



MACARTHUR
Legal Centre

Supporting our community

13 November 2018

Australia Law Reform Commission

By email: familylaw@alrc.gov.au

Submissions to the Review of the Family Law System

Dear Panel Members,

Introduction

Macarthur Legal Centre (MLC) is part of a network of community legal centres, funded by state and federal governments and the NSW Public Purpose Fund, to provide free legal advice, referrals and assistance to residents of the Macarthur region of NSW, extending to Goulburn and Bowral. We also deliver community legal education, to increase awareness of legal issues, and use our coalface experience to help inform legal and policy reforms. We also auspice the Macarthur Women's Domestic Violence Court Advocacy Service (MWDVCAS), the South West Sydney Tenants Advice and Advocacy Service (SWSTAAS), an Aboriginal Legal Assistance Program (ALAP), and a Children's Court Assistance Scheme (CCAS).

Our Mission

Our mission is to ensure that professional legal services are accessible to all members of our community, regardless of social or economic background. We see our clients as individuals, and we consistently strive to deliver our services in innovative, collaborative and holistic ways. We provide free legal information, advice and referrals to all residents in our region, and targeted casework assistance for disadvantaged clients. Our key priority client groups include women, victims of domestic and family violence, Aboriginal clients, clients experiencing financial disadvantage, clients with a disability and CALD clients.

Our Services

This year we provided 'information' to 2962 people, made 3783 referrals and our solicitors conducted 1218 legal advice sessions. 55% of our advice sessions were delivered 'face-to-face', and 45% were via telephone (with two via email). Our solicitors opened 467 new cases during the year, as well as providing ongoing casework to 443 long-term, and return clients. In total, we assisted 1426 clients with legal advice and casework services. Our solicitors provided advice and assistance at our Campbelltown office and various outreach locations, throughout our catchment area.

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MLC is accredited by NACLC

Our Family Law Work

Family law continues to be one of our main areas of practice, with many of our clients experiencing related domestic and family violence issues. Statistics relevant to this submission:

| Area of Legal Work | Advice (%) | Casework (%) |
|---------------------|------------|--------------|
| Family Law | 47% | 30% |
| Care & Protection | 4% | 8% |
| ADVO matters | 3% | 3% |
| Victim Support & DV | 4% | 6% |

MLC, like all CLCs, is committed to holistic, client-focused service delivery. To achieve this, we partner with internal and external service providers to ensure our clients achieve the best outcomes possible.

Supporting our MWDVCAS Clients

We currently run a DV list at our office, each Thursday morning, to provide in-house legal advice and assistance to clients of our Macarthur Women's Domestic Violence Court Advocacy Service (MWDVCAS). That is, clients who are protected persons/victims in current ADVO/criminal matters before the Local Courts we service. In these cases, the majority of offenders are male domestic partners, and advice is provided to clients at the time of separation. Most of these clients present with family law issues (parenting, property division, divorce) and they frequently have related child protection issues, family debt, housing, victim support and other issues. This demonstrates the complexity of the interplay between domestic violence and the family law system. All clients in this list are seen by female solicitors, with specialized knowledge in domestic violence, family law, care and protection and victim support. Where ongoing casework is involved we often work collaboratively with internal and external workers to achieve the best possible legal and social outcomes for our clients.

Family Relationship Centre Partnerships

We also partner with the Family Relationship Centres (FRCs) at Macarthur Square, Liverpool, Fairfield and Bankstown to provide legal advice, referrals and assistance/representation to clients accessing FRC services. Generally, South West Sydney Legal Centre (SWSLC) will provide similar advice to the 'other party' in each matter. This model, whereby both parties are represented by solicitors from community legal centres, is aimed at redressing power imbalances and resolving entrenched conflicts, with the aim to developing safe parenting arrangements and helping parents avoid negative court action. This year our solicitors, provided advice to 72 FRC clients and participated in **30** legally assisted family dispute resolution sessions.

CALA Pilot

Over the last year, MLC has worked closely with Bankstown FRC, and SWSLC, to deliver a new 18-month 'culturally appropriate and legally assisted' (CALA) mediation pilot. As part of this pilot,

clients have access to free legal advice, legally assisted FDR, family support services, counselling and child practitioners. This program is an innovative initiative funded by the Commonwealth Attorney General's Department. As part of this program, our solicitors (and all service partners) participate in ongoing training and development (for example, training in cultural understanding, child inclusive practice, child protection, domestic/family violence and men's behaviour change etc). We've also worked closely with our partners to develop new, culturally-tailored, models of practice. In the remaining 6-months of our pilot we hope to trial a variety of new legally assisted mediation/FDR models (including settlement-focused, advisory and consultative/multi-party models). This pilot has highlighted the benefit of working collaboratively with varied service partners in the family law space to improve access, efficiency and effectiveness of early intervention models and support services. We believe this model is also a good proto-type for the Families Hubs envisaged in the current Discussion Paper. We understand that the program evaluators will also be providing submissions, in regards to this pilot, to the current Review round.

Care Partner Program

MLC is currently funded to deliver specialized care and protection services, two days per week, as part of the Care Partner program supported by Legal Aid NSW. This year, our care solicitors provided advice to 81 clients – with ongoing casework in 60 of these matters. Clients included parents, grandparents and carers. Clients in this group were predominantly single women 70%, with 41% identifying as Aboriginal. Relevant to this submission, we find that we frequently provide advice to 'safe' parents, grandparents, aunts and relatives wanting to take proactive action in matters involving children at risk of harm from their biological parent/s. In many of these cases, accessing the family law system is preferable to the need for state intervention/child removal (e.g. with the use of parenting plans, consent or court orders allocating parental responsibility to 'safe' family members). This is because the family law system allows families to retain autonomy over decision-making for their children (as distinct from punitive state child welfare legislation). We find, however, that safe carers (especially grandparents and non-parent carers) often face barriers to accessing the family courts (due to lack of Legal Aid, prohibitive legal costs etc.), which can ultimately lead to undesirable intervention by Family and Community Services (FaCS).

Community Legal Education

MLC offers a range of free community legal education talks to community groups and service providers. Each year we offer arrange of family law related talks, at various locations throughout our catchment area.

General Comments

As a rule, MLC is committed to client-focused, trauma-informed and culturally-safe service delivery. We aim to provide our clients with holistic service delivery to help meet their legal, social and housing needs. While not wanting to disparage the legal profession as a whole, or family law practitioners in particular, we are not motivated by profit and are committed to

amicable, quick, just and equitable resolution of disputes. Unfortunately we often find that legal intervention by private practitioners can result in the opposite – unnecessary litigation, delay, cost and acrimony between separating parties. Furthermore, CLCs are well-placed to provide clients with holistic support, post separation, which can aid recovery and smooth-out other interventions (e.g. we can assist with ancillary legal, social, housing matters and which might otherwise hinder a client’s ability to effectively participate in family law processes).

We believe that our close work with our MWDVCAS team, our outreach partners and FRCs (and vulnerable clients generally) places us in an ideal position to make valuable submissions to this Review. The views outlined in this submission are based primarily on our practice experience, in providing frontline legal services to vulnerable clients with family law and related issues. We have limited our submissions to issues we consider to be of primary concern to our key client groups.

We strongly believe that CLCs have a key role to play in early intervention work, within the Family Law sector. In particular, providing free, accessible and trauma-informed advice and assistance to vulnerable clients – including victims of domestic and family violence, women, CALD clients, clients with disabilities, Aboriginal clients and those with low incomes. We are already committed to early intervention, collaborative decision making (where possible), alternate dispute resolution and innovative practice. We support the idea of Family Hubs and believe that CLCs have a key potential role to play in servicing these hubs. Related to this is an obvious need for adequate and consistent funding to CLCs to support this work in the long-term.

Submissions in Relation to Specific Proposals in the Current Discussion Paper

Proposal 2. Education, Awareness and Information

We agree with **proposals 2-1 to 2-8**, regarding the need for new and innovative ways of delivering information about the family law system to separating families. We frequently find separating clients are misinformed about their respective, rights, obligations and options under the *(Cth) Family Law Act 1975 (the Family Law Act)*. Furthermore, clients often mistakenly believe that the only way to access the system is via the use of private lawyers. These misunderstandings can lead to unnecessary use of litigation models, heightened acrimony, barriers to accessing justice (where costs of private solicitors are prohibitive) and other unnecessary costs (i.e. monetary, emotional and time costs). Clearing up these misunderstandings should lead to improved access to family law systems and services, more efficient and effective resolution of disputes and safer/fairer outcomes for parents, children and related parties.

We believe that CLCs are well-placed to assist with delivering community legal education components of potential information dissemination models. For example, running legal information sessions at proposed Families Hubs.

Proposal 3. Simple and Clearer Legislation

Overall, we believe that the public, and workers in the family law sector, would benefit from simplification of family law legislation and the stream-lining of forms and processes. As **proposal 3-2 suggests**, we also believe that there is an ongoing need to have paper-forms and filing processes available to court users. As an example, we often see clients at outreach locations, and have no access to technology at these sites. If we can complete a paper-based divorce application with a client onsite, it saves us the need to go back to the office and complete an online application. Furthermore, it is an ongoing reality that many members of the community do not have access to reliable technology and internet access, and/or simply lack technological proficiency (which can unnecessarily hinder their access to online service delivery systems).

We also strongly agree with **proposal 3-11**. Notably, that provisions for property settlement should be amended to include consideration of the impact of family violence on party contributions and future needs. We frequently see female clients who have been forced into years of domestic servitude by their male partners - being unable to work outside the home, and/or exposed to economic/financial abuse, with resultant impairment of income earning capacity (due to lack of skills, work experience, low self-esteem etc.). This puts them at a distinct disadvantage compared to their male partners. We believe these factors are highly relevant to the division of available assets, post separation.

Proposal 4. Getting Advice and Support

We also strongly support **proposal 4-1** relating to the establish new 'Families Hubs', as a single visible entry point, for families requiring post-separation support services. As already indicated, we believe that CLCs are already perfectly placed to play a vital role within these hubs (or to even act as hubs). Providing community legal education, free legal advice, means-tested representation in legally assisted family dispute resolution (for both parenting and property matters), and legal drafting services (i.e. preparing formal agreements, and consent order applications, under the Family Law Act).

Proposal 5. Dispute Resolution

We strongly agree with **proposal 5-3**, which would require parties to attempt FDR prior to lodging a court application for property and financial matters. Each year, we advise hundreds of clients with relatively small property pools, who would benefit from this requirement. For example, in the case of female victims of domestic violence, there can be a tendency 'walk away' from relationships without a 'fair and equitable' split of property, simply because the other party refuses to negotiate and the cost of legal proceedings is prohibitive. This is especially the case where she is the primary care giver to young children, without independent income, and unable to afford legal fees (which puts her at a distinct disadvantage compared to her male partner).

If FDR were compulsory in these matters, and services similar to low-cost parenting mediation were available via FRCs or Families Hubs, then CLCs could play a vital role in providing clients

with initial advice and ongoing representing in these FDR processes (e.g. in cases where there is a power imbalance, family violence or significant discrepancy in financial competency).

We agree with **proposal 5-7**, which suggests that there should be consequences/punishment for failure to make full and frank disclosure in financial matters. For example, we recently assisted with a property matter in the family courts, where the other party (also a perpetrator of domestic violence) intentionally frustrated and prolonged proceedings, by his ongoing failure to make full and frank disclosures about his assets and tax liabilities. For over 18 months, there were no consequence for his repeated failures to meet filing directions in regard to disclosure. This meant that our client was unable to make realistic offers of settlement and had to proceed to hearing unnecessarily (with related time, energy and monetary costs).

We strongly agree with **proposal 5-9**, with regard to supporting culturally safe models of practice, within the family law space. Our day-to-day practice clearly illustrates that there is a great need for means-tested fee for service models which are easily accessible to **all** members of the community. Again, CLCs are already perfectly placed to assist with service delivery in this space, given our demonstrated commitment to fair outcomes, trauma-informed and culturally-safe practice (see discussion of our CALA pilot above). This would necessarily involve amendments to existing CLC funding and service agreements, to ensure long-term viability of these services, and fair pay scales to ensure that CLCs have the ability to recruit and retain appropriately trained, senior legal practitioners. Guidelines for Legally Assisted Dispute Resolution (LADR) would also be helpful, to ensure the delivery of high quality, evidence-based approaches to LADR (as per **proposal 5-10**).

Proposal 6. Reshaping the Adjudication Landscape

We strongly support **proposal 6-3**, which suggests the establishment of a simplified small property claims process, a specialist family law list and an Indigenous list. As noted above, we find that our female victims of family violence are often disadvantaged when leaving relationships with relatively small property pools, because they have limited access to income to pay for legal representation. A small claims division, which is cost-effective and easy to navigate for self-representing litigants, should improve access to just and equitable property division for vulnerable clients (access to free legal assistance, throughout these processes, would also be beneficial). Specialist Domestic Violence and Indigenous Lists will also help address entrenched power imbalances and improve safety and access.

Proposal 11. Information Sharing

As part of our Care Partner Program, we routinely provide advice to families involved with Family and Community Services (FaCS), and frequently see an overlap with the Family Law jurisdiction. For example, we often advise 'safe' parents, grandparents, aunts/uncles and older siblings, who have informally taken over care of children (or wish to do so), because their biological parent/s pose a risk of harm. Sometimes these placements are purely voluntarily, and occur with parental consent, and other times they are 'strongly suggested' by FaCS (i.e. as the only viable alternate to state intervention and child removal).

Where parents are not in agreement, or where parties need to formalize agreements (in the form of parenting plans, consent orders), family court applications are often advisable/necessary. It would be helpful for the 'safe' applicants/carers in these matters to *actively* have the support of FaCS in making their family court applications. This information sharing should also help assure the family courts that proposed arrangements are safe and in the best interests of the children. (see **Question 11-4**).

Summary

In short, we support key proposals in the current Discussion Paper around family law education and awareness campaigns; simpler and clearer legislation, forms and processes; provision of culturally safe and means-tested family support and early dispute resolution services; and the establishment of Families Hubs. We believe that CLCs, such as MLC, are ideally placed to do more work in this space, because of our existing expertise and ongoing commitment to early intervention, ADR, trauma-informed and culturally safe practice, prioritizing client/child safety and increasing access to justice for the most vulnerable members of our community. Any changes in expectations around service delivery must, however, be accompanied by new and fair funding arrangements for participating CLCs. In particular, funding levels should allow CLCs to recruit and retain **senior legal specialists**, who are able to work effectively and safely with vulnerable clients in these complex legal spaces. Without this, we risk poor service delivery, unsafe outcomes and wasted government resources.

If you have any questions in regard to these submissions, please feel free to contact the writer on (02) 4628 2042, or at cpirina@maclegal.net.au.

Yours faithfully,

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