

Townsville Community Legal Service Inc.

Response to ALRC Discussion Paper 86 – Review of the Family Law System

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Introduction

1. This submission is focused on Chapter 4 – Getting Advice and Support.
2. The contact for this submission is:

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3. By way of Background, Townsville Community Legal Service Inc. has been providing free legal services to the communities of North Queensland since 1991.
4. TCLS has always provided dedicated services for family law. The steering group that established the (then unfunded) TCLS identified family law advice as a central unmet legal need in North Queensland. Family law continues to be an area of consistently strong (and still often unmet) demand.
5. About one third of TCLS' work is in family law. It offers advice sessions during daytime hours, and two evening advice sessions – both of which offer family law advice. TCLS also has a referral partnership with the Townsville Family Relationship Centre and is a rostered FASS provider in the Federal Circuit Court of Australia Townsville Registry.
6. Daytime appointments offer deeper task oriented opportunities for people, including drafting affidavits, forms and pleadings, and offering more detailed advice on matters such as procedural steps and compliance issues.
7. We are generally supportive of the Commission's proposals but have concerns about the proposals contained in Chapter 4.
8. In our view, Chapter 4 lacks proper consideration of the broader, historical funding issues such as funding for existing legal assistance providers. It is within this context that we make our submissions.

Service Fragmentation

9. We note much of Chapter 4 is premised on the negative impacts of service fragmentation. We agree that service fragmentation is a barrier to resolution of family law issues between separated persons.
10. In our view, system fragmentation is the central cause of service fragmentation. Services have been designed around the existing system and developed over time as the system grew and evolved.

11. Some services, like counselling services have changed significantly over time. They were initially provided by the Courts themselves whereas now they form part of the broader family law system and are contracted to a range of agencies. Other services like legal assistance services provided by legal aid commissions, private lawyers under grants of aid and through community legal centres have seen significant contextual change (funding, type, venue, extent, eligibility) but remain essentially as they always were.
12. All services have experienced impacts from increasing demand and complexity. All legal assistance providers note that the numbers of clients have increased over time but also the complexity of client's matters have increased over time.
13. We suggest that neither system fragmentation or service fragmentation will be resolved by the addition of another layer of service delivery.
14. The Productivity Commission noted the problematic nature of fragmentation within the family law system:

Families attempting to resolve complex disputes involving family violence and child safety issues are required to use multiple systems and engage with a large number of organisations and service providers. Some organisations and service providers are the responsibility of the states and territories (for example, police, child protection agencies, magistrates courts, children's courts), others are the responsibility of the Commonwealth (family law courts, FRCs and other FSP funded services), and some are jointly funded (LACs and CLCs). The interaction and overlap between jurisdictions can result in multiple proceedings and inconsistent orders, which can cause unsafe and traumatic situations for parents and children. The current court structure means that parties often will have to institute or be engaged in proceedings in various legal forums in order to have all of their issues determined. (p.866)
15. This point is repeated over and over in systemic commentary on the family law system and acknowledged throughout the Discussion Paper.
16. We observe that the existing Australian family law system is fragmented across Commonwealth constitutional heads of power (or lack thereof) and state jurisdiction, multiple Courts and Tribunals, and differing levels of expertise in and commitment to child-centred best practice.
17. TCLS has always taken the position that the issue of jurisdictional fragmentation is a principal cause of service fragmentation and a significant barrier to access to legal services and other supports.

The Local Experience

18. Despite this, our local experience is that while service fragmentation is a real issue, it is being addressed by existing service providers. Our view is that better resourcing of local networks would be a genuine alternative to families hubs. It is also a solution

that that recognises that one size does not fit all, and local solutions must be adapted to local problems and conditions.

19. Contextually, Townsville has both a Family Court and a Federal Circuit Court, a Family Relationship Centre, Family Dispute Resolution practitioners and services and other related agencies. It has general and specialist legal service providers and private solicitors and a local family law bar. It is well resourced as a family law focal point in regional Queensland and acts as an access point for many who live in outlying areas.
20. In Townsville, there are three (3) principal networks that work towards joined-up services in family law:
 - North Queensland Legal Assistance Forum (NQLAF)
 - Dovetail
 - Family Law Pathways Network North Queensland (FLPNNQ)
21. The **North Queensland Legal Assistance Forum**, a Regional Legal Assistance Forum, regularly deals with cross-agency collaboration in the area of family law to avoid duplication, to ensure seamless service delivery, and to maximise the efficiency and effectiveness of all local service models.
22. NQLAF was the one of first regional legal assistance forums, developed by local providers long before there were funding imperatives to engage in collaborative service delivery models. The members of NQLAF include:
 - Aboriginal & Torres Strait Islander Legal Service
 - Aboriginal & Torres Strait Islander Women's Legal Service Nth Qld
 - Court Network Townsville
 - Legal Aid Queensland
 - North Queensland Domestic Violence Resource Service
 - North Queensland Women's Legal Service
 - Queensland Indigenous Family Violence Legal Service
 - Townsville Community Legal Service
 - Townsville District Law Association & Nth Queensland Law Association
23. Collaborative referral pathways can help local providers ensure that fragmentation is minimised. Services regularly deal with clients that require holistic and multi-agency responses from safety and violence planning, accommodation, child safety, income support, disability, health and counselling agencies.
24. Identification of high-risk families is another means of ensuring that fragmentation does not lead to higher risks of family violence or other adverse consequences. This is being used in the area of domestic and family violence in Townsville as part of an integrated approach to domestic and family violence. The model, called **Dovetail**, includes a high risk group under newly amended state laws that facilitate interagency cooperation in the most serious cases of domestic and family violence.ⁱ A copy of the

Dovetail brochure can be [downloaded](#).ⁱⁱ Dovetail's membership includes members of North Queensland Legal Assistance Forum.

25. A third significant local network is **Family Law Pathways Network North Qld** (NQFLPN). Family Law Pathways North Queensland Family Law Pathways Network (NQFLPN) incorporates Townsville, Charters Towers, Burdekin, Ingham, Mount Isa and surrounding districts. The main objective of the NQFLPN is to enhance collaboration between organizations working within the family law system to ensure that separating families have a clear dispute resolution pathway. This is achieved through information sharing, workshops and training and networking forums.
26. Alongside these broader collaborative networks, smaller microcosms exist that exemplify how services work together to address service fragmentation.
27. The first microcosm of collaboration is the FRC Partnership in Townsville, whereby referrals are made from the FRC to TCLS, NQWLS and LAQ depending on gender, conflicts of interest and availability. This coordinated advice service ensures that every client who contacts the FRC are provided with a warm referral for legal assistance upon intake.
28. The advice is therefore proactive, well in advance of dispute resolution processes and is adapted to address the central issue of arrangements post separation including consent parenting agreements and parenting plans.
29. Further enhancements could be made to this process through targeted assistance immediately after parenting conferences including monitoring and review of parenting plans to avoid entry into unnecessary court processes.
30. Collaborative lawyering might also offer opportunities to trial local models of service cooperation during this crucial time where separated parties (especially in parenting matters) are effectively piloting consent arrangements.
31. A second microcosm of collaboration is the FASS service combining LAQ, NQWLS and TCLS, ensuring that conflicts of interest are not barriers to receiving advice at court but also channelling specialist cases to specialist providers. TCLS accepts referrals from FASS and the Federal Circuit Court Registry on grandparenting (through its Seniors Legal and Support Service) and visa applicants and sponsored spouses where family violence is at issue (through its Family Violence Migration Legal Service).
32. Enhancements could be made to address the targeting of FASS. The FASS system appears to adjust to provide services to both parties where violence is present, and evaluation of FASS should consider whether this has had the outcome of decreased risks of violence.
33. All three local networks work closely with other providers to ensure they are aware of changes in service provision or activity within the region. They collectively represent the continuum of family law services.

Families Hubs

34. We note that the model proposed purports to be a one stop shop with a novel purpose – to “act as a supported entry point to a range of legal and support services to meet the needs of separating families and their children outside the courts.”
35. The idea that a single-entry point can also be a one-stop-shop is an attractive idea, but whether it can translate into reality, alongside the other competing needs within the family law system is our principal concern. The reality of federal resourcing of the system is that all currently involved have inadequate resources, including the Courts, legal assistance providers and other services such as counselling, mediation and specialist experts.
36. The injection of another new model of service delivery has the potential to:
 - undermine existing goodwill and partnerships
 - further fragment the system
 - add additional geographic inequity
 - dilute the funding for existing service providers
37. The current legal assistance landscape has taken some time to build and includes a variety of cooperative and collaborative measures. For example, family law service provision in Townsville has clear protocols for dealing with multiple levels of conflicts of interest, both in advice and court-based services. These protocols, service models and in some cases funding structures have evolved through leadership by policy agencies, service providers and local stakeholders.
38. To impose a “new” hub model on local areas will undermine existing goodwill and partnerships and most submitters to the DP seemed to suggest that joined up approaches to service delivery could be achieved within existing arrangements, without resorting to the creation and funding of an entirely new service model. Cooperation between service providers may not be at an ideal level in some areas, but the introduction of yet another potential partner and layer may be counter-intuitive.
39. There seems no doubt that the model proposed has the potential to further fragment the system. There is a notion posed that the new model may be an expansion of the existing FRC model, though it also poses the FRC’s original role as a front door as if little but referral lay beyond the door. Limitations noted include gaps in collaboration with legal assistance providers, which may not be as stark or problematic as the DP seems to indicate, or at least may not be such that they impact on the FRC as significantly as noted.
40. The FRC in Townsville collaborates with all legal assistance providers to ensure comprehensive assistance is offered. Each and every person who undertakes intake through the Townsville FRC is offered a warm referral to a local legal assistance provider.

41. Whether lawyers attended at the FRC was always a matter for local providers and some chose outreach at the FRC based on accessibility concerns, others chose referral to a remote site based on avoiding perceptions of a lack of independence between FRC and legal assistance service provider. In any event, not persons who are offered referrals accept them, and even those that do accept referrals create resourcing demands beyond the abilities of the funding received by local legal assistance service providers.
42. Additional geographic inequity may be created by the placement of any new providers, unless they are trialled in places currently without FRCs and other joined-up legal assistance service providers. TCLS already sees that the placement of FRCs can create “haves” and “have nots” in the level and type of services provided, for example in mediation services.
43. The hub model may face serious issues tracking and managing conflicts of interest given the breadth of proposed services across those listed by the Commission. This should never be a barrier to provision of services, but ultimately, problems can arise where people in conflict (including those with histories of violence) are expected to attend a single venue. These concerns include personal safety, information security, and professional ethical issues.

FASS

44. TCLS is a participant in FASS and generally agrees with the Commission’s formulation of the utility of this program.
45. The FASS program provides services at the locational point of need in cases where timely assistance is both warranted and necessary.
46. Like our comments about the Hubs, TCLS notes that the expansion of FASS must be handled in a manner that respects existing arrangements between legal assistance service providers and other service providers to identify whether FASS will enhance services or not. While the FASS model is a very useful one, there may already be similar or equally successful models in operation in some registries.

Who Falls through the Gaps

47. Much of the Commission’s approach appears to be premised on addressing how persons within the system fall through gaps and cracks and providing a solution by way two principal means: Families Hubs and FASS.
48. For TCLS, the clients that are most likely to fall through the gaps are those that are outside the service area of an FRC, or the likely service area of a Hub and or who are remote from a Court registry.
49. Most of these clients do not have a legal aid commission office nearby. Some have a community legal centre or other service nearby. These clients generally only have

access to visiting services, who may be specialists like Indigenous Family Violence Prevention Legal Services. They may also have access to a limited pool of local private lawyers, a few of whom may be specialists in family law. Some might do legal aid work. This dynamic includes many Aboriginal and Torres Strait Islander persons who depend on visiting services to create equity of access.

50. When conflicts of interest arise options in more remote areas quickly dwindle down to telephone services. TCLS speaks to many clients who cannot see someone locally because of conflicts with local providers.

Conclusions

51. By relying on the two solutions, the Commission has failed to address the simple reality – the inadequacy of funding for legal assistance service providers on all levels.

52. The KPMG Report on the Future Focus of Family Law Services (FLS) noted that:

6. Collectively, FLS received a total of \$777 million for the five-year funding period, with allocation of this funding varied according to service type. FRCs receive almost 50 per cent of the total funding allocated to all eight service types, nationally. All remaining service types receive 10 per cent of funding or less. (p.4)

53. Therefore, the creation of the Hub model is likely to cost at least that of the FRCs – so in excess of 350 million over four years.

54. The Commission appears to recommend that the Hubs be built alongside existing FRCs and so the costs associated with the FRCs and the Hubs could equal the entirety at least of the FLS funding as assessed by KPMG.

55. TCLS suggest that alternative uses of this level of funding could clearly include proper resourcing of legal assistance service providers and other service providers.

56. The model suggested by the Law Commission of Ontario appears to be unimplemented. Saini and Birnbaum (2016) suggest:

Despite these reports, government action and response has been slow, in part because there is a lack of consensus among researchers, stakeholders and professional groups about how, when, and for whom to provide specific services and more importantly about how they will be funded. (p.383)

57. TCLS suggest that while the Commission's proposals have real merit, they should not take priority over proper resourcing of legal assistance service providers.

58. The Law Council of Australia's The Justice Project Final Report – Legal Services noted:

The legal assistance sector has been pioneering multi-disciplinary servicing collaborations for some time, and joined-up servicing is also integral to its future.

Seamless service provision helps to prevent individuals with multiple legal and non-legal needs from falling through the cracks. (p.5)

59. TCLS endorses this statement and suggests that service fragmentation, as addressed through joined-up service delivery is already occurring and with proper resourcing could be properly trialled, implemented and evaluated in the various models that currently exist.

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ⁱ <http://www.nqdvrs.org.au/dovetail.html>

ⁱⁱ http://www.nqdvrs.org.au/brochures/dovetail_brochure.pdf