



AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF THE FAMILY LAW SYSTEM

Response to Discussion Paper released on 2 October 2018

Submission from Partnerships for Victorian Relationship Centres (*Partnerships Victoria*)

1. Introduction

Partnerships Victoria welcomes the opportunity to comment on the proposals set out in the Discussion Paper on the Review of the Family Law System (*the Discussion Paper*).

Partnerships Victoria is the representative body of the 15 Family Relationship Centres (*FRCs*) that operate in Victoria (see Schedule 1 for a list of members). It was established to bring the Victorian FRCs together to help them collaborate with each other and with the Australian government to ensure the provision of quality family relationship services. This submission includes input from all our members.

The vision of Partnerships Victoria is to foster ‘an effective network of quality Family Relationship Centres in Victoria’ and its mission is ‘to support healthy families through a strategic partnership that promotes and strengthens the capacity of Victorian FRCs’.

Partnerships Victoria works collaboratively to: identify and address critical issues; provide a collective voice to advocate strongly and positively with Government; provide leadership for practice and policy, and to contribute to sector knowledge and wisdom.

As the representative body of the Victorian FRCs, Partnerships Victoria has drawn on the significant experience of its members in order to contribute to this important discussion. In relation to the work of our members, we note that in the past financial year, our members have assisted 17,025 clients.¹

Partnerships Victoria broadly agrees with the proposals set out in the Discussion Paper. We do not propose to provide detailed comment in relation to every recommendation and question. Rather, we will focus on Parts 4 and 5, and provide some general comments in relation to the other Parts of the Discussion Paper.

2. Summary of key comments

As a general comment, in the context of the proposed reforms, funding will be a key factor in terms of whether the identified policy proposals can be delivered. As part of the review, funding options should be given close consideration, particularly, as noted in the KPMG Report², in growth corridors and catchments where there is limited or no service provision since the establishment of FRCs over 12 years ago.

¹ Aggregated Data Exchange (DEX) data from respective centres for 1st July 2017 – 30th of June 2018.

² KPMG, *Future Focus of the Family Law Services, Final Report* (Report prepared for Attorney-General’s Department (Cth), 2016) (**KPMG Report**).

2.1 Part 4 – Getting Advice and Support

- Partnerships Victoria strongly supports the proposal to develop clearly designated community-based Families Hubs, which offer a range of services under one roof. In that regard, Partnerships Victoria strongly supports Proposals 4-1, 4-2, 4-3 and 4-4.
- Partnerships Victoria considers that an efficient and cost effective mechanism to achieve this proposal is to build upon the already existing structure offered through FRCs. That is, FRCs should operate as Families Hubs and further consideration should also be given to the design of future FRCs/Family Hubs expanding into growth corridors of metropolitan cities.

2.2 Part 5 – Dispute Resolution

Funding

- The funding situation for FRCs and Family Dispute Resolution (**FDR**) should be given close attention.
- Partnerships Victoria proposes that current charging restrictions be lifted so that FRCs can determine the charge rates for those who do not fit into the lower socio-economic categories of clients. Partnerships Victoria also acknowledges the ‘safety net’ that FRCs provide to separating families with a significant proportion of clients in financial distress.

Proposal 5-2

- The factors currently set out in regulation 25(2)(c) of the Family Law (Family Dispute Resolution Practitioners) Regulation 2008 (Cth) should not be expanded as set out in Proposal 5-2.

Proposal 5-3

- We strongly agree with Proposal 5-3 to mandate FDR before court in property and financial matters.
- While we agree that there should be a limited range of exemptions to mandated FDR, we would alter the second dot point in Proposal 5-3 so that cases involving closely related parties are not automatically exempt.

Proposal 5-4

- Partnerships Victoria agrees with the proposal to require a ‘genuine steps’ statement to be filed with a court application for property and finance matters.
- We suggest that if a genuine effort has apparently not been made, then the *Family Law Act 1975* (Cth) (**the Act**) should say that courts ‘*must* take this into account in determining’ a costs application.
- We recommend that such a statement also be required in parenting cases.
- It would be helpful to have more detail about what a ‘genuine steps statement’ should include and, as a result, the matters which the court may take into account when considering whether a genuine effort to resolve a matter in good faith has been taken.

Proposal 5-5

- Partnerships Victoria agrees with Proposal 5-5 and particularly supports the approach of only providing a few, simple options for certificate types in property and financial cases.
- The certificate types in relation to parenting matters (section 60I(8) of the Act) should be the same as the certificate types provided for property and financial matters just referred to.
- There should be a central database which FRCs can access to see whether a party has applied for FDR. While consideration will need to be given to ensuring that low cost FDR will be provided if needed, the general principle should be that if an application for FDR is in train, no other application should be accepted. Privacy concerns will need to be addressed in establishing this database to ensure that privacy is adequately protected, while allowing the necessary information to be recorded and accessed.
- Partnerships Victoria submits that section 60I(9) of the Act needs to be amended to limit the grounds on which people can be exempted from obtaining a certificate before making a court application in parenting matters.

Proposal 5-6

- We agree with Proposal 5-6 and, in addition, propose that simplified financial statements, bank statements and tax returns should be required to be provided by the parties, in order to facilitate financial FDR.

Property Plans

- We propose that FDR Practitioners have the option of drawing up a 'property plan' which will be somewhat like a parenting plan (see section 63C of the Act) as it currently operates within the Act.
- We propose that section 44(3) (property proceedings should be taken within 12 months of divorce) and section 44(5) (property proceedings in a de facto matter should be taken within 2 years of separation) be expanded to include a provision that property proceedings for married parties shall be taken within 12 months of a property plan being signed and for de facto parties within 12 months of a property plan being signed.

2.3 Other Comments on the Discussion Paper

Parts 2, 3 and 8

- We broadly agree with the proposals in these parts and would seek to have involvement in consultations as to how the proposals are implemented.

Part 6

- We broadly agree with the proposals in this part. In addition, we recommend that in the triage process and in conjunction with considering the 'genuine steps statement', consideration should be given to sending the parties out of the court

system to an FDR process, including back into an incomplete attempted FDR process in some cases.

Part 7

- We support the recommendations in this part and would seek membership on the Advisory Board referred to in Proposal 7-13.

Part 10

- Partnerships Victoria strongly agrees with the proposals in Part 10. As part of the training referred to in Proposal 10-4, Partnerships Victoria would like to see the Family Law Commission developing a resource kit and guidelines on core competencies and accreditation. The Commission should consult with stakeholders, including Partnerships Victoria, in developing these resources.
- The Family Law Commission could further support a skilled workforce by providing resources and guidance on other topics that may assist the workforce. For example, guidelines could be developed as to when a Family Law system professional engages other services to support it.
- Partnerships Victoria would seek to be involved in the development of a workforce capability plan for the Family Law system.

Part 11

- Having an appropriate information sharing framework is essential. While we broadly support the recommendations in Part 11, we note that there are various complexities and sensitivities that require due consideration.

Part 12

- We strongly support the establishment of a Family Law Commission. Partnerships Victoria recommends that an advisory council be established for the Commission and would seek membership to this council.

DETAILED COMMENTS

3. Part 4 – Getting Advice and Support

Partnerships Victoria strongly supports the proposal to develop clearly designated community-based Families Hubs, which offer a range of services under one roof. In that regard, Partnerships Victoria strongly supports Proposals 4-1, 4-2, 4-3 and 4-4.

Partnerships Victoria considers that an efficient and cost effective mechanism to achieve this proposal is to build upon the already existing structure offered through FRCs. That is, FRCs should operate as Families Hubs.

3.1 Current Role of FRCs

FRCs were a central aspect of the 2006 Family Law Reforms, providing an alternative structure and support service for families. FRCs are currently a

source of information and confidential assistance for families at all stages in their lives. They focus on providing FDR to enable separating families achieve workable parenting arrangements outside the Family Court system.

They actively promote multiple models for resolving conflict and can be used pre and post legal activities to enable effective dialogue between parties. FRCs also support links between legal assistance and other support services, so that people can seek assistance that addresses their whole issue, not just the legal aspects. FRCs work alongside a network of family law services.

3.2 Could FRCs operate as Families Hubs?

The Discussion Paper³ notes that FRCs were designed to act as the ‘front door’ to services for separating families, but not a ‘one-stop-shop’ and were designed to link clients with services through referrals rather than housing a wide variety of services on-site. The Review of the Family Law System presents a perfect opportunity to consider whether the current operations of FRCs could be expanded to further enhance their central role in the Family Law System.

In our submission, the policy rationale for the establishment of Families Hubs does not differ significantly from the policy underpinning the existence of FRCs⁴. Further, the Discussion Paper notes that the proposed Families Hubs ‘share some of the features that drove the development of existing FRCs’⁵.

Indeed, with development and deployment of the Orange Door Support and Safety Hubs by the Victorian State Government, representatives from Family Safety Victoria consulted with a number of FRCs in relation to design, layout and operations. The need to triage and manage separate parties that are connected via children whilst also managing risk is very similar for both separating and family violence clients.

Partnerships Victoria considers that expanding the policy objectives of existing FRCs to align with those of the proposed Families Hubs, would not be a major departure from the current operation of FRCs.

In particular, some FRCs currently provide many of the services listed in Proposal 4-3.

For example, the following services are currently provided on the site of the Frankston FRC:

- Specialist family violence services.
- FDR services.
- Therapeutic services.
- Financial counselling services.
- Housing assistance services.

³ See paragraph 4.11.

⁴ ‘Every picture tells a story’, A new family law system Government Response to Every picture tells a story. Response to the report of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child-custody arrangements in the event of family separation, (June 2005).

⁵ At paragraph 4.20.

- Health services.
- Gambling Health services.
- Children’s contact services.
- Parenting support programs or parenting education services.

These services represent many of the core services (other than legally assisted services) that the Families Hubs are proposed to provide on-site under proposal 4-3.

In relation to our other members, generally at least 3-4 of the above services are already provided on-site. Where services are not provided on-site, clear referral pathways exist for the majority of the above services.

In addition, in many cases, other services which are appropriate for the particular community can also be accessed on-site. For example, the Traralgon FRC has an elder-abuse program while the Mildura FRC provides homelessness support.

Consequently, some FRCs are culturally and physically set up to respond to the needs of families and diverse communities and have existing infrastructure that would create efficiencies for the establishment of Families Hubs.

Further, the Discussion Paper notes that ‘to be effective each Hub would need to be clearly identified and well known in the local community as a trusted place to seek help when you separate’. The KPMG Report⁶ establishes that FRCs were by far the most utilised Family Law support service in 2014. Additionally, according to the CFRE Report⁷, 85.5% of clients who used FDR process by FRC FDR providers were strongly satisfied with the service. FRCs are a highly visible entry point to Family Law Services and already have a trusted reputation in the community.

The Discussion Paper⁸ states that previous reports and submissions suggest that ‘the ability of FRCs to connect families with the full range of legal and support services they may need is limited by a number of factors...’ We agree that under the current model and funding structure, FRCs are not in a position to provide the necessary and /or comprehensive suite of services that the Families Hubs will provide.

However, none of the challenges listed are insurmountable and they are matters that would need to be addressed by newly created Families Hubs in any event. We address each of the factors listed in the Discussion Paper below:

(a) Funding

We agree that FRCs have become more focused on the provision of FDR. However, this focus occurred precisely because FRCs have via necessity focused on demand for FDR for children’s matters. Whilst some FRCs are also funded to provide additional early intervention services, this is not across every FRC. Further, while operating costs of FRCs have increased (for example,

⁶ KPMG Report 20, 56.

⁷ Centre for Family Research and Evaluation (CFRE), Report: Family Dispute Resolution Evaluation – An Outcome Measurement Tool Development Project, (November 2017), 6.

⁸ At paragraph 4.11.

through rental increases, wages etc.), funding has remained static. This has meant in some case, the work of FRCs has been negatively affected due to increased costs leading to some contraction of service provision.

The Geelong FRC's experience is that:

The rent and outgoings increased by 110.8% from 2010/11 to 2018/19 (13.8% increase per year). This is due to competition and increased demand for suitable office space as a result of changes to the workforce in Geelong i.e. the closure of manufacturing and the increase in community services, health and insurance sectors (such as the movement of NDIS, TAC and WorkCover). This has had a significant impact on our capacity to meet demand and necessarily contract service delivery.

The Wodonga FRC notes that:

The FRC budget has reduced in real terms every year due to increases in Agency infrastructure costs (accommodation, utilities) as well as unfunded and underfunded CPI increases, Employee Award increases and annual staffing wage increments. We have had to reduce staffing hours as a result.

Similarly, the Warrnambool FRC has said:

Over the years the number of staff hours has had to decrease as the cost of running the service increases. There has also been an increasing cost for IT that allows the service to be responsive to clients across the region.

Further, FRCs have experienced an increase in complexity of cases. Family violence has been increasingly reported amongst clients. Some centres report incidences as high as 50-60% of cases. This has put great pressure on resourcing to maintain safety.

The focus on the provision of FDR has therefore been necessary in the current funding environment, and taking into account the primary function of FRCs. However, that in itself does not mean that FRCs are not in a position to expand their services with appropriate funding. Indeed, as we discuss below, an expansion of the role of FRCs should cost significantly less than establishing an entirely new and separate framework. That is, there is value for money and funding efficiencies that can be achieved through using the existing structure.

Given that a number of the proposals in the Discussion Paper will require a significant amount of money, and given that there will always be a limited pool of money, any savings measures should be given due consideration.

(b) Gaps in collaboration with legal assistance services

Partnerships Victoria agrees that there have been gaps in collaboration with legal assistance services but considers that the main reason for this relates to the funding pressures on community legal centres (**CLCs**) and Legal Aid Offices.

In December 2009, the FRC Legal Assistance Partnerships Program commenced. The program was funded by the Attorney-General's Department to enable FRCs to partner with legal service organisations so that legal information, advice and assistance could be provided to clients of FRCs.

The experience of our members in relation to this program was very positive. In cases involving high conflict parties, the program enabled resolution through the FRC process, when, otherwise, the dispute would have had to have been resolved in court. The Australian Institute of Family Studies⁹ produced a report into the program which found that:

Overall the conclusions to be drawn from the evaluation are very positive, and most partnerships are functioning well or very well. **Most report high or very high levels of collaboration and enthusiasm for the project, while recognising the need to work through issues arising out of the significant cultural differences experienced by each professional group.** The legacy of being hesitant about involving lawyers was evident in some individual statements from FRC staff, and a very small number of partnerships appeared to be functioning poorly, or to be still at the very beginning of development. [Emphasis added]

As is evident from the above, in the majority of cases, there were high levels of collaboration between FRCs and legal assistance services. Although we do note that in some cases of LAFDR, our members reported that the legal support provided was not optimum. This resulted in a decline in the quality of the outcome and an increase in the time of the process.

While the program was successful overall, our members report that the partnerships did not continue because the legal services did not have sufficient funding, or funding was directed to other “high priority” areas. That is, as FDR is not a core service of CLCs or Legal Aid Commissions, we understand that funding allocated to FDR in the past has been redirected to align with the priorities of those organisations.

Now, Lawyer Assisted Family Dispute Resolution (**LAFDR**) is a major gap in services for most FRCs who are often forced to fund it directly themselves.

This issue will therefore also exist in relation to newly established Families Hubs and is not particular to FRCs.

As set out above, there are great benefits to providing LAFDR and we would support LAFDR becoming an integral part of the new Family Law System. In our view, in order to provide this important service, funding should be given directly to FRCs (Families Hubs) in order to source legal assistance where required.

If FRCs were given brokerage funding for LAFDR, they could effectively manage a number of service providers and gain better efficiencies from the funding. In addition, given their experience with FDR, FRCs are well placed to identify lawyers who are well skilled in this area in order to ensure that quality assistance is provided.

(c) Gaps in collaboration with specialist family violence services

The KPMG Report discusses the Co-ordinated Family Dispute Resolution trial and notes at page 36 that although that trial was discontinued ‘it successfully developed long lasting, collaborative relationships between socio-legal providers around family violence’.

⁹ Australian Institute of Family Studies, *Evaluation of the Family Relationship Centre legal assistance partnerships program* (2011), E1.

Certainly in our experience, many FRCs have formed strong relationships with specialist family violence services. Further, the Frankston FRC is currently located in the same building as a newly established Family Violence centre (Orange Door). As the rollout of the Victorian State-based Orange Door centres continue, there are more opportunities for co-location and increased collaboration between FRCs and the Family Violence reform in Victoria. This may involve potentially moving current FRCs to be collated with Orange Door Centres.

In the Victorian context, Orange Door is a good example of an existing service offering. Orange Door is intended to operate in a similar manner to that of the Families Hubs. As part of its model, out-posted Hub workers will be based in other services. In developing the Families Hub model, it will be essential to consult widely with State and Territory Government agencies in order to properly co-ordinate services and build upon existing structures. As noted in the Discussion Paper on page 84, 'the range of services needed by separating families and their children would include Commonwealth, State and Territory funded agencies', and as such, the success of the Families Hubs largely depends on the coordinated response of the various governments.

The Melbourne FRC have also developed the Family Safety Model (FSM) which caters specifically for families who want to undertake FDR, but who may have multiple Family Violence risk factors that are compounded by complex needs. 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. The FSM allows families to participate to a greater extent in FDR, reduce risk and achieve better outcomes. 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.

When considering the development of Families Hubs, it is important to take into account existing services in order to avoid duplication and to achieve cost efficiencies. In this regard, we are strongly in support of Proposal 4-1.

(d) Providing culturally appropriate services

We accept that across Family Law Services, there is a need to focus on culturally appropriate services. This could be taken into account in developing a funding model for the expansion of FRCs and considering the way in which FRCs could operate (discussed further below at 3.4).

3.3 Benefits of using an already existing structure

There are a number of key benefits to building upon the existing framework, the physical and social capital, and the experience of FRCs.

There are currently 65 FRCs across Australia, which are well established in the local communities, have strong relationships with complimentary service providers and currently provide a wide range of services on-site through collaboration and colocation.

In our view, the infrastructure, expertise and services already exist in FRCs, and could serve as a base to expand the role of FRCs to that of Families Hubs

described in the Discussion Paper. We consider that building upon an existing model would be a significant time and cost saving for the government.

Given that FRCs already have a strong reputation within the local community, they are well placed to achieve the policy objectives of Families Hubs. Indeed these policy objectives would only represent a slight expansion of the policy rationale that led to the creation of FRCs in the first place.

3.4 The future model of FRCs as Families Hubs

We envisage that FRCs would receive enquiries from community referrals and from community awareness campaigns, both online and through other media. FRCs would then provide:

- 1) An initial contact point for clients to identify the person's safety, support and advice needs and those of their children. A consistent template would need to be developed for risk and safety purposes.
- 2) Multi-disciplinary triage services to assist clients to develop plans to address their safety, support and advice needs and those of their children.

This is already undertaken in many respects given that FRCs operate on a 'no wrong door' system. With a reformulation of the role of FRCs, this service can be further enhanced and expanded.

- 3) Core services within the same physical location

As noted, most of the FRCs are run by large community services organisations with a wide-ranging portfolio of services across multiple funding sources. Any gaps in services are generally sourced by the FRCs through collaborative partnerships. It is not unusual for FRCs to already access complementary services within their organisation such as general counselling, family violence support, housing, mental health and alcohol and drug services, etc.

A refocus on expanding the core services offered on-site would achieve the objective of establishing a 'one-stop-shop' for families dealing with complex issues and needs.

- 4) Referral services

As noted in the KPMG report, FRCs currently operate on a 'no wrong door' system so that providers are 'required to refer clients on to the appropriate service if the initial intake point is not the most appropriate'¹⁰.

As part of an expansion of services (including the appointment of a Hub Coordinator), and, with the use of technology, FRCs could work on improving referrals through a network of existing service providers.

- 5) Case Management

This is an essential element of the proposed Families Hubs as it ensures that clients are closely supported when using various support services, and avoids anyone 'falling through the cracks'. As FRCs are currently not funded

¹⁰ KPMG Report at paragraph 3.2.2.

to undertake case management, it has not been widely offered, although some of our members do provide this service where possible.

6) Additional Access Points

In addition to providing core services within the same physical location, Partnerships Victoria considers that the Families Hubs should include other ways of accessing services. This may be particularly important in regional areas, where vast distances may need to be travelled in order for a client to reach a physical hub. It also recognises that there may be physical constraints with providing additional services in the same location.

As such, the physical hubs should be complemented by telephone and online services (including Skype, with appropriate security protocols). We see a great opportunity in this regard to use technology to deliver services where physical services are impractical in a particular location or where clients have specific difficulty accessing those services. In this respect, we strongly support Proposal 4-2.

We envisage that there would also be physical Local Area Access Points, which provide a physical location for intake and triage, but may not provide all the core services. These Local Area Access Points can provide services that are specific to the needs of a particular community and could be more focussed on providing services which are culturally appropriate for the surrounding demographic.

Further consideration should also be given to the current geographic spread of FRCs. Suburbs have expanded dramatically and unexpectedly in some cities since 2006 and a number of additional FRCs/Hubs would be well warranted because of this.

4. Part 5 – Dispute Resolution

Partnerships Victoria agrees with the thrust and most, but not all, of the proposals within Part 5. In this section, we wish to provide some further considerations that are necessary to facilitate the implementation of the proposals.

4.1 Background, types of dispute resolution and funding

Partnerships Victoria proposes that current charging restrictions be lifted so that FRCs can determine the charge rates for those who do not fit into the lower socio-economic categories of clients. Partnerships Victoria also acknowledges the 'safety net' that FRCs provide to separating families with a significant proportion of clients in financial distress.

The funding situation for FRCs and FDR should be given close attention.

Partnerships Victoria strongly agrees that the use of Family FDR should be expanded in the context of separating couples. The very large majority of people prefer to do almost anything to avoid court. As such, strong systems and legislation should be in place to encourage FDR and indeed to encourage people to go back into FDR in some cases after an incomplete FDR process.

Nevertheless, it is important to emphasise the structural and practical difficulties that the FRCs operate under. FDR is based around the definition in section 10F of the Act

which defines it as a process in which an independent FDR practitioner helps people affected by separation or divorce to resolve some or all of their issues with each other.

The model of one FDR Practitioner and two clients works well in, we suggest, a small majority of cases. However, too many couples under the current system get exemptions from FDR and too many require more assistance than is possible with one FDR Practitioner alone. The latter unfortunately leads to section 60I certificates being granted when, with more resources, the matter may have been fully settled in FDR. This ultimately results in unnecessary time and expense, for both the parties and the court.

In our view, the Part 5 proposals should pay more attention to the need to increase the availability of more complex and expensive forms of both FDR and ADR, so as to best minimise the number of cases going to court. Additionally FRC's provide information sessions post separation education and in some instances Parenting Orders Programs which assist parties to prepare for FDR, manage emotions and learn new skills which are not readily available in private FDR.

Types of ADR processes of which we are aware and most of which ((a)-(g)) operate in a number of FRCs include the following:

No lawyer FDR

(These categories apply to FRC's, the Community Sector and private FDR Practitioners.)

- (a) FDR with one practitioner.
- (b) FDR with two FDR practitioners.
- (c) Shuttle FDR (one or two practitioners). Recommended, for example, in many instances where there are or have been family violence issues or power imbalance issues. We note that our members report an increase in demand for this type of service.
- (d) Child inclusive mediation or child inclusive practice (CIP). This usually involves the one FDR Practitioner plus a child consultant.
- (e) CoMeT (conjoint mediation and therapy). This usually involves an FDR Practitioner and a separate counsellor/psychologist engaging in therapy. In appropriate cases, a child consultant may also be included.

Legally assisted ADR

- (f) LAFDR (legally assisted family dispute resolution). Each party has a lawyer to assist them. The lawyers may be provided by community legal centres (**CLCs**) or legal aid commissions - although their funding and resources are scarce, and they are often less available than the FRCs would wish.
- (g) LACAFDR (legally assisted culturally appropriate family dispute resolution). In addition to lawyers, this includes a cultural worker to assist with the special needs of the individual or couple.

- (h) Inter-disciplinary collaborative practice (ICP). This is a private process involving lawyers for each party with a psychologist neutral and usually a financial planner or accountant neutral.
- (i) Arbitration. This is a private process and is limited to property cases - which is a serious limitation.
- (j) Community agencies which run FDR (with less funding than FRCs).
- (k) Private FDR Practitioners. For example , lawyers or psychologists.
- (l) Private lawyer-led negotiation – the traditional process.

Clearly model (a) is the minimum cost FDR model. If a second practitioner, or a child consultant or cultural worker (for example) are added, the salary cost – which is the major cost of the process, doubles. Increases continue upwards with more professionals involved, making most of these process options not practical for most cases.

If our FRCs were able to afford to choose the best process from the above list for their version of FDR for a particular couple, a much larger proportion of clients could be satisfactorily managed through the FDR process. Currently FRCs manage this process quite well with mainstream and basic cases being managed by one FDR practitioner and more complex and high risk cases being managed by two FDR practitioners. However, increasingly more difficult cases are coming back into the FDR system given the high cost of litigation, increased need for amending arrangements as children grow older and parties' frustration with the court process.

Accordingly, the cases of substantial power imbalance may well not be manageable. Further, the level of child inclusive practice which is ideal, and which the Australian Law Reform Commission recommends, is not possible because of the extra costs involved in child consultants participating in such processes. Similarly the CoMeT process would seldom be possible for costs reasons.

The legally assisted processes are also problematic since the government funded agencies (CLC's and Legal Aid Commissions) have such limited resources.

A major impediment to the funding of FRCs is the severe means testing and limits on charging applied by the government for all FDR matters. While it is appropriate to have means testing applying to the lower socio-economic categories of clients, we submit that the government should not determine the charge rates for those who do not fit into these categories. Currently a broad array of clients present at FRCs for FDR some of which could pay full fees that are heavily subsidised by Government. At some FRCs, clients call around to ascertain fees which is often a substantial driver of service patronage – even if the client could afford to access a private FDR service.

This will be a much more relevant question with an influx of financial cases in which money will, by definition, be available to pay reasonable costs - at least upon the sale of jointly owned assets, if not before. Deregulation here would open serious possibilities of the FRCs making a small profit from those who can afford to pay, to thereby support them delivering more services to a larger number of clients. However the fee structure and charter for FRCs requires significant review to ensure that clients who can afford to pay for FDR including property are directed to do so. Additionally, the fees for Property matters should be different to Children's matters.

Clearly, over time, the number of property and financial cases issuing in the courts should significantly reduce because of the mandating of FDR. Accordingly, funding could be redirected over time from the courts to FDR.

The funding situation for FRCs and FDR in general is a serious matter that needs real attention. The cost of FDR is significantly lower than comparable costs to clients of going through the legal system. Further, the stress, anxiety, delays and potential harm to children involved are also much less.

Even the FDR system as it currently stands is struggling under the weight of numbers with wait lists for intake interviews ranging from three to eight weeks or so. After intake interviews, the first joint meeting can then be several weeks after that. In cases of serious tension between the parties, a ten week plus wait for a first joint interview is often impossible to contemplate. Indeed this encourages people to issue court proceedings and claim an exemption from FDR on the basis of urgency. Funding needs to be seriously considered because of this issue as well. On a positive note and in light of this issue many FRCs indicate that clients access information sessions and post separation programs to prepare for FDR while they are waiting for FDR.

Amendment to section 10F?

In passing we raise a question as to whether, bearing in mind the narrow definition of FDR in section 10F (one practitioner plus clients), there is a concern that the more involved processes with numerous other professionals involved would still be defined as family dispute resolution, and given the confidentiality and related protections in the Act?

We wonder if section 10F should be amended to provide that it is still FDR if other people are involved in the process in addition to the FDR Practitioner and the clients.

4.2 We now proceed to discuss specific proposals in Part 5. Proposal 5-2: regulation 25 factors for consideration

The factors currently set out in regulation 25(2)(c) of the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth) should not be expanded.

We respectfully suggest that regulation 25(2)(c) of the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth) sufficiently covers the issue of the parties' relative knowledge. Equality of bargaining power (which must be considered by the FDR Practitioner under this regulation) inevitably covers the relative levels of knowledge of the parties. Further, needlessly (in our view) adding to the list of factors for FDR Practitioners to consider, runs the risk of increasing the people for whom it is thought that FDR is inappropriate, possibly unnecessarily.

As such, we do not support Proposal 5-2.

4.3 Proposal 5-3: mandating FDR before court in property and financial cases

We strongly agree with Proposal 5-3 to mandate FDR before court in property and financial matters.

While we agree that there should be a limited range of exemptions to mandated FDR, we would alter the second dot point in Proposal 5-3 so that cases involving closely related parties are not automatically exempt.

For example, the second dot point could be altered to refer to exemptions where there is complexity 'involving third party interests (apart from superannuation trustees and *entities wholly controlled by one or both of the parties*)'. Many family businesses have relatively simple company and family trust structures in which no truly independent third parties are involved.

4.4 Proposal 5-4 and the genuine steps statement

Partnerships Victoria agrees with the proposal to require a 'genuine steps' statement to be filed with a court application for property and finance matters.

We suggest that if a genuine effort has apparently not been made, then the Act should say that courts '*must* take this into account in determining' a costs application.

(a) Genuine steps statement for parenting

We recommend that such a statement also be required in parenting cases. The legislative aim is to make sure that as many people as possible try hard to settle out of court. As such, every extra *small* impediment to court, such as a genuine steps statement in parenting cases is, we say, a good thing.

(b) Expanded genuine steps statement

In relation to proposal 5-4, it would be helpful to have more detail about what a 'genuine steps statement' should include and, as a result, the matters which the court may take into account when considering whether a genuine effort to resolve a matter in good faith has been taken.

We suggest that when considering whether a genuine effort has been made, the court should take into account:

- (i) Any FDR certificate;
- (ii) Any mediation undertaken including details as to the identity and qualifications of the mediator;
- (iii) Any arbitration undertaken including details as to the identity and qualifications of the arbitrator;
- (iv) Any collaborative practice process undertaken by the parties including details of the identity and qualifications of the professionals involved in that process;
- (v) Without divulging any offers made to settle, any relevant reasons the matter did not fully settle through the ADR process undertaken.

The latter provision would potentially pick up situations of failure to disclose documents and information which would be highly relevant to costs considerations by the court.

4.5 Proposal 5-5 and the FDR certificate for property and financial cases

(a) Partnerships Victoria agrees with Proposal 5-5 and particularly supports the approach of providing only a few, simple options for certificate types in property and financial cases and in parenting cases

The certificate types in relation to parenting matters (section 60I(8) of the Act) should be the same as the certificate types provided for property and financial matters just referred to.

These certificates are a major concern for our FRCs. They cause anxiety in clients, and complaints from people who see themselves as badly or unfairly treated through the certificate process. The CFRE report noted that there was significant variation in the processes around issuing certificates, with some FRCs providing certificates only on request, whilst others provided certificates even when FDR was successful in resolving disputes, (although the most frequent grounds for issuing certificates was where parties had attended FDR and made a genuine effort to resolve the issue).¹¹

In turn, the multiplicity of certificates has no apparent benefit as far as the Family Law system is concerned. Ultimately, this leads to complaints from clients, again with no countervailing benefit in the system when we insist on one certificate type or another.

(b) Other certificate issues

There should be a central database which FRCs are entitled to access to see whether a party has applied for FDR. While consideration will need to be given to ensuring that low cost FDR will be provided if needed, the general principle should be that if an application for FDR is in train, no other application should be accepted. Privacy concerns will need to be addressed in establishing this database to ensure that privacy is adequately protected, while allowing the necessary information to be recorded and accessed.

This would address certain concerns around the certificate process. At present, people 'game the system' by applying to multiple FDR Practitioners or FRCs. If party A applies to FRC X, there is nothing to stop the other party choosing to refuse for the sake of delay or just to be difficult (or whatever reason) and retaliating by then applying to FRC Y. This might have a longer waiting period, or be geographically more convenient to one party, or there may be a simple desire to draw out the entire process as long as possible.

The operation of the database should ensure that clients cannot 'shop around' for certificates, but should also avoid causing disadvantage to one party.

¹¹ CFRE Report at 68.

(c) Exemptions from certificates

Partnerships Victoria submits that section 60I(9) of the Act needs to be amended to limit the grounds on which people can be exempted from obtaining a certificate before making a court application in parenting matters.

In particular, section 60I(9)(b) should be shrunk to provide that there are only two grounds there as follows:

- (i) There would be a risk of abuse of the child if there were to be a delay in applying for the order; or
- (ii) there would be a risk of family violence by one of the parties if there were to be a delay in applying for the order.

At present, the paragraph allows for an exemption if there has been a simple one-off abuse which may have been quite historical or if there has been any form of family violence at any time between the parties. That, we respectfully suggest, means that exceptions currently apply in cases where FDR would be appropriate and helpful. Of course the FDR Practitioners provide a further level of protection from inappropriate FDR as they have the ability to grant a certificate if they believe that FDR is 'not suitable'. As part of the guidance to be provided by the Family Law Commissioner, the sector should be given a consistent approach to the detection and management of family violence risk.

4.6 Proposal 5-6 and disclosure duties in money cases, including compulsory financial statements

We agree with Proposal 5-6 and in addition, propose that simplified financial statements, bank statements and tax returns should be required to be provided by the parties, in order to facilitate financial FDR.

In particular, we would mandate that the parties provide, prior to the commencement of joint sessions:

- (i) Signed (simplified) financial statements;
- (ii) Copies of all bank statements for accounts in the name of the client or any related person or entity for the last 12 months;
- (iii) Copies of tax returns for the client and any other entity which he or she partly or wholly controls for the last 3 years; and
- (iv) The FDR Practitioner should have the discretion to dispense with these specific requirements (this power would be used in the simplest of cases and in the cases where the parties indicate a high level of mutual trust – which is not an uncommon scenario).

As Part 3 of the Discussion Paper suggests, the financial statement used in the courts should be simplified as it is quite an unhelpful document at this stage. For FDR purposes, the financial statement needs to set out the parties' current income (not expenses), property, liabilities, financial resources (if any) and

superannuation. Again, to simplify the financial statement, we would not require it to be sworn but suggest a statement of truth much abbreviated from the statement of truth used in the application for consent orders in the Family Court. In particular, we would put statements at the end of the financial statement along the lines of:

- (i) The matters stated in this form are to the best of my knowledge true and correct.
- (ii) I have no interest in property, superannuation or a financial resource or any liability apart from what is described in this form.
- (iii) Any estimates of value given in this form are given in good faith and are as accurate as I am able to give at this time.
- (iv) Failure to make disclosure which is as accurate as possible and in good faith means that any settlement reached may be challenged and set aside and the person responsible may have to pay the costs of the other party.

Such specific documentary provision would greatly simplify the FDR process. In certain cases, it would also quickly alert the FDR Practitioner as to whether a party was going to be wilfully difficult about disclosing assets which would be highly relevant to discontinuing the process.

4.7 Question 5-3: reviewing the process for allowing parenting cases to be commenced in court

This process should be reviewed. At present, too many cases either get an exemption or a section 60I certificate in parenting cases. As referred to under several headings above:

- (a) The certificate types should be changed to match the proposed types for property and financial cases.
- (b) The grounds for exemption (section 60I(8)) from obtaining a certificate should be reduced.
- (c) A genuine steps statement should be required with any court application that is filed.

4.8 Property Plans

We propose that FDR Practitioners have the option of drawing up a 'property plan' which will be somewhat like a parenting plan (see section 63C of the Act) as it currently operates within the Act.

This proposal stems from a major concern of our members that settlements are not legally binding in financial FDR. Parties often go to lawyers after FDR and the settlement 'falls apart' for a variety of reasons, en route to it supposedly getting documented and made legally binding.

The above proposal would reduce the risk of this occurring and would be ideally suited for low value cases without significant legal complexity.

The property plan would be prepared by the FDR Practitioner and signed by the two parties to document the agreed settlement. It should cover both property and spousal maintenance issues. The proposed Family Law Commission could be engaged to draft some simple pro forma property plans recommended for use by FDR Practitioners.

As the law stands, a court will not make an order for a property settlement without being satisfied as a threshold matter that it is 'just and equitable' to make any order¹². This gives a legal basis for simple and realistic 'property plans' being, in effect, upheld by the courts, thus discouraging further disputes after property plans are signed in an FRC process.

We propose that section 44(3) (property proceedings should be taken within 12 months of divorce) and section 44(5) (property proceedings in a de facto matter should be taken within 2 years of separation) be expanded to include a provision that property proceedings for married parties shall be taken within 12 months of a property plan being signed and for de facto parties within 12 months of a property plan being signed.

There would also need to be a provision that the time limits do not apply if the property plan is not practicable. Further, the courts would need to be authorised to enforce appropriate property plans.

5. Other Comments on the Discussion Paper

(a) Parts 2, 3 and 8

In relation to the proposals in Parts 2, 3 and 8, we broadly agree and would seek to have involvement in consultations as to how the proposals are implemented.

(b) Part 6

We broadly agree with the proposals in Part 6. In addition, we strongly recommend that the triage process includes giving serious consideration to requiring parties to go into an FDR process outside the court system. This should be closely connected with the consideration of the 'genuine steps' taken by the applicant prior to issuing proceedings. If the genuine steps were 'not good enough', the parties could be sent out of the court system into FDR, including, in some cases, going back into FDR which was previously unsuccessful. This has the potential to filter a significant number of cases back out of the court system. Furthermore, consideration should be given to provide guidelines and a definition of what 'not good enough' means in the context of eligibility to actively participate in FDR.

(c) Part 7

Similarly, we support the recommendations in Part 7 and would seek membership to the Advisory Board referred to in Proposal 7-13.

¹² See the High Court case of *Stanford* [2012] HCA 52.

FRCs have a high level of expertise in engaging with children in a developmentally appropriate way including Child Inclusive Practice. Where appropriate, it can be beneficial to involve children, particularly where there are divergent views about what is best for the children from the parents' perspective. A child focus can also been maintained in traditional service provision involving parents in FDR. In terms of children actively participating in the FDR process, the challenge is to triage this level of support to the right client cohort for maximum impact whilst also noting the increased costs for this additional level of resources.

(d) Part 10

Partnerships Victoria strongly agrees with the proposals in Part 10. As part of the training referred to in Proposal 10-4, Partnerships Victoria would like to see the Family Law Commission develop a resource kit and guidelines on core competencies and accreditation. The Commission should consult with stakeholders, including Partnerships Victoria, in developing these resources.

The Family Law Commission could further support a skilled workforce by providing resources and guidance on other topics that may assist the workforce. For example, guidelines could be developed as to when a Family Law system professional engages other services to support it.

Partnerships Victoria would seek to be involved in the development of a workforce capability plan for the Family Law system.

(e) Part 11

In relation to Part 11, we note that having an appropriate information sharing framework is essential. While we broadly support the recommendations in Part 11, we note that there are various complexities and sensitivities that require due consideration.

(f) Part 12

We strongly support the establishment of a Family Law Commission described in Part 12. Partnerships Victoria recommends that an advisory council be established for the Commission and would seek membership to this council.

An additional role for the Commission could be to stipulate what qualifications and training are required of all categories of professionals referred to above in paragraph 4.4(b).

Any further inquiries about this submission can be directed to:

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APPENDIX: LIST OF MEMBER ORGANISATIONS OF PARTNERSHIP

The following FRCs are members of Partnerships Victoria:

Member	Address	Phone Number
Ballarat Family Relationship Centre, auspiced by Centacare Ballarat	1025 Sturt Street, Ballarat	5387 9222
Berwick Family Relationship Centre, auspiced by Relationships Australia (Victoria)	38 Clyde Road, Berwick	8768 4111
Broadmeadows Family Relationship Centre, auspiced by MacKillop Family Services	Level 1, 1100 Pascoe Vale Road, Broadmeadows	9351 3700
Chadstone Family Relationship Centre, auspiced by Better Place Australia	41 Stamford Road, Oakleigh	9564 6999
Frankston Family Relationship Centre, auspiced by Family Life	Level 1, 60-64 Wells Street, Frankston	9784 0650
Geelong Family Relationship Centre, auspiced by CatholicCare Melbourne	Suite 2, 27-31 Myer Street, Geelong	5246 5600
Greensborough Family Relationship Centre, auspiced by Relationships Australia (Victoria)	79 Grimshaw Street, Greensborough	9404 7800
Melbourne Family Relationship Centre, auspiced by Relationships Australia (Victoria)	379 Collins Street, Melbourne	8625 3666
Mildura Family Relationship Centre, auspiced by Mallee Family Care	105 Lemon Avenue, Mildura	5021 7400
Ringwood Family Relationship Centre, auspiced by EACH	68 Charter Street, Ringwood	9871 6300

Member	Address	Phone Number
Shepparton Family Relationship Centre, auspiced by CatholicCare Sandhurst	634 Wyndham Street, Shepparton	5820 7444
Sunshine Family Relationship Centre, auspiced by Relationships Australia (Victoria)	1 st Floor, Harvester Centre, 4 Devonshire Road, Sunshine	8311 9222
Traralgon Family Relationship Centre, auspiced by Better Place Australia	41 Grey Street, Traralgon	5175 9333
Warrnambool Family Relationship Centre, auspiced by OzChild	142 Timor Street, Warrnambool	5559 3000
Wodonga Family Relationship Centre, auspiced by Upper Murray Family Care	282 Beechworth Road Wodonga	(02) 6057 5399