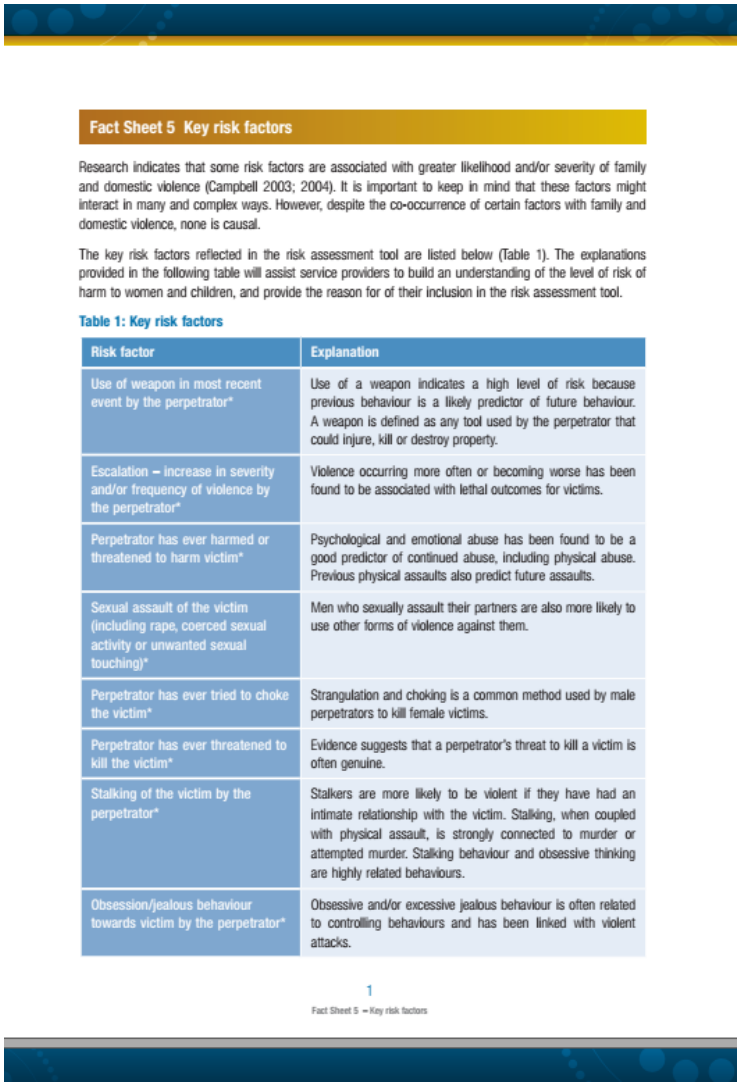
In an environment of increasing case complexity, the FSM is able to effectively assist people progressing through FDR, and is also of great assistance to those transitioning through the Family Law System. The current trial of the FSM at our Melbourne and Sunshine FRCs demonstrates an opportunity to enhance the existing FDR model and to prioritise the safety of clients presenting for FDR and their families. RAV's FSM provides a continuous, case navigation service that enables greater participation in FDR, and supports women and children to transition to the Courts safely. We contend that this is the most effective and safest option for women and children affected by FV who are separating.

Attachment E: Fact Sheet 5 Key Risk Factors

Image below is reproduced for illustrative purposes only. Please refer to separate Attachment E, which is an excerpt from:

Department for Child Protection and Family Support (2015). Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (2nd ed.), Perth, Western Australia: Western Australian Government.

Accessed at https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FactSheet5Keyriskfactors.pdf, 9 November 2018



Fact Sheet 5 Key risk factors

Research indicates that some risk factors are associated with greater likelihood and/or severity of family and domestic violence (Campbell 2003; 2004). It is important to keep in mind that these factors might interact in many and complex ways. However, despite the co-occurrence of certain factors with family and domestic violence, none is causal.

The key risk factors reflected in the risk assessment tool are listed below (Table 1). The explanations provided in the following table will assist service providers to build an understanding of the level of risk of harm to women and children, and provide the reason for of their inclusion in the risk assessment tool.

Table 1: Key risk factors

Risk factor	Explanation
Use of weapon in most recent event by the perpetrator*	Use of a weapon indicates a high level of risk because previous behaviour is a likely predictor of future behaviour. A weapon is defined as any tool used by the perpetrator that could injure, kill or destroy property.
Escalation – increase in severity and/or frequency of violence by the perpetrator*	Violence occurring more often or becoming worse has been found to be associated with lethal outcomes for victims.
Perpetrator has ever harmed or threatened to harm victim*	Psychological and emotional abuse has been found to be a good predictor of continued abuse, including physical abuse. Previous physical assaults also predict future assaults.
Sexual assault of the victim (including rape, coerced sexual activity or unwanted sexual touching)*	Men who sexually assault their partners are also more likely to use other forms of violence against them.
Perpetrator has ever tried to choke the victim*	Strangulation and choking is a common method used by male perpetrators to kill female victims.
Perpetrator has ever threatened to kill the victim*	Evidence suggests that a perpetrator's threat to kill a victim is often genuine.
Stalking of the victim by the perpetrator*	Stalkers are more likely to be violent if they have had an intimate relationship with the victim. Stalking, when coupled with physical assault, is strongly connected to murder or attempted murder. Stalking behaviour and obsessive thinking are highly related behaviours.
Obsession/jealous behaviour towards victim by the perpetrator*	Obsessive and/or excessive jealous behaviour is often related to controlling behaviours and has been linked with violent attacks.

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Fact Sheet 5 – Key risk factors

Relationships Australia VICTORIA

Review of the Family Law System: Discussion Paper

Submission by Relationships Australia Victoria (RAV)