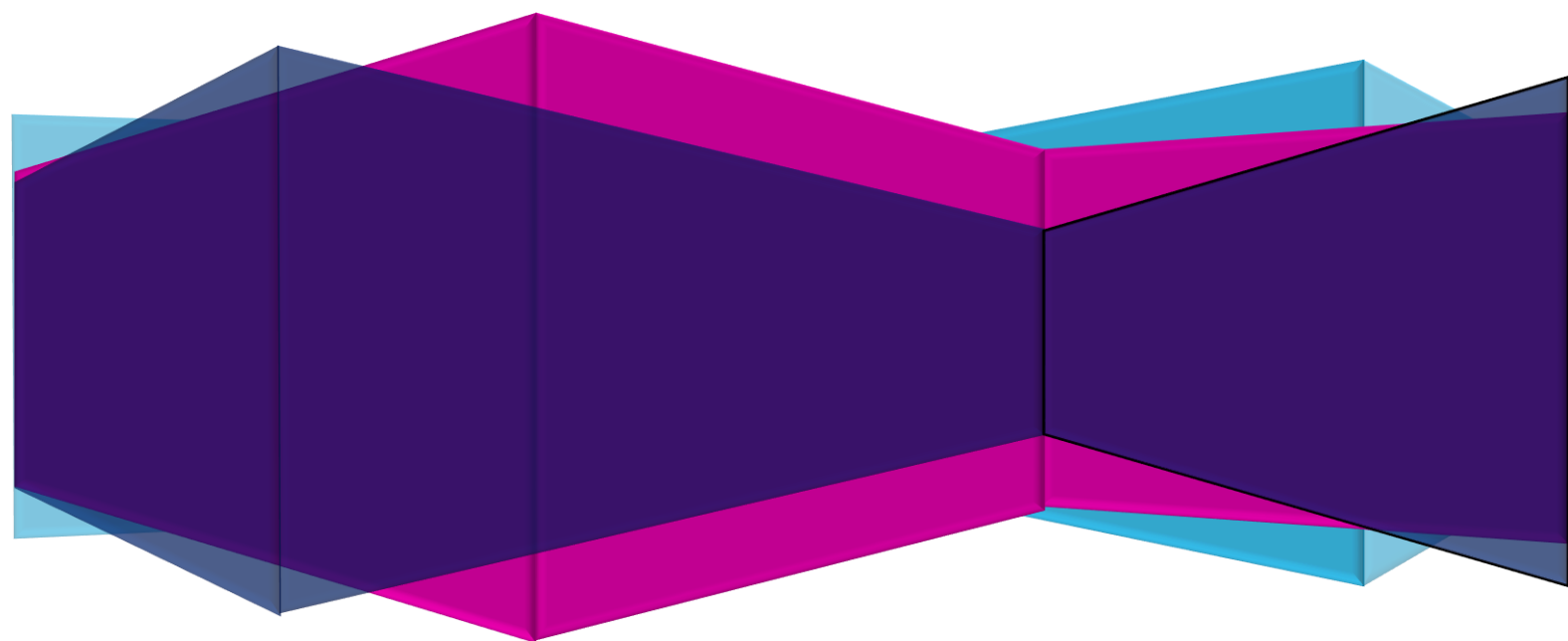




Review of the Family Law System Submissions to Discussion Paper

Brimbank Melton Community Legal Centre



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Introduction

Thank you for the opportunity to contribute to the review of the family law system. Brimbank Melton Community Legal Centre (BMCLC), is the legal program of CommUnity Plus, a multi-disciplinary organisation providing family, education, legal and neighbourhood house programs to disadvantaged and vulnerable members of the community. BMCLC provides free legal services to one of the fastest growing and most culturally diverse regions, across the Brimbank, Melton and Bacchus Marsh communities.

About Brimbank Melton Community Legal Centre

Brimbank Melton Community Legal Centre (BMCLC) provides free legal services through its two offices in Melton and St Albans for people who live, work or study in the Brimbank, Melton and Bacchus Marsh communities. There are a high number of new migrants in the catchment area which make for a culturally and linguistically diverse community.

The family lawyers advise and represent clients in family violence and family law matters. Given the large volume of CALD clients, much of the work involves working with interpreters. The family law practice also involves outreach services. These include attending legally assisted FDR in parenting and property matters at the Sunshine Family Relationship Centre and delivering family law and family violence legal services at health centres including Sunshine Hospital and Moorabool Shire Council as part of its two Health Justice Partnerships.

BMCLC also runs a Vietnamese Lawyer project and participates in the “Out of the Dark” Program at the Dame Phyllis Frost Correction centre in Ravenhall.

National Education and Awareness Campaign

Proposals 2-1 & 2-2

BMCLC supports the proposal for a national education and awareness campaign outlined in Proposal 2-1.

BMCLC has found that many women experiencing separation and family violence encounter barriers to accessing support services. One of those barriers relate to language, but we have also seen that a growing number of women from CALD communities do not wish to seek out help for fear of shame and stigma and its attendant social isolation within their community.

According to the Australian Institute of Family Studies' (AIFS) report *'Enhancing family and relationship service accessibility and delivery to culturally and linguistically diverse families in Australia'*, cultural norms can serve as a barrier for ethnic minority families from seeking extra-familial support, especially for women and children¹. According to the AIFS report:

'When ethnic minority families experience disruption and conflict in their family relationships, government-funded services, such as those provided by FRSP, can provide assistance and support. However, in collectivist cultures, it is normative to rely on the family as the main source of support and family issues are generally not to be known to outsiders; if they were to become widely known, it could compromise their social standing in the community. For example, based on research that investigated parent training issues with Chinese families in the US, Lieh-Mak et al. (1984) stated that one of their cultural beliefs is that "the private shame of a family should not be made known to outsiders" (cited in Forehand & Kotchick, 1996, p. 199). As such, some ethnic minority families may resist seeking extra-familial help because of a prohibitive sociocultural norm. This is compounded further for ethnic minority women, whose traditional gender role is as carers rather than as those who are cared for (Cortis, Sawrikar, & Muir, 2007; Weerasinghe & Williams, 2003).'

Such cultural norms may be a barrier for separating families from CALD communities to accessing and engaging with the support and services of the proposed Families Hubs.

Further, in the same report, the AIFS go on to note the following about traditional gender roles that prevent men from engaging with services²:

'The National Evaluation of Sure Start in the UK (Lloyd, O'Brien, & Lewis, 2003) indicated that most family counselling services have great difficulty engaging fathers. However, fathers from ethnic minority families are particularly challenging to engage because of traditional gender roles. As Page et al. (2007) pointed out, based on a review of a number of good practice case studies for promoting and enhancing cultural diversity in children's and parental service provision in the UK, "virtually all of the case studies found engaging with

¹ <https://aifs.gov.au/cfca/publications/enhancing-family-and-relationship-service-accessibility-and/barriers-service>.

² See above, page 4.

fathers more challenging than engaging with mothers. The reasons for this were a mix of practical issues (such as limited time due to being the main breadwinner) and cultural in which gender roles are clearly defined and raising children is delineated as being a predominantly female activity’.

Moreover, the AIFS notes that CALD communities fear of authorities, such as child protection, police, courts, taxation, immigration and housing departments³:

‘Depending on the family’s situation, fear of immigration and other authorities may also prevent the family from accessing services. For example, many refugee families will have experienced violence or abuse from officials in their own countries, and this may well affect the way they relate to any authority figures (Sipe, 1999). Also, families unsure of their status in Australia may be reluctant to divulge family-related difficulties for fear they will be conveyed to immigration authorities’.

BMCLC submits that any national education and awareness campaign that lifts the community’s understanding and awareness of the family law system and support services also address the cultural norms in some communities that attaches negative perceptions to family breakdown. The content of the campaign should also seek to educate CALD communities regarding the importance of a child-centred approach in disputes relating to children to enhance understanding of gender roles.

In relation to fear and mistrust of authority figures and government departments, the AIF notes that reassurance of confidentiality is critical to address this and to ensure engagement with the assistance and services provided by the proposed Families Hubs.

The above outcomes can be achieved by implementing Proposal 2-2 (The national education and awareness campaign should be developed in consultation with culturally and linguistically diverse organisations).

Getting Advice and Support - Families Hubs

Proposal 4-3

BMCLC believes that there is considerable merit in the establishment of community based Hubs.

Proposal recommends that Families Hubs have on-site out-posted workers from various support services. BMCLC would add that some frontline staff should be multi-lingual. Further, the list of on-site out-posted workers should be expanded to include staff from the Department of Health and Human Services (DHHS) – in particular the Child Support Agency and Centrelink. Finally, Families

³ See above.

Hubs should recognise the need to provide appropriate and ongoing accommodation support for separating families who are escaping family violence – this would require dedicated funding. These recommendations are elaborated below.

Workforce diversity within Families Hubs

As noted by the Benevolent Society⁴, women from culturally and linguistically diverse communities (CALD) experience significant barriers that prevent awareness of and access to support services. BMCLC has had a similar experience - women who face both family violence and separation issues experience great difficulty navigating the community support network and achieving a basic understanding of their legal rights.

BMCLC recommends that Families Hubs employ multi-lingual staff members whose language skills would be essential to encourage access and engagement for separating families from CALD communities. It is well recognised that staff members who can communicate with a CALD community member in their own language are better placed to build rapport, and thus can more easily bring about ongoing engagement with support services.

According to the Australian Institute of Family Studies (AIFS), services are not perceived as relevant due to lack of cultural diversity in the workforce and marketing of services. In its article titled, *‘Enhancing family and relationship service accessibility and delivery to culturally and linguistically diverse families in Australia’*, the AIFS notes that⁵:

‘The ways in which services are marketed can have a significant effect on whether families perceive the service to be relevant to them. It is suggested that CALD families who perceive the services as being geared toward Anglo-Saxon families may be less likely to use the services. For example, if there are no staff from a CALD background in the profile of the family relationship service outlet, or accompanying pamphlets do not depict a diverse range of families, some CALD families may then feel the service is not relevant for them.’

BMCLC conducts the Vietnamese Lawyer Project (VLP) in partnership with the Australian Vietnamese Women’s Association. This project delivers legal assistance to the Vietnamese community in Melbourne’s western suburbs and does so in the Vietnamese language.

Our clients report that they feel much more comfortable discussing their legal issues with a Vietnamese speaker. Most clients acknowledge that even though legal services may be accessed through an interpreting service, clients feel that the import of their instructions are more fully received and understood by a native speaker – this is consistent with the commonly held perception that meaning, tone and nuance often gets “lost in translation”.

⁴ See paragraph 2.21 of the Discussion Paper.

⁵ <https://aifs.gov.au/cfca/publications/enhancing-family-and-relationship-service-accessibility-and/barriers-service>.

The VLP experience tells us that Vietnamese-speaking community members, and by analogy members of CALD communities, are very reluctant to make contact with a service unless there is staff diversity that can facilitate seamless communication.

Child Support Agency and Centrelink workers out-posted at Families Hubs

BMCLC's women clients who experience relationship breakdowns and leave the family home are often the primary carers of the child(ren) from the relationship. These clients often need support and advice in relation to child support and applying for an appropriate Centrelink payment (for example from a Partnered parenting payment to a Single parenting payment or from a Carer's payment to a Newstart Allowance).

This process of expediting income support to those suffering family breakdown and family violence would require the Child Support Agency and Centrelink to recognise and facilitate urgent applications for child support assessments (and collection) and income support respectively. BMCLC endorses the comments regarding referral pathways and strong relationships between the Families Hubs and universal services such as Centrelink and the Child Support Agency⁶. BMCLC submits that it would be more effective to include these services within the one-stop-shop model upon which the Families Hubs are based. Specifically, BMCLC recommends that DHHS staff join the list of on-site out-posted workers listed in proposal 4-3.

Further funding to provide appropriate and on-going housing support services

Proposal 4-3 calls for Families Hubs to provide housing assistance services. BMCLC endorses this proposal especially as it relates to separated family members experiencing family violence.

The VLP has provided legal assistance to a number of women who has experienced varying degrees of family violence but are unable to leave the family home for want of affordable accommodation. We find that most of our women clients rely on a Centrelink payment as their sole source of income and often have limited or no family or social supports. Consequently, those seeking to escape a violent or abusive home environment with their child(ren) have no option than to access crisis accommodation. The crisis accommodation sector, in our view, is grossly deficient due to underfunding.

Currently, crisis accommodation assistance comes in the form of hotel, motel stays or refuges. Safe Steps note that victims "usually stay in a motel...until another long term accommodation option becomes available"⁷. For those seeking to escape family violence, this is not a safe or viable option⁸.

⁶ See paragraph 4.41 in the Discussion Paper.

⁷ Safe Steps Family Violence Response Centre, *Emergency Accommodation*, <<https://www.safesteps.org.au/our-services/services-for-women-children/247-family-violence-response-phone-line/emergency-accommodation/>>.

⁸ In their submission to the Royal Commission into Family Violence, Safe Steps detailed the detriments of this kind of accommodation. Motels are costly, and can be unsuitable for victims of family violence – they have

For the above purpose, Families Hubs would require special funding to facilitate urgent and appropriate accommodation. Without such assistance, women face the heart-breaking dilemma of choosing either to return to an unsafe family home or endure homelessness.

The above recommendations are premised on the upstream metaphor. This is the notion that it is more effective to address problems at the upstream stage before they worsen as they wind their way downstream (a preventative model). In essence, upstream thinking gets to the root cause of legal, economic and social problems: a lack of adequate income and appropriate accommodation.

Proposal 4-4

This proposal lists various diverse stakeholders and proposes that they should play a central role in the design of Families Hubs to ensure that each hub is culturally safe and accessible, responsive to local needs, and builds on existing networks and relationships between local services.

BMCLC is of the view that these diverse stakeholders can and should have a more expanded role that would include the training of Hub staff. This could take the form of community legal education and professional development training conducted by community legal centres, and cultural awareness training conducted by Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations.

Such a connected model avoids the “operating in siloes” syndrome and fosters greater knowledge-sharing, effective referrals (avoiding sending clients on a referral merry-go-round) and secondary consultations (this involves a discussion between specialists of different disciplines about how best to progress a client’s matter).

This would complement the proposal of the Discussion paper whereby service providers from the Families Hubs conducting information sessions or outreach⁹.

Access to justice for Prisoners

Nothing in the discussion paper addresses family law issues as they relate to the experiences of those in prisons and their barriers to access to justice.

BMCLC attends the Dame Phyllis Frost Prison as part of the “Out of the Dark Program”.

been described as “unsafe, unpleasant and alienating” (Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 37). Additionally, Safe Steps is not funded to provide any support or advocacy to victims and their children accommodated in motels. In March-April 2015, Safe Steps clients spent an average of 3.88 nights in a motel (p38). Victims often face problems once they move to refuges. The “vast majority” of family violence housing supports are high security refuges, which often prevent contact with family and friends, and require victims to cease attending work. Many refuges have communal living spaces, which create privacy concerns and can be an issue for women with “divergent social and cultural needs” (Royal Commission Report Vol II, 55).

⁹ See paragraph 2.17 of the Discussion Paper.

We refer to our discussion (Brimbank Melton Community Legal Centre Submission 76) of some of the barriers to justice experienced by those incarcerated and how the family law system fails them. While BMCLC welcomes the fact that the Discussion Paper has taken on board some of its recommendations, there is no mention as to the barriers specifically faced by those incarcerated.

Two thirds of women in the Dame Phyllis Frost Corrections Centre have a history of suffering from family violence and for many, family violence has been a contributing factor to their imprisonment.

During BMCLC's work at the Dame Phyllis Frost Centre, some of the women there have reported to us some of the worst cases of family violence. Many of these women have been separated from their children and are traumatised. They report feeling defeated and abandoned.

We believe that a coordinated approach to women's legal assistance in prison would greatly assist them in terms of their access to the family law within prison and also well beyond their release from prison.

Assistance during their sentence

Reports have found that regardless of whether a problem arises prior to, during or after a prisoner's term of imprisonment, unresolved legal problems have the potential to cause significant disruption to a prisoner both during their sentence and post release.

BMCLC refers to the many reports that have been made noting that in the context of family law issues, a direct link can be made between the impact of family law issues and female prisoners' rehabilitation.

As noted in BMCLC's previous submission, the failure of the state systems has implications for many of the women's federal legal rights:

- They are disadvantaged in any parenting proceeding as they often have little or no contact with their children;
- They are often disadvantaged as their partners dispose of assets;
- They will have access to lawyers, (LIV, CLC's and pro bono lawyers) however, there are issues as to timely access. Prisoners currently have direct phone access to the Victorian Ombudsman and the Health Services Commissioner;
- While lawyers attend the prison, prisoners' legal issues are still significantly under-serviced. This is partly due to the fact that, while there are services available, there is not coordinated response but rather, the service providers operate in 'siloes'.

The failure of the state systems has implications for the child's federal legal rights:

- It is not in the best interest of the child for the child to have no contact with the mother;
- The child has the right to have a relationship with both of its parents;
- The child has the right to have a life free of violence.

In terms of their access within the prison, at present the CLC's and other organisations that attend the prison work in silos and there is a need for a coordinated response.

Assistance for those on remand

A growing number of women are now spending time in prison on remand and the numbers are expected to grow with tougher bail and parole laws.

Many have no option but to return to the abusive relationship from which they came having been provided with no legal assistance at all.

There is no legal coordinated response for these women or any meaningful legal response for these women at all. This is a problem that is only going to get worse as the numbers of those on remand are increasing while funding is decreasing.

Assistance post-release

The "Out of the Dark Program" is but one of the programs that aims, amongst other things, to assist with women's reintegration into the community and which provides advice as to how to connect with supporting agencies. BMCLC, along with other organisations that strive to provide good services in this space, are presented with difficulties in light of factors that are out of their control, for example, the chronic housing shortage, which means that many of the women face homelessness upon their release and feel that they have no option but to return to the live with the perpetrators.

Despite there being many transition and post release programs, recidivism, or 'the revolving door' as one of the women in the Dame Phyllis Frost Centre put it, remains a problem. Again, a better, coordinated response is called for.

Nowhere in the Discussion Paper does it take those imprisoned under the microscope and seek to turn the discussion toward a better, more coordinated and effective approach to better assist these women to access justice. This is all the more striking, given that these women arguably experience some of the worst effects of the systems failings.

BMCLC calls for access to justice and service delivery for the prison population both within the prison and post release to be addressed in its Report to be delivered to the Attorney-General on 31 March 2019.