



Submission on behalf of the
Central Coast Family Law Pathways Network

In response to the ALRC Family Law Inquiry Discussion Paper

This document was written in consultation with, and on behalf of, the Central Coast Family Law Pathways Network Steering Committee:

Sue Winter (Chair)/Counselling; **Stephanie Bennett**/Domestic Violence; **Haydon Carr**/Private Legal; **Deon van Dyke**/Private Legal; **Kelly Edwards**/Legal Aid; **Ryan Flippence**/Community Legal Centre; **Kim Healy**/Central Coast Law Society; **Kian Safaei**/CALD; **Jonathon Wenman**/FDRP & Auspic; **Sharon Wilkinson**/NSW Police Domestic Violence.

The Central Coast Family Law Pathways Network (FLPN) is a network of family law and ancillary service professionals. The Steering Committee of the FLPN is made up of local organisation and sector representatives. There is no Federal Circuit Court or Australian Family Court on the Central Coast. Consequently, the FLPN focuses on skilling current service providers and establishing methods of cross-sector communication and collaboration. The Central Coast FLPN has considered it prudent to respond to four key areas arising from the Australian Law Reform Commission (ALRC) Family Law Inquiry Discussion Paper which address systemic issues experienced by Central Coast FLPN members. They are:

- Referral relationships with services outside the family law system;
- Families Hubs;
- Protected confidences & sensitive records; and
- A right to be heard.

Referral relationships with services outside the family law system

Digital Service Platforms

Streamlining referral processes between agencies and service providers is essential to reduce the service fatigue experienced by separating families, to close gaps and reduce the siloing of family service delivery. The Central Coast FLPN welcomes the proposal to improve these processes.

Digital platforms currently exist which provide a service directory function across Australia. The non-profit organisation Infoxchange have developed a user-friendly public-facing platform which compiles service delivery contact details. The usability and adaptability of this platform has seen it power State government platforms hosting service directories and ancillary referral and communication functions. In NSW the Family and Community Services Department has developed HSNet, powered by Infoxchange. HSNet provides a digital service directory with service communication, referral, and capacity management capability. Similarly OnePlace in Queensland and AskLizzy are powered by Infoxchange.

Having a single comprehensive portal to access when clients present with legal or non-legal issues would be extremely beneficial to family law and social service practitioners alike. Such a platform may be particularly helpful for universal service providers who may not be familiar with family law services in the area.

Proposal: All Commonwealth State and Territory funded service providers be required to register their services on the digital platform as part of their grant agreement. This platform would become the single digital authority for finding a relevant service and making a referral.

Universal Services

In identifying universal services, the Central Coast FLPN welcomes greater collaboration with schools, childcare and health services. It is important to note that Centrelink is a universal service

which is accessed by the most disadvantaged families. Centrelink has been identified by the Central Coast FLPN as an underutilised partner in recognising and referring family law concerns. The Central Coast FLPN encourages any work the Commonwealth government does to develop referral relationships include Centrelink as a key universal service provider.

The Central Coast FLPN supports the use of cross-jurisdictional multi-disciplinary programs such as the Domestic Violence Unit (Legal Aid). Further integration between State-based systems such as child protection agencies, police and family violence services and the family law sector may benefit separating families. The Central Coast FLPN supports a collaborative approach to integrating state-based issues which are pertinent to family law. The Domestic Violence Committee has been shown to be a successful collaborative model on the Central Coast in identifying, educating and prioritising family law issues which impact domestic violence strategies and service delivery.

Families Hubs

The Central Coast FLPN cautiously welcomes the Families Hub proposal. However, we wish to draw attention to several issues arising from the structure and implementation of the Families Hubs.

Without specific detail, as to which Hub model the ALRC is proposing to implement, it is difficult to formulate a precise response. However, the broad approach of a collaborative and non-hierarchical integrated service delivery model is welcomed with the view to improve ease of access and coordination of service provision to separating and separated families in local regions.

Governance and administration

The Central Coast FLPN wishes the ALRC to deliberate on the governance and administration model best-suited for the Hub program. The Central Coast FLPN seeks to draw attention to the inherent risks of outsourcing the implementation of this program through a competitive tendering process.

If the Hub program is outsourced and a single Non-Government Organisation (NGO) is given the task of its implementation, it may be challenging to facilitate a collaborative non-hierarchical Hub in local communities. This may be particularly the case if the program is granted after a competitive tendering process. Competitive tendering by design will pit local organisations against one-another before the program can be implemented. Through this competitive process the Families Hubs will become a locally contentious field for organisations. At the end of such a process there will be only one successful organisation, as result all other organisations in the area will have been unsuccessful. This outcome undermines the collaborative and non-hierarchical intent of the program from the outset. This tension may then be amplified by the model of the Hub requiring employees of unsuccessful services to work out of the Hub location, administered by the successful applicant. It is worth noting there may also be a perverse financial incentive to undermine the success of the Hub in anticipation of a grant round.

Proposal: The ALRC recommend a Steering Committee or Board arrangement to facilitate the Hubs. These structures will have representatives of the participating organisations and relevant sectors. This Steering Committee or Board arrangement will hold responsibility for reporting activities, financial accountability and strategic decision-making.

The benefits of this system of administration are twofold. First, representation from all the collaborative partners actively overseeing the Hub will increase family service ownership in a collaborative and non-hierarchical manner from the outset. In other words, the sharing of financial and political responsibility among organisations limits the potential for grievances around otherwise unilateral decision-making and increases 'buy-in' from participating organisations. Second, having

local organisations actively participating in the running of the Hubs allows for the Hub composition to be reflective of the community it is based in and respond to unique local features; an identified feature of the ALRC's proposed Hubs.

The Central Coast FLPN notes that the private legal sector is absent from the consideration of the ALRC in the composition of the Families Hubs. The private legal sector is vitally important to the successful implementation of any community service initiative in family law and should be represented in the composition of the Families Hubs with leading members of the local legal community. This may be accomplished through strong links to the local Law Society or other family law associations.

Professional Development

The Central Coast FLPN supports the ALRC's recommendation that the Families Hub take up the work of cross-sector collaboration and professional development. This work, which is currently provided by the FLPN, would be best placed to be delivered from within a collaborative service delivery model.

It is crucial that whatever the ultimate design of the Hub, the independence and responsiveness of the professional development offered by the Hubs needs to be secured. Freedom from an Auspicing organisation's branding has provided the FLPN a unique place in the local family law service sectors as an independent program which authentically fosters collaboration. It is beneficial for any professional development work undertaken by the Hubs to be for the wider socio-legal family service sector.

In administering professional development through the Hubs, the Central Coast FLPN recommends that the ALRC examine an open membership system which encourages all professionals engaging with separated and separating families, to participate in training events, conferences and networking. Furthermore, the Central Coast FLPN proposes that stronger links between the Hubs and Australian Institute of Family Studies and other relevant institutions (universities, research centres and professional bodies) be recommended for the purposes of training and the development of best practice service delivery.

Family and domestic violence

The Central Coast FLPN acknowledges that there is an inherent risk in facilitating service delivery through a single geographic location to both perpetrators and victims of family violence. However, there have been experienced practice benefits to the *cross-pollination* of service delivery to perpetrators and victims.

In determining the measures required to safely implement such a model the Central Coast FLPN supports comprehensive safety procedures. These may include:

- Intake assessment by appointment.
- Initial appointment being taken over the phone.
- Those accessing the Families Hubs being asked to identify all previous partners.
- A corresponding database which flags conflict appointment times between identified domestic relationships and plans appointments accordingly.

Furthermore, the Central Coast FLPN emphasises the need to have the intake and assessment role recognised as one of significant importance. This role will effectively be a triage position and should be designed accordingly with an emphasis on therapeutic skill, safety planning and socio-legal needs identification.

Protected Confidences & Sensitive Documents

Proposed balancing test

The Central Coast FLPN welcomes the proposed change, requiring leave of the Court before the issuing subpoenas of protected confidences and sensitive documents.

The Central Coast FLPN welcomes the introduction of a balancing test weighing the probative value of the evidence against the risk that harm might be caused to a confider.

The Central Coast FLPN proposes higher legislative tests when the confider is a child. The rationale behind a more stringent test when the confider is a child is twofold. First, that children are particularly vulnerable in high-conflict parental disputes to procedural exploitation. Second that if children have been able to confide in a professional, and develop a beneficial/therapeutic relationship, the harm from any excavation of that relationship may significantly affect that child's ability to develop those relationships of trust in the future.

Proposal: When a child is the confider:

1. All other reasonable methods by which to gain the protected information must have been taken before issuing a subpoena for the protected confidences of a child.
2. In exercising the power to exclude evidence the court should apply a higher balance test; the probative value must significantly outweigh the risk, direct or indirect, which may occur if the evidence is adduced.
3. If the confidences of a child are admitted, then the judicial officer should have the discretion to facilitate the sensitive material in a non-adversarial manner.

This higher test should be seen in conjunction with the role of the children's advocate. Any procedural hindrance in uncovering the truth of a matter to which the child is privy is overcome through the effective facilitation of the child's voice. By protecting their confidences from the rigour of the court system, in tandem with the facilitation of their voice through the children's advocate, the family law system itself will have less harmful impacts on children.

The Right to be Heard

The Central Coast FLPN is supportive of the inclusion of a children's advocate position to facilitate the child's voice in legal proceedings through the writing of a report, assisting the child to meet with decision makers and supporting the child appearing directly in family law proceedings. Child-inclusive practices hold that the voice of a child in proceedings concerning them is not an examinable fact but a channel expressing thoughts and feelings. Children should not be held responsible for their care arrangements but neither should any participation be tokenistic. Children should not only be heard but listened to.

In designing this role, the Central Coast FLPN asks the ALRC to consider the role of the children's advocate post-proceedings.

Question 7-3:

The Central Coast FLPN ask the ALRC to clarify that the child advocate role will be writing a *report* in a non-evaluative manner. Using child inclusive practices this report can be developed with the child

or young person as an effective method to communicate their voice to the court. If it a non-evaluative report then then it follows that there is no need for the child advocate to be cross-examined.