Australian Law Reform Commission
Review of the Family Law System
Discussion Paper

Submission

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# About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner.

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians. We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas. VLA can help people with legal problems about criminal matters, family separation, child protection, family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

* Free legal information through our website, our Legal Help line, community legal education, publications and other resources
* Legal advice through our Legal Help telephone line and free clinics on specific legal issues
* Minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
* Grants of legal aid to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer
* A family mediation service for disadvantaged separated families
* Funding to 40 community legal centres and support for the operation of the community legal sector.

## About VLA’s family law work

VLA’s Family, Youth and Children’s Law Program plays a leading role in the coordination of family law and family violence legal services in Victoria. We provide:

* Duty lawyer, legal advice, representation and information services including in child support, parenting disputes, child protection and family violence matters across the state, to children and to parents;
* Lawyer-assisted and child-inclusive family dispute resolution to help settle disputes without going to court (through our Family Dispute Resolution Service);
* Independent children’s lawyers who promote the interests of children at risk;
* The new Family Advocacy and Support Services (FASS) in Melbourne and Dandenong family law registries – providing specialist duty lawyers alongside specialist family violence support workers;
* A Family Violence to Family Law Continuity of Service Delivery pilot with community legal centres, offering a continuing legal service from when parents first appear at the Magistrates’ Court for family violence intervention orders, through to addressing family law needs; and
* Legal advice and education in the community.

In the 2017–18 year, the Family, Youth and Children’s Law program provided:

* services to over 37,000 clients (including over 1,900 Aboriginal or Torres Strait Islander clients)
* over 14,000 legal advice and minor assistance services, 18,000 duty lawyer services and over 15,000 grants for ongoing representation.

Informed by this broad experience and access to data, VLA has, over many years, worked with governments, family law courts and family law professionals to improve the family law system and the outcomes for our clients and most importantly for children. We also have ongoing engagement with the Victorian government, state agencies and other partners in the implementation of the recommendations of the state’s Royal Commission into Family Violence.

**Client stories**

The client stories and case studies used throughout this submission are real cases but have been de-identified and names and other details have been changed to protect privacy and confidentiality. Client consent has been obtained to include each client story.

# Executive Summary

Victoria Legal Aid (VLA) is pleased to present our submission to the Australian Law Reform Commission Review of the Family Law System Discussion Paper.

Our earlier submission to the Issues Paper focused on five key themes which underpin our vision for an improved family law system:

* Create an accessible system;
* Support parents to resolve disputes without recourse to the courts;
* Respond to the needs of the child and family;
* Protect all individuals’ right to safety; and
* Enable good decision-making based on the best available evidence.

It is pleasing to see these themes adopted throughout the ALRC’s initial proposals, including a clear focus on safety and early intervention for families to prevent the escalation of legal and non-legal problems. We are broadly supportive of the ALRC’s proposals, which cover a significant range of content and areas for reform, and commend the ALRC for its evident depth of work to date.

The review offers an opportunity for the ALRC to provide clear and transparent guidance for government to consider when responding to the final report and the **proposals as a whole**. We would like to see guidance about:

* which proposals come ‘as a package’ and must be accepted and implemented together, including an outline of this in a timetable for implementation.
* how existing infrastructure and promising initiatives can be strengthened. Funding for new initiatives should not be at the expense of increased and guaranteed future funding for existing and proven parts of the system.
* prioritisation of resources and investment, including for building workforce capacity, knowledge, and skills.

Building on the themes of our earlier submission, and recognising the current operating and funding environment, we have identified five priority areas that we would like the ALRC to consider in the development of final recommendations:

**Creating an accessible system**

The Discussion Paper notes that the current family law and related service system is fragmented, and families are not able to access the supports and services they need when they need it, including legal assistance. Our experience similarly shows that there is a need for early identification of families’ legal and non-legal issues and subsequent provision of legal assistance at the early stage of a dispute to help families to access services and resolve their matter without the need for protracted legal proceedings.

VLA strongly supports measures to improve access to information about the family law system and related services, address service fragmentation, and build strong relationships between services to ensure that families are accessing the supports they need. Our practice experience suggests that the most effective way to give effect to these goals would be to avoid creating or building further sites or Families Hubs but instead build on the existing service system, by investing in statewide legal triage, resourcing existing family support services adequately, expanding existing integrated practice initiatives and establishing navigator or case manager roles within existing services.

**Supporting families to resolve disputes about property and financial arrangements**

We are delighted to see that the ALRC has proposed significant reforms in the Discussion Paper relating to how the family law system assists families to resolve property and financial arrangements. Our practice experience of assisting the most vulnerable individuals informs our recommendations about further measures to better support families to resolve property and financial disputes fairly and in a timely way.

We continue to support the introduction into the legislation of a presumption and guiding factors for the court to consider when determining property disputes, which would enable parties to better understand their entitlements and negotiate in the shadow of the law. We also would like to see stronger mechanisms to encourage full and frank financial disclosure and enforce small property and/or debt orders, and the introduction of an administrative mechanism for spousal maintenance applications and administrative information gathering powers for the courts regarding parties’ financial matters.

**Improving availability of** **legally-assisted family dispute resolution**

Families making decisions about what arrangements work best for their children can be greatly assisted by timely legal advice and advocacy. Legally aided clients are particularly vulnerable, firstly because they are financially disadvantaged, but frequently because they have had or are experiencing other complicating factors, including family violence, mental health issues, and/or drug and alcohol difficulties. These issues can impact on a client’s capacity to negotiate on their own behalf, which is one of the foundational requisites underpinning successful dispute resolution.

Legally-assisted family dispute resolution (LAFDR) is a case-managed process that includes ongoing risk assessment to prioritise safety. It makes family dispute resolution (FDR) more widely available to families with multiple needs or risk factors, who may otherwise be screened out of FDR processes.

Many people experiencing vulnerability, including those experiencing family violence, are currently left in more disadvantaged positions when they are screened out of FDR. We would like to see investment in making existing LAFDR services more widely available to facilitate the earlier resolution of disputes, including for property and financial disputes where it should be recognised as the most appropriate FDR model. We also encourage further consideration of the key elements of our existing Kids Talk model, which could be adopted and rolled out in FDR programs more broadly as essential to supporting the safe participation of children in FDR.

**Creating a cohesive and coordinated court intake, triage and case management process**

The court is not only a site for determination of disputes but a touch point for providing assistance to families in the formal family law system. An important role of the system should be to maximise the opportunity that represents to ensure a holistic response for children and families, many of whom have multiple and intersecting support needs.

VLA therefore strongly supports the ALRC’s proposals for a court triage, risk assessment and case management process, co-location of family law court registries in state and territory local courts and the expansion of FASS. We suggest that the ALRC could consider providing further guidance about the functions of the court triage, assessment and case management role.

VLA also welcomes the significant focus of the Discussion Paper on improving the family law system’s response to family violence and consideration of safety. However, VLA remains concerned that family violence may be seen as a specialist issue when it should be considered core business of the family law system. We continue to encourage a more specific legislative requirement that family violence allegations in family law matters be determined early, with this legislative change supported by increased resourcing to the family law courts to enable earlier decision-making. We believe this would recognise the significant presence of family violence in family law matters generally and reduce the need for a specialist family violence list in the courts.

**Enabling safe information sharing**

VLA supports and has advocated for improved information sharing between the federal family law system and the state and territory child protection and family violence systems, underpinned by principles of safety, to develop better co-ordinated responses for vulnerable children and families and to better identify and manage risk.

In our experience, information sharing can lead to better decision-making informed by the best evidence and all relevant information. However, it is critical that only appropriate information is shared and that the receiver of information understands its relevance to the decision they are making. We would like to see further consideration in the ALRC’s final report of the risks of sharing information and how these will be addressed.

## Summary of recommendations

We recommend the ALRC consider the following in its final proposals:

**Proposals as a whole**

* Articulating which proposals come ‘as a package’ and must be accepted and implemented together to work;
* Outlining the order in which the ALRC recommends the proposals should be implemented, including an outline of this in an indicative timetable for implementation;
* Describing how existing infrastructure and initiatives can be built from or strengthened as a first preference wherever appropriate;
* Identifying the priorities for government investment and resources, including building workforce capacity, knowledge and skills.

**Creating an accessible system**

* Resourcing support services to reduce wait times;
* Establishing Service System Navigator or case management positions in existing services;
* Expanding existing collaborative initiatives in already established community locations, similar to Health Justice Partnerships, and with strong referral pathways;
* Incorporating or connecting consistent legal triage services into relevant non-legal family support services, supported by online legal triage and referral tools.

**Supporting families to resolve disputes about property and financial arrangements;**

*Property*

* Introducing further guidance in the legislation for deciding property matters, for example principles or guiding factors and/or a ‘presumption of equal contribution’ with additional factors for departing from the presumption;
* Introducing stronger mechanisms to encourage full and frank disclosure, including
	+ providing the courts with administrative information gathering powers regarding parties’ financial matters, and
	+ amending the legislation to encourage greater exercise of courts’ discretion to make adverse adjustments to property divisions for parties who do not make full and frank disclosure;
* Additional resourcing to broaden availability of legal assistance for priority clients to pursue small property matters.

*Debt*

* Relaxing in structured ways the requirements in sections 75(2)(ha) and 90AE(3)(b) regarding anticipating the effect of orders as to debts.

*Spousal maintenance*

* Commissioning an appropriate body with relevant expertise to develop an administrative mechanism for spousal maintenance applications;
* Creating a specialist court pathway for interim spousal maintenance matters;
* Enabling Registrars to make interim urgent periodic or lump sum spousal maintenance orders.

*Superannuation*

* Allowing for early release of superannuation for parties experiencing financial hardship following separation in limited circumstances and after access to financial counselling and use of other avenues of family law financial support.

*Enforceability*

* Introducing stronger enforceability mechanisms, including Registrar-conducted post-order hearings regarding compliance with orders.

**Improving availability of legally-assisted family dispute resolution;**

* Investing in increasing the availability of existing LAFDR services to families;
* Resourcing Aboriginal Community Controlled Organisations to provide more legal assistance to Aboriginal clients in LAFDR;
* Recognition of the need to preference LAFDR models for FDR in property and financial disputes;
* Resourcing appropriate services to be available for families if proposal 5-3 is implemented, such as access to financial counselling;
* Recommending that the disclosure proposals be implemented at the same time as reforms to the FDR and property provisions;
* Introducing an option in the FDR certificate for property and financial matters to indicate that one or more parties or the FDR service considers that there has been inadequate disclosure.
* Adopting and rolling out the key elements of the Kids Talk model in FDR programs;
* Applying the key elements of Kids Talk to the development of the child advocate model;
* Increasing the capacity of Kids Talk and similar programs to enable them to be more widely available for children and young people in Victoria.

**Creating a cohesive and coordinated court intake, triage and case management process;**

* Introducing legislative amendments to the *Family Law Act 1975* (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts;
* Providing associated resourcing to enable early hearings to occur;
* Introducing safeguards into the process for early hearings to protect victim survivors of family violence;
* Strengthening the description of the risk assessment and triage process to include:
	+ ongoing risk assessments for parties and for children;
	+ identifying matters that should be referred to preliminary hearings for early determinations of family violence, after identifying family violence as a risk factor and issue in dispute;
	+ ongoing case management to ensure matters are ready for hearing dates and parties have complied with disclosure obligations; and
	+ coordinating with and making referrals to FDR where appropriate.

**Enabling safe information sharing;**

* Addressing concerns about information sharing;
* Excluding unproven or untested allegations from any national information sharing regime, without clarity of the context of that information;
* Providing training for family law judicial officers and professionals in state child protection (care and protection) documentation and processes.

# Introduction

VLA welcomes the opportunity to make a submission to the Australian Law Reform Commission (ALRC) Review of the Family Law System (the review). VLA commends the ALRC for its significant efforts as part of the review so far. The Discussion Paper covers an immense amount of content relating to the family law system and its history since the introduction of the *Family Law Act 1975* (Cth). We are pleased to see and contribute to the initial thinking about how the family law system can be improved to ensure access to justice for all members of the community.

As a member of National Legal Aid (NLA), VLA has contributed to and endorses the NLA submission to the Discussion Paper. The NLA submission represents the joint practice experience of the eight Legal Aid Commissions (LACs) in Australia and provides a comprehensive response to the proposals from the national perspective. Where VLA does not comment on a proposal, please refer to NLA’s submission.

Our own submission is based on our practice experience in Victoria. Our state family violence and child protection systems have undergone significant structural change and service reform in recent years, including due to the Royal Commission into Family Violence. Our analysis of the issues in the family law system is informed by our engagement with and experience of these reforms, particularly given the overlap between the three jurisdictions (family law, family violence and child protection), as well as the lessons learnt from these reforms in state jurisdictions where there is relevance to the family law jurisdiction.

Our submission is also grounded in our practice experience of providing legal assistance services to the most vulnerable members of our society, who often experience multiple and complex needs and intersecting forms of disadvantage. VLA acknowledges and values the generous input of our clients, lawyers, and key stakeholders who contributed content to this submission.

VLA is broadly supportive of the ALRC’s proposals, which cover a significant range of content and areas for reform.

We are also pleased to see a clear focus on cultural safety and ensuring the family law system is accessible and responsive to the diverse range of families engaging with it. In particular, we are pleased to see an emphasis on changes being implemented in consultation with culturally-specific organisations; we would recommend this be expanded to *specialist* culturally-specific organisations such as Aboriginal Family Violence Prevention and Legal Services. We are supportive of the introduction of an Indigenous court list and the preparation of cultural reports for Aboriginal and/or Torres Strait Islander children and stress the need for these initiatives to be adequately resourced and supported.

Below we make, first, some recommendations about overarching considerations for the presentation of the ALRC’s final reform proposals. Then, building on the themes of our earlier submission, and recognising the current operating and funding environment, we have identified five priority areas that we would like the ALRC to consider in the development of final recommendations. These are:

* Creating an accessible system;
* Supporting families to resolve disputes about property and financial arrangements;
* Improving availability of legally-assisted family dispute resolution;
* Creating a cohesive and coordinated court intake, triage and case management process;
* Enabling safe information sharing.

# Proposals as a whole

The Discussion Paper covers a large terrain and contains over 100 formal proposals and many more concepts and ideas. We suggest that the final proposals would benefit from further articulation by the ALRC of how it recommends that central implementation issues are approached. It will be critical that the ALRC’s final proposals:

* are clear as to the interdependence between proposals and the suggested order or timeframes for reform implementation;
* focus on building from existing infrastructure and resources, where possible; and
* include advice to the government on how to prioritise investment if there is limited additional funding to implement the recommendations of the review.

## Clarifying the inter-dependencies and timeframes for reform implementation

Many of the proposals in the Discussion Paper underpin the ALRC’s vision of the future family law system; many are mutually reinforcing and require others to be accepted if they are to succeed; and others seem to be in mini packages. Amongst others, these include:

* The changes to workforce and accreditation requirements underpin the whole set of reforms;
* The establishment of the Family Law Commission underpins the workforce and accreditation proposals and is crucial to effective oversight and governance arrangements;
* The changes to Family Dispute Resolution for property and financial arrangements come as a package, including the changes to disclosure obligations, which in our view are critical before mandatory family dispute resolution can be appropriately and safely implemented.

We recommend a clear articulation in the final report of which proposals come ‘as a package’ and must be accepted and implemented together to work effectively, and the order in which the ALRC recommends the proposals should be implemented, including an outline of this in an indicative timetable for implementation.

This will be critical in providing clear and transparent guidance for government to consider when responding to the report. A similar approach was taken by the Victorian Royal Commission into Family Violence, which made clear in its final report that it was not specifying exact timeframes for implementation and that it understood implementation was a task for government, but provided an indicative set of timeframes that helped to clarify both the order of priority for implementation as well as that some proposals would be more or less complex to implement than others.

## Building from existing infrastructure and initiatives

The Discussion Paper highlights concerns from many stakeholders about the problems with the operation of the current family law system due to demand and resourcing pressures. A key theme in the Discussion Paper also relates to submissions identifying what is already working well in the system or could be working more effectively if it was resourced further.

Our own experience aligns with this theme. We recognise that there are some instances where new approaches are required, such as stronger mechanisms to ensure safety is adequately considered in any determinations made about children and that parties meet their financial disclosure obligations. Yet there are many instances where in our view it would be more efficient and cost-effective to resource existing proven initiatives to be more widely available or to fulfil their function better. We recommend further consideration in the final report of not only new initiatives and reforms but how existing infrastructure and promising initiatives can be strengthened.

## Prioritising investment and resourcing

We recognise the complex environment in which the family law system currently operates. There are workforce capacity issues; long wait times for services; other reforms (at state and commonwealth levels) being implemented; and limited resources and funding available. These factors are front of mind in our reading of the Discussion Paper and may weigh heavily on whether the government adopts all the recommendations in the final report.

In our view, one of the most critical foundations of the family law system is a workforce with the knowledge and skills to assist all families, including those experiencing vulnerability. Many of the proposals rely on the availability of human resources and a large workforce, yet our practice experience, including as a large employer ourselves as well as purchaser of and referrer to family law and related services, unfortunately shows that this is a challenge in a limited resource environment.

We suggest that clear advice from the ALRC to government about prioritisation of resources, including for building workforce capacity, knowledge, and skills, would be very helpful.

**Recommendations**

We recommend the ALRC consider a clear articulation of the following in its final proposals:

* which proposals come ‘as a package’ and must be accepted and implemented together to work;
* the order in which the ALRC recommends the proposals should be implemented, including an outline of this in an indicative timetable for implementation;
* how existing infrastructure and initiatives can be built from or strengthened as a first preference wherever appropriate;
* the priorities for government investment and resources, including building workforce capacity, knowledge and skills.

# Creating an accessible system

The ability to access legal information and support services is essential to ensuring access to justice for all members of our community.

The complexity of issues facing families within the family law system has been steadily increasing. While most disputes resolve before families enter the formal family law system, the cases that proceed to the family law courts are the most complex, often involving multiple risk factors including family violence, child abuse, mental illness, substance abuse and/or cognitive impairment issues, and are less likely to resolve without court decisions.

This suggests there is a need for early identification of legal and non-legal issues and subsequent provision of assistance at the early stage of a dispute to help individuals and their families to access services and resolve their matter without the need for protracted legal proceedings.

The Discussion Paper acknowledges that families require access to appropriate supports before problems escalate or become entrenched. However, the current family law and related service system is fragmented, and families are not able to access the supports and services they need when they need them, including legal assistance.[[1]](#footnote-1) Our experience also demonstrates how families with complex and multiple needs may:

* require support to identify and engage with relevant support services to address non-legal issues impacting on their family law matter; or
* be unaware that the issues they are experiencing involve family law (or related legal needs) or could be resolved through a legal response.

It is pleasing to see that the Discussion Paper acknowledges the fragmented nature of the service system and the strong link between community understanding of and confidence in the family law system. VLA strongly supports measures to improve access to information about of the family law system and related services, address service fragmentation, and build strong relationships between services to ensure that families are accessing the supports they need. This enables earlier identification of legal and non-legal needs and helps prevent the escalation or exacerbation of legal problems.

We believe that the most effective way to give effect to these goals would be to build on the existing service system and resource proven existing services adequately. We also suggest a focus on how to facilitate better coordination across the legal assistance and social services sectors. Below we recommend several means to do so, including:

* Resourcing for support services to reduce wait times;
* Establishing Service System Navigator or case management positions in existing services;
* Expanding existing collaborative initiatives in already established community locations, similar to Health Justice Partnerships, and with strong referral pathways;
* Incorporating or connecting consistent legal triage services into relevant non-legal family support services, supported by online legal triage and referral tools.

## Support services capacity and wait times

VLA welcomes the efforts of the ALRC to reconceptualise how the family law system could provide a coordinated and holistic service system response for separating families and their children. It is important that the family law system has clear processes to coordinate access to services for families and minimise multiple referrals where the onus is on the family to navigate the system.

We strongly agree that clients need to be able to access social supports to address their legal and non-legal problems, and that addressing non-legal problems may decrease the likelihood of family law problems arising or escalating.

The Discussion Paper notes that families are not getting the supports they need because there is a lack of coordination and case management of services. However, in our experience, an arguably more significant barrier relates to the availability of support services in the first place. For example, VLA is seeing wait lists of up to:

* 12 months for men’s behaviour change programs in Geelong, Ballarat and the Latrobe Valley
* 6 months for family therapy in Geelong
* 3 months for housing services in the Latrobe Valley
* 12 weeks for children’s counselling.

Below we discuss the proposal to establish Families Hubs in more detail, but we note here that it is also unclear how the additional workforce that would be required to be co-located in the Hubs would be sourced and funded. Finding the workforce to adequately staff the new Victorian Support and Safety Hubs (The Orange Door) has already proved problematic in Victoria. It is also currently unclear whether and how the Families Hubs would need to case manage clients for an extended period if clients were on six or 12 month wait lists for support services.

## Navigator and case management functions

The Discussion Paper suggests establishing ‘one stop shops’ for families, as outlined in proposal 4-1 for Families Hubs, to enable families to access the supports they need more easily.

We support the ALRC’s intent to make sure that families can access support services and case management to address their non-legal needs and prevent the occurrence or escalation of legal needs. However, we are concerned that new Hubs may inadvertently exacerbate barriers for families by directing already stretched resources into this new initiative.

The co-location of multiple services in one hub requires significant investment – in funding, infrastructure, resources and staffing – yet may not solve the problem of ensuring improved service coordination (particularly if services are not resourced appropriately as identified above).

In Victoria, the proposed Families Hubs may also unintentionally duplicate practice already occurring. For people in Victoria who have experienced family violence who are already engaged with The Orange Door, the Families Hub would become another hub for them to engage with and another screening process for them to go through. In the service system proposed in the Discussion Paper, there could potentially be Families Hubs, Family Relationship Centres (FRCs), expanded FASS services, and The Orange Door, all with some form of services onsite and many with case management capacity. We are concerned that this proposal may unintentionally create a far more complex and overlapping service system for families to navigate.

**The Orange Door**

The Orange Doors in Victoria aim to provide a visible point for families to access services and support.

The Orange Door brings together two separate systems to drive a coordinated response to families’ needs. It brings together the ChildFIRST intake system for reports about risk to children, and the L17 intake system for reports about family violence, including information about the perpetrator and victim. This is a definitive *systems* change, with associated technological infrastructure to create an integrated approach. It also has a clearly defined intake and risk and needs assessment function that fills a gap in the service system.

The Orange Door operates mainly on reports from police (relating to family violence) or to ChildFIRST (about concerns relating to children). This means that The Orange Door is responding at a specific point in time in their lives. A significant number of the people accessing The Orange Door may have a legal issue but not necessarily all will, and the individuals might have non-legal issues that are much more pressing than their legal issues.

A family law Families Hub would be different in that the families would all have in common a specific legal issue – a family law dispute – but they would all be in very different circumstances. For example, some would be newly separated families and others would be people who have been separated and possibly in litigation for years.

We suggest consideration of other ways that the problem of service access and coordination could be solved, for example, including navigator positions in existing services to build relationships between service systems.

The Discussion Paper proposes a Hub Coordinator to develop and maintain relationships with each of the services represented at the Hub, as well as other relevant services in the local community that separating families and their children may need. There is a similar system navigator position in The Orange Doors, a position which is focused on building relationships and pathways between The Orange Door and external services and systems.

The intent of the Families Hubs proposal could be given effect by incorporating the principles of these roles within existing systems and services, establishing system navigator roles specifically focused on building relationships and understanding between family law services and other relevant community services.

These roles could be built into the FRCs, existing community health hubs, or in Victoria into The Orange Doors. A similar role could also be established in the family law court registries and/or FASS to facilitate connections from the courts to relevant services.

## Integrated practice initiatives

As mentioned, we also support a focus on facilitating better coordination across and between the legal assistance sector and social services sector more broadly.

The Discussion Paper notes the problems with the existing service system in the section on ‘a need for joined up service delivery (p81):

*Stakeholders noted that many services operate in a siloed way and may not have capacity to identify the full range of a client’s service needs beyond those they provide. Even where co-occurring issues are identified, agencies may not have sufficient knowledge of the broader services sector to make appropriate referrals, and are unlikely to be able to coordinate and support a client’s engagement with other services over time.*

The Families Hubs as proposed might assist to bring legal and non-legal services together but would require significant investment in physical infrastructure and staffing, including purpose-built buildings to meet safety requirements. The Orange Door experience in Victoria has shown the difficulties of finding appropriate locations for community hubs. Although the Discussion Paper notes that the Families Hubs may be located in or adjacent to The Orange Doors in Victoria, in our experience of The Orange Door so far, the practical reality is that in many cases there is not the physical space for that to occur.

VLA practice experience also shows that most people are first accessing legal support via online services or telephone services. Physical hubs can create additional barriers to accessing the system for people who live in cities in locations that are far from the hubs, or for those in regional areas that are a significant distance from the town with a hub and where there is limited public transport. They can also create disincentives to access the hub in regional areas due to concerns about lack of anonymity.

There are ways that these issues and challenges could be addressed through existing initiatives. We support integration of legal assistance into existing community services so as to assist and work with community organisations to address legal and non-legal needs holistically. Health Justice Partnerships are a good example of how this is already working well, the principles of which could be adopted for other initiatives.

For example, VLA is involved in a Health Justice Partnerships in partnership with Mildura’s Sunraysia Community Health Services (SCHS) to support better integration of services for clients across all health and justice agencies in Mildura, recognising the overlap of health and legal issues in many people’s lives. It has a strong emphasis on collaboration, community development and targeted outreach services. We also have partnerships with family violence organisations where we provide early intervention legal outreach services to their clients experiencing family violence, and we note a number of community legal centres in Victoria have also established successful Health Justice Partnerships. For example, Eastern Community Legal Centre’s MABELS project brings together organisations in a multi-disciplinary collaboration providing an integrated, early intervention response to family violence for women and their children attending maternal and child health services.

We support building on existing models where service collaboration and integration is shown to be working well and suggest this could prove a far less resource intensive alternative. We would value further consideration in the final report of how to strengthen collaboration between community services and legal assistance services.

## Referrals to legal assistance

Collaboration between legal and non-legal services also requires clear referral pathways. VLA strongly supports the development of relationships and strong, collaborative referral pathways between universal services, secondary family violence and other family services, tertiary services like police and child protection, and the family law system.

To create a cohesive service system that meets the multiple and often complex needs of people experiencing vulnerability, professionals need to have a strong understanding of relevant services and appropriate client pathways, including to identify legal needs at the earliest stage.

The Discussion Paper notes in the section on ‘addressing service fragmentation’ (p80):

*The submissions and consultations also indicate that many clients who present with family law issues will have previously engaged with universal services, such as Centrelink, a health service or the police. While these organisations can act as referral pathways to legal services, the ALRC’s consultations suggest that such services rarely offer clients assistance with accessing the family law system*.

VLA’s Family Law Legal Aid Services Review in 2015 similarly identified this issue and VLA’s submission to the Issues Paper identified the importance of building the ability of community service organisations to identify family law issues when engaging with clients and refer appropriately. This would help improve engagement of vulnerable clients in appropriate services.

Proposal 2-4 goes some way to adopting this suggestion but we suggest further and more concrete recommendations could be developed.

Legal assistance providers in Victoria already employ a range of triage and other strategies to assist in the early identification of legal and non-legal problems, and to prevent the escalation of legal problems. The recent Access to Justice Review in Victoria recognised this and highlighted the need to direct people to the most appropriate resources or services to resolve their legal problems, no matter how they first make contact with the justice system.[[2]](#footnote-2) It identified effective legal triage as a means to do this.

The concept of ‘legal triage’ refers to assessing a person’s problems and needs and directing them to the most appropriate destination for support and resolution, irrespective of how the person makes contact with the justice system. Effective legal triage can ensure that people’s needs are identified and met at the earliest possible stage, before their problems become more serious. It can therefore reduce the need for more intensive and expensive intervention in the future.

**VLA Legal Help service**

VLA provides a free legal information and advice service – Legal Help – which currently provides crucial navigation assistance in the family law system. Legal Help is the main telephone entry point for legal triage for the broader Victorian legal assistance sector and is therefore often the first touch point for people with a legal problem.

In 2017-18, VLA’s Legal Help telephone service received over 196,000 calls. Three of the top five matters dealt with by the Legal Help telephone service were family law legal issues: time spent with children, family law property settlements and parenting plans. Family violence applications were also in the top five matters.

To determine how to triage a call, Legal Help undertakes a preliminary assessment – determining the primary legal issue, whether the caller is already receiving the assistance of a lawyer, and any immediate access issues which need to be addressed (such as the need for an interpreter).

Legal Help may refer matters to a more appropriate legal service or private practitioner, provide one-off information or advice, assess the calls as out of scope of Legal Help, or undertake further assessment to determine whether the individual meets the criteria to receive legal aid.

In this initial assessment, Legal Help lawyers also consider whether there are any non-legal issues that may be impacting on or interacting with the individual’s legal issues. Legal Help provides referrals to relevant non-legal support services to assist people to access this support.

Legal Help often provides information about where an individual can go for more information about the family law process or for further legal assistance or services. It provides crucial navigation assistance at the early stage of the family law system.

The 2016 Victorian Access to Justice Review recommended that VLA become the primary entry point for information about legal issues and services in Victoria and expand its Legal Help service.[[3]](#footnote-3) VLA currently has plans to continue to grow Legal Help as the main entry point to the legal assistance sector in Victoria including by providing extended hours and considering various ways to expand access to and the effectiveness of Legal Help through the use of online tools and technology-enabled services such as web-chat and greater integration with our website.[[4]](#footnote-4)

Legal Help also now provides the Intake and Referral function at the Victorian FASS at both sites, the Melbourne and Dandenong permanent registries of the family law courts, undertaking legal triage in person with presenting clients.

In terms of improving people’s early referral to legal assistance, the Victorian Access to Justice Review ultimately made several recommendations, including that the government support integrated service delivery programs (discussed above), that legal triage capacity be improved, and that The Orange Door and the proposed Pride Centre for the LGBTIQ community connect people to legal assistance via incorporating legal triage into these hubs.

We suggest that the ALRC consider a similar approach for improving referrals to family law and other related legal assistance. In our view, the most easy-to-understand, efficient, cost-effective, and streamlined way of enabling consistent and early identification of legal need is to build strong referral pathways between community services and primary entry points for legal triage, such as the Legal Help service in Victoria.

This would not preclude other referral pathways to legal assistance, including the co-location of lawyers in community services or hubs where appropriate and resourced. However, we support models that recognise that the most relevant legal service that should consistently be connected with other non-legal services (whether at Hubs or otherwise) is legal triage services (including through Legal Help). Legal triage is then able to assess and refer people into the legal advice or ongoing assistance they require, which may include but not be limited to family lawyer assistance. This also means non-legal workers are not required or expected to become expert at assessing legal needs alongside their other responsibilities.

Additionally, as mentioned in our submission to the Issues Paper, VLA is considering how online tools could assist community service organisations to refer clients to family law services at the earliest possible opportunity to improve timeliness as well as early identification of legal and non-legal issues. Online tools have the potential to increase consistency in legal screening and triage. They would assist workers to:

* Identify the type or types of legal issues faced by the client;
* Determine the level of urgency/priority of the identified legal issue;
* Determine the most appropriate service offering;
* Direct or connect the client to the service offering;
* Provide the client with legal information or details of other non-legal supports, whether through information provided or referrals to external services.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Resourcing for support services to reduce wait times;
* Establishing Service System Navigator or case management positions in existing services;
* Expanding existing collaborative initiatives in already established community locations, similar to Health Justice Partnerships, and with strong referral pathways;
* Incorporating or connecting consistent legal triage services into relevant non-legal family support services, supported by online legal triage and referral tools.

# Supporting families to resolve disputes about property and financial arrangements

VLA provides assistance to parties in dispute about small financial or property pools and debts. We are delighted to see that the ALRC has proposed significant reforms in the Discussion Paper relating to how the family law system assists families to resolve property and financial arrangements.

Outlined below are some additional considerations about how the family law system could better support families to resolve property and financial disputes fairly and in a timely way. We discuss property disputes, debts, spousal maintenance and superannuation, as well as the enforceability of orders. We believe our recommendations would be of benefit to all property matters considered by the family law courts, including large property pools, but they are informed by VLA’s practice experience assisting the most vulnerable.

## Property disputes

Our experience of assisting parties with small property pools shows that property settlement can bring significant material relief to separated parties in financial hardship and support caring arrangements for children.

**Client story**

Our client Layla was separated and the primary carer of the three-year-old son of the marriage.

She was unemployed, suffering from mental illness, could not read, spoke limited English, and required an interpreter to communicate.

Layla’s marriage was an arranged marriage, following which she migrated to Australia some months later. There was a Family Violence Intervention Order in place for the protection of Layla. The husband owned a property in his sole name with equity estimated at over $50,000. He had stable employment and had superannuation funds of about $60,000.

VLA’s Child Support Legal Service assisted Layla to apply for child support through DHS (Child Support) and obtained orders by consent to receive a superannuation split of nearly $20,000 and $50 per week spousal maintenance for two years.

Without legal representation, Layla would likely have not pursued her entitlements as there were no joint assets of the marriage and the husband had accrued significant credit card debts post separation.

For VLA clients, a property settlement can be crucial to preventing entrenched poverty following the end of a relationship, particularly where there has been family violence. Women who are unable to reach an agreement with an ex-partner who has used family violence, as is common in family law matters, are often forced to leave the relationship with nothing and, as a result, are at greater risk of financial hardship and poverty than men post-separation.[[5]](#footnote-5) The inability to access or seek a property settlement can also be a means of further perpetrating family violence (restricting access to a financial settlement). This can ultimately impact negatively on the safety, health and development of children.

The proposals in the Discussion Paper will go a significant way to improving the legal outcomes for parties with small property pools and/or debts. Below we suggest further consideration be given to strengthening the property provisions in the legislation, encouraging better disclosure, and increasing the availability of legal assistance for small property claims.

### Greater guidance in the law on property disputes

At present the consideration by the family law courts of whether it is ‘just and equitable’ to make an order for the division of property post-separation provides little guidance to parties about the likely outcome of a property settlement or on what factors the decision will be made.

The requirement that the court consider the contributions (both direct and indirect) made by each party to the property pool during the relationship is also a complicated step in the current decision-making process and provides no clear identifiable principles to guide parties in how the property may be split post-separation.

Information about how property settlements are determined by the law may be reasonably well understood within the domain of the legal profession, but it is not commonly known to the community. The Family Court website states, “The way your assets and debts will be shared between you will depend on the individual circumstances of your family. Your settlement will probably be different from others you may have heard about.” In other words, people have little clear guidance of what will occur with their property dispute and the current discretionary approach means families with similar circumstances (size and type of assets, and length of marriage) will have varying and inconsistent settlements.

VLA agrees with proposal 3-10 to amend the provisions to more clearly articulate the four-step process used by courts for determining the division of property. We recognise the ALRC’s hesitance to move towards a prescriptive approach in determining property matters and agree that such an approach could create additional avenues for systems abuse. However, without introducing any guiding principles or factors for deciding property matters, it is likely that the provision will remain unclear to people using the family law system.

The current discretionary approach requiring a bespoke judicial decision on each case is not affordable or useful for many Victorians, especially those who do not meet legal aid eligibility criteria and cannot afford the cost of private legal representation to help them negotiate a just and equitable settlement. The concern that a prescriptive or guided approach will result in injustice must be weighed against the disadvantages of a fully discretionary approach.

We therefore consider that the introduction in the legislation of additional guidance, distilled from case law for deciding property matters, is important to clarify the decision-making process and provide greater guidance to parties to enable negotiations in the shadow of the law.

One approach would be to adopt some clear principles or factors to guide property settlement decisions. For example, Fehlberg and Sarmas have recently suggested the following principles to provide guidance to parties about how their dispute will be decided based on existing research, including:

* the housing requirements of dependent children;
* the material and economic security of the parties;
* whether adjustments should be made as compensation for relationship-based loss; and
* equal division of any surplus.[[6]](#footnote-6)

The introduction of a presumption regarding property settlements, such as one that recognises the equal status of parties in a relationship (irrespective of whether one parent has primarily made non-financial contributions, including caring for children), is another option. Additional factors for departing from any starting presumption would provide an important safeguard for people experiencing vulnerability or hardship.

### Disclosure obligations

We are delighted to see the ALRC has proposed legislating disclosure obligations and consequences for non-disclosure into the *Family Law Act 1975* (Cth) in proposals 5-6 and 5-7. These are welcome reforms and will likely have a beneficial impact in improving disclosure in property and financial disputes.

Presently, identifying the value of the asset pool represents a significant hurdle in many property disputes. There is already an obligation on parties to make full and frank disclosure of their financial situation;[[7]](#footnote-7) this disclosure is absolute.

Yet, failure to make proper disclosure continues to be a tactic used by parties in property disputes. Our Family Dispute Resolution Service (FDRS) commonly sees lack of financial disclosure prior to mediation, which pushes parties to litigation where otherwise they may have been able to resolve the dispute without initiating legal proceedings. Although the court has the ability to deal with parties who fail to properly disclose, such as dismissing a non-compliant party’s application or making costs orders at conclusion of the matter, this is not helpful in practice for parties who are unable to progress to final hearing, especially in small property disputes.[[8]](#footnote-8)

We support proposals 5-2 and 5-7 to strengthen penalties for non-compliance, including the use of quasi criminal penalties, particularly at interim or early stages of the matter. We also support proposal 6-6 suggesting that the role of Registrars be used to establish, monitor and enforce timelines for procedural steps, including disclosure.

We would also like to see the introduction of further mechanisms to encourage and facilitate full and frank disclosure. Improved mechanisms to manage disclosure in family law disputes would reduce delay for parties and the courts, promoting faster negotiations and earlier resolution of disputes.

There are a number of ways this could be achieved. For example we recommend the ALRC consider recommending the government introduce powers to the Court, that may be delegated to Registrars, that would be similar to the cost effective and often productive administrative information gathering power of the Child Support Registrar in s120 of the *Child Support (Registration and Collection) Act 1988*. We note Women’s Legal Service Victoria has also previously recommended introducing an administrative mechanism, for the family law courts to be provided with information by the Australian Taxation Office for the purposes of determining if full financial disclosure is being made, and agree this would also be a useful measure. In addition, we would recommend legislative amendments to the *Family Law Act 1975* (Cth) to encourage greater exercise of courts’ discretion to make adverse adjustments to property divisions for parties who do not make full and frank disclosure.

### Small property claims

VLA commends the ALRC on its proposal to introduce a new stream for determining small property disputes in the family courts. In our view, a simplified small property stream will help to:

* Determine matters more quickly and cost-effectively than the current court process;
* Provide an option to parties where legally-assisted mediation has not resolved the dispute or the family dispute resolution (FDR) service has assessed the matter as not suitable for mediation;
* Make small property settlements more accessible compared to the present situation; small property claims are among the least likely to be made in the current family law system because of an inability of one party to afford a lawyer;[[9]](#footnote-9)
* Demystify superannuation split cases to facilitate parties who seek solely superannuation split orders where that is the only asset of the relationship. It is noted that the majority of such superannuation orders are similar in nature but are too technical for self-represented litigants. We support the ALRC recommendations in relation to superannuation.

We recommend that the criteria for determining eligibility to the Small Property List be scoped through further consultation. We would like to see consideration of financial vulnerability, the issues in dispute, and the nature and value of assets, and for the process to be available to eligible parties with concurrent unresolved parenting matters. Our initial views are that it could include cases that involve:

* Matrimonial home only
* Debt only
* Superannuation only
* Spousal maintenance only
* Combination of the above
* And/or value of the applicant’s interest or claim up to a specified amount (say, around $200,000).

The client story below shows why it is important that the focus be on the value of the client’s claim or equitable interest rather than the total asset pool.

**Client story**

VLA’s Child Support Legal Service acted for Jane, who has separated from her husband after 18 months. Due to the s75(2) factors in that it was a very short marriage (not uncommon in cases of family violence) and Jane made no initial contribution to the marriage, her share of the assets of the relationship is about 10 percent.

The value of the total asset pool (including a car, house, shares and superannuation) is uncertain but estimated to exceed $300,000, meaning Jane’s share is limited to about $50,000.

$50,000 will go far in contributing to caring for the child of the relationship and establishing a home for Jane, who is at risk of homelessness, including buying household items such as a washing machine, microwave, and rental bond.

We would also like to see clear referral processes for parties with small property claims to legally-assisted FDR services to assist parties to resolve as many of their issues in dispute as possible before entering the small claims court process.

**Funding for legal assistance for small property claims**

Like parenting disputes, most parents are able to resolve property matters without relying on formal family law processes, and research suggests that these property divisions are satisfactory to the majority of parents.[[10]](#footnote-10) Where agreement cannot be met, though, it is extremely rare to obtain a property settlement in the family law system without a lawyer’s assistance.

Private legal representation is prohibitively expensive for many and legal aid and community legal centre services are very rare for matters involving property where there are not related parenting disputes. This is primarily due to the limited nature of national legal assistance funding, which leads to LACs prioritising funding for cases where disputes about children are involved.

**Client story**

After Susan and her husband separated, their four children lived with Susan. The asset pool consisted of the matrimonial home valued over one million dollars and superannuation of less than $50,000.

Susan’s circumstances indicated a number of vulnerabilities including severe family violence. Susan was unable to work due to her experiences of family violence, and was living off Centrelink payments.

Susan did not want to retain the family home despite having care of the children. The mortgage was over $800,000 and she could not afford the repayments. Further, she did not wish to continue residing in the home as the home had been the site of severe trauma for her and her children.

Susan did not meet VLA’s legal aid grant guidelines for property matters because she did not seek to retain the former matrimonial home but instead seek a more general property settlement.

In its review of access to justice arrangements, the Productivity Commission concluded that the majority of low- and middle-income earners have limited capacity to manage large and unexpected legal costs,[[11]](#footnote-11) yet the means test used by LACs is restrictive.[[12]](#footnote-12) It described the current situation like this:

The income tests [used by LACs] are below many established measures of relative poverty. It is not the case that people are ‘too wealthy’ to be eligible for legal assistance, but rather that they are ‘not sufficiently impoverished’.[[13]](#footnote-13)

The Productivity Commission concluded that there is a role for government in assisting these individuals to uphold their legal rights and resolve their civil (including family) law disputes.[[14]](#footnote-14) To give effect to the commitment of the ALRC to addressing accessibility to the family law system, we ask that the ALRC consider recommending additional resourcing to broaden availability of legal assistance for priority clients to pursue small property matters, including those experiencing family violence.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Introducing further guidance in the legislation for deciding property matters, for example principles or guiding factors and/or a ‘presumption of equal contribution’ with additional factors for departing from the presumption;
* Introducing stronger mechanisms to encourage full and frank disclosure, including

 - providing the courts with administrative information gathering powers regarding parties’ financial matters, and

 - amending the legislation to encourage greater exercise of courts’ discretion to make adverse adjustments to property divisions for parties who do not make full and frank disclosure;

* Additional resourcing to broaden availability of legal assistance for priority clients to pursue small property matters.

## Debt division

VLA welcomes consideration of improved processes for dividing debt on relationship breakdown. For many of VLA’s clients, debt is a key issue in property disputes and joint debts can raise significant concerns. In particular, debts can be used by perpetrators of family violence as a means to continue to exert control over their former partner.

At present, the family law courts can make orders and injunctions that affect third parties such as banks. Orders can also be made which transfer responsibility for a debt from one partner to another.

However, our practice experience is that the making of orders that fairly address debts in property disputes is being prevented by section 75(2)(ha), which requires the court to take into account ‘the effect of any proposed order on the ability of a creditor of a party to recover the creditor’s debt’, and by section 90AE(3)(b), which requires it to not be ‘foreseeable at the time that the order is made that to make the order would result in the debt not being paid in full’.

It is very difficult for the court to confidently anticipate the repayment of a debt when making an order; indeed this is difficult to anticipate even where the liability for the debt goes unchanged by a court order.

Unable to meet the requirements of sections 75(2)(ha) and 90AE(3)(b), the family law courts often make orders which do not alter the legal liability for the debt, but attempt to shift the responsibility for payment of the debt onto one party, with that party required to indemnify the other in the event of non-payment.

Our experience shows that such indemnities are ineffective because they do not prevent a victim survivor of family violence from having to repay the debt when pursued by the lender or other third party. Despite an agreement or decision of the court about who should pay the debt, the party responsible for taking actions such as repaying the debt or calling the lender to provide the indemnity often simply does not do so.

We do not consider that proposal 3-13 will have the intended effect of addressing this issue, given that voluntary action from the financial sector has not resulted in significant change for clients so far. Proposal 3-14 already anticipates that proposal 3-13 may not work and suggests the Government consider relaxing the requirement in section 90AE(3)(b) if evaluation finds that proposal 3-13 for voluntary industry action has not been effective.

We suggest the ALRC consider some clearer recommendations to address this problem. These could include powers for the Court to waive these requirements in matters in the simplified small property list and/or where the value of the debt to be altered is under a specified amount. The ALRC could also recommend including additional factors in the legislation for the court to consider in its determination regarding debts, including:

* consideration of the impact of the order on the lender or third party;
* financial capacity of the parties;
* financial hardship caused by the debt.

If the ALRC is not willing to recommend relaxing the requirements in sections 75(2)(ha) and 90AE(3)(b) in structured ways as suggested above, we suggest the inclusion of a timeframe on the evaluation recommended in proposal 3-14 to build in some greater accountability for action.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Relaxing in structured ways the requirements in sections 75(2)(ha) and 90AE(3)(b) regarding anticipating the effect of orders as to debts.

## Spousal maintenance

The ALRC questions whether an administrative mechanism should be introduced for interim spousal maintenance. VLA’s Commonwealth family law service provides legal assistance in spousal maintenance cases including for the enforcement of spousal maintenance orders. The application of a means test means that VLA is assisting low-income parties. In 2016-17, VLA provided 640 spousal and child maintenance legal assistance services.[[15]](#footnote-15)

We recommend the introduction of an administrative process for spousal maintenance applications. From VLA’s experience delivering both family law and child support legal services, spousal maintenance decisions better align with the child support regime, including the special circumstances (administrative departure) process, and an administrative process would redirect these matters away from the family law courts and provide timely resolution for parties.

**The problem with the current spousal maintenance process**

Our practice experience shows the court process does not provide timely outcomes by way of interim or final orders for applications for urgent spousal maintenance. Urgent spousal maintenance applications take many months for an order to be obtained. Clients are initially referred for legal action; the lawyer needs to obtain funding, prepare and file three sets of documents; and await the first return date (usually six weeks, slightly earlier if time abridged). The other party may not respond or provide their financial documents on the first return date which leads to an adjournment.

Often interim orders are not made (unless there is consent) as the court has no time for a defended interim hearing. By the time the next court date arrives, it is often well more than four months since the client sought assistance, and the court usually does not order backdated payments. We act for clients who are in crisis accommodation having fled the matrimonial home due to family violence with no access or entitlement to Centrelink, or other funds under control of the other party, and who risk homelessness, whereby the court process is inadequate in providing urgent or interim payments. For these clients, access to timely payment is crucial.

**An administrative assessment process for spousal maintenance**

From our experience in child support matters, an administrative assessment can be issued speedily (within weeks) and commence from the date of request, and applications can be made over the telephone. Introducing a similar mechanism for spousal maintenance applications would improve access to justice for individuals experiencing vulnerability and financial hardship.

In our view, an administrative calculation could look at the difference in incomes of the parties, less any child support paid, and factors such as who is paying the mortgage and loans, and the length of the relationship. As proposed below, whereby the Department of Human Services (Cth) (DHS) and the Australian Tax Office (ATO) are able to share information, an administrative mechanism at first instance post separation would assist significantly in restoring financial security and in addressing the issue of parties not disclosing their income ahead of FDR processes.

We see that there could be an initial assessment for six months from the date of application. During this period, parties would have opportunity to access administrative objection processes (if they objected to the income or other factors used in the assessment), seek to undertake FDR for their financial matters, or prepare a court application.

**Existing enablers**

Prior to the introduction of the *Child Support (Assessment) Act 1989*, absent consent between the separated parents, every carer parent had to apply to the Family Court (or court exercising federal jurisdiction) for a bespoke child maintenance order. Section 18 of the *Child Support (Registration and Collection) Act 1988* provides that ‘a liability of a party to a marriage to pay a periodic amount for the maintenance of the other party to the marriage… is a registrable maintenance liability’. This means that DHS Child Support has had the ability to assist with collection and enforcement of court ordered spousal maintenance since 1988.

It is already possible to enable DHS to assess spousal maintenance, as an effective interim measure for those who need access to payments post-separation for their financial security or those who face homelessness, noting the delays in obtaining a court hearing and court ordered spousal maintenance. The DHS will also likely already have both parties’ financial details following the making of child support applications and can be provided with legislated access to ATO income information (as a starting point, not a definitive measure), which would assist with the making of spousal maintenance assessments for a fixed interim period pending property settlement proceedings.

We recommend the commissioning of an appropriate body with relevant expertise to consult on and develop an administrative mechanism for spousal maintenance applications.

In the alternative or in addition to an administrative mechanism, we support the creation of a specialist Spousal Maintenance List (this could be included as part of the small property claims list or in proposal 6-3 regarding specialist court pathways) whereby a Registrar could provide interim urgent periodic or lump sum orders pending final order. Registrars could make use of administrative information gathering powers if necessary, which we recommended above regarding family law property disputes more generally.

We note the importance here of training for decision makers on the dynamics and nature of family violence to improve identification and response to systems abuse in relation to financial arrangements.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Commissioning an appropriate body with relevant expertise to develop an administrative mechanism for spousal maintenance applications;
* Creating a specialist court pathway for interim spousal maintenance matters;
* Enabling Registrars to make interim urgent periodic or lump sum spousal maintenance orders.

## Superannuation

VLA commends the ALRC on its proposals to improve the accessibility of information and resources about superannuation splitting. VLA supports the proposals 3-15, 3-16, and 3-17, as we believe they will make it easier for separating families negotiating in the shadow of the law and without legal assistance to understand and resolve disputes about financial arrangements involving superannuation splitting.

VLA is supportive of the ALRC proposing the Government consider enabling the early release of superannuation in situations of hardship following separation; however, we stress the need for the scope of such a proposal to be limited to ensure this provision is not open to abuse nor will worsen a person’s financial circumstances in the long term. As such, financial counselling and other checks and balances should be required to support parties and to confirm the benefits and disadvantages of early release. For example it would be important that other avenues of family law financial support were pursued first, such as a spousal maintenance order or an adjusted property settlement, if it were safe to do so.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Allowing for early release of superannuation for parties experiencing financial hardship following separation in limited circumstances and after access to financial counselling and use of other avenues of family law financial support.

## Enforceability

Finally, VLA’s experience is that enforceability is a key issue for parties with small property pools, which will need to be addressed for the proposals in relation to property to achieve their intent.

Presently it is very easy for small property pool orders to be ignored by one of the parties, which we see often in situations of family violence. The difficulty and expense in getting orders enforced is a significant barrier to people resolving their small property pool matters.

We suggest the ALRC consider additional mechanisms to ensure small property orders are enforceable in a less costly way and binding on third parties. For example, Registrars could be empowered to conduct post-order hearings to check compliance with orders that the court has made and make costs orders if they have not been complied with.

Other parts of the system, like FDR services, will also be more effective if the agreement reached is capable of being enforced or there is a mechanism to obtain enforceable orders if the matter is not resolved through FDR. Like clarity on the factors the court is likely to take into account, clarity about enforceability supports parties to negotiate in the shadow of the law, which helps guard against systems abuse and power imbalances.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Introducing stronger enforceability mechanisms, including Registrar-conducted post-order hearings regarding compliance with orders.

# Improving availability of legally-assisted family dispute resolution

VLA welcomes the focus in the Discussion Paper on mediation and FDR and recognition of the impact of the 2006 reforms in leading to a reduction in court filings for children’s matters.

We support proposals 5-3 and 5-2 which respectively introduce a requirement for parties to attempt FDR before lodging a court application for determination of property and financial matters and for FDR providers to consider the respective levels of knowledge of the matters in dispute, including of relevant financial arrangements.

We are also pleased to see recognition in the Discussion Paper of the benefits of legally-assisted FDR (LAFDR) in resolving complex disputes, including for example in situations of family violence, and proposals to further develop models of culturally appropriate and safe models.

VLA supports greater use of LAFDR to facilitate earlier resolution of disputes. Families making decisions about what arrangements work best for their children can be greatly assisted by timely legal advice and advocacy.

We would like to see further discussion in the final report of building on existing, proven models of LAFDR and making LAFDR available to a greater number of separating families, acknowledging that LAFDR makes FDR more widely available to families with complex needs and that people experiencing family violence are left in more disadvantaged positions when they are screened out of FDR.

We would also like to see:

* Recognition of the need to preference LAFDR models for property and financial disputes;
* Resourcing for appropriate services to be available for families if proposal 5-3 is implemented, such as access to financial counselling;
* The disclosure proposals implemented at the same time as reforms to the FDR and property provisions; and
* A new option in the FDR certificate for property and financial matters, to indicate if one or more parties or the FDR service considers that there has been inadequate disclosure.

## Increasing the availability of existing models of LAFDR

We support opportunities to improve and refine the legally-assisted model of FDR, particularly relating to cultural safety and risk assessment, as outlined in proposals 5-9 and 5-10 in the Discussion Paper.

However, these proposals focus only on the design of FDR services; they do not also provide suggestions for how a greater number of families could, in fact, access beneficial LAFDR. VLA suggests that further consideration be given to how existing safe and effective models of LAFDR can be made available to a larger number of parties.

LAFDR achieves high rates of settlement and plays a key role in preventing matters from reaching court. In 2016-17, VLA’s FDRS delivered 1,044 conferences, with a settlement rate of 83 percent.[[16]](#footnote-16) The majority of conferences (70 percent) were early intervention FDR and 30 percent were litigation intervention FDR. A history or risk of family violence was identified during the intake screening process for 88 percent of cases.

Legally aided clients are particularly vulnerable, firstly because they are financially disadvantaged, but frequently because they have had or are experiencing other complicating factors, including family violence, mental health issues, and/or drug and alcohol difficulties. These issues can impact on a client’s capacity to negotiate on their own behalf, which is one of the foundational requisites underpinning successful dispute resolution. LAFDR provides a cost-effective process for these clients, including parents who have been victims of family violence or where other risk factors have been identified but cannot be mitigated by a non-legally assisted FDR service provider.

As outlined in our submission to the Issues Paper, our FDRS is a legally-assisted model, supported by case management for clients and mediation by experienced chairpersons, and expands eligibility of FDR to parents screened out of non-legally assisted models of FDR. The case manager conducts screening and ongoing risk assessment and links families into appropriate supports and manages their safety during the dispute resolution conference. The assistance of lawyers throughout this process can provide clients with advocacy, direct legal advice, and support through a process in which they may otherwise be disadvantaged. Lawyers balance the interests of their clients with the ‘best interests of the child’ legislation. This involves ‘reality testing’ proposals in terms of whether they are child focussed and providing clients with information about how a matter may be considered in the court. This is complemented and reinforced for clients by the chairpersons, who draw on their legal or social science backgrounds to provide focus on the child and reality test the workability of any arrangement considered.

We acknowledge the ALRC’s concern about the intensity of the case management model; however, in our experience, the model is not overlyexpensive or intensive, and is much less so than court litigation. The specific and significant benefits mentioned above justify the added effort, ensuring that the process is safe and families are supported throughout, and demonstrate why legally-assisted models of FDR should be more readily available for separating families. This is also a sensible resource investment up front, as it is cheaper than families entering court processes and pursuing litigation.

We also support a preference of LAFDR for Aboriginal and/or Torres Strait Islander peoples, specifically including Aboriginal legal services providing legal assistance to parties in the FDR conference. This is particularly critical for Aboriginal and/or Torres Strait Islander women who are victim survivors of family violence and where there may be significant power imbalances in the dispute. It requires additional resourcing for Aboriginal Family Violence Prevention and Legal Services and other Aboriginal legal services to provide assistance during LAFDR and for mediations to be chaired by Aboriginal chairpersons. These types of models, as occur in VLA’s FDRS, can be built upon, rather than needing to develop entirely new models of culturally safe FDR or LAFDR.

In relation to the ALRC’s proposal to investigate cost-recovery models for LAFDR, we note the challenges of cost recovery models. It is important to note that LACs already engage in cost recovery through financial contributions applied to grants of assistance following application of the means test. Although VLA tries to recover any assessed financial contributions which are put in place as a condition of a grant of legal assistance for family law matters, including for FDR, in practice VLA has difficulty recovering contributions. We suggest the ALRC consider the challenges of cost-recovery models further in its final report.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Investing in increasing the availability of existing LAFDR services to families.
* Resourcing Aboriginal Community Controlled Organisations to provide more legal assistance to Aboriginal clients in LAFDR.

## Using LAFDR for property matters

VLA welcomes the proposal 5-3 to introduce a requirement that parties attempt FDR prior to lodging a court application for the determination of property and financial matters.

Given the benefits identified above, we are of the view that a LAFDR model would be the preferred model for FDR in property matters and essential to preventing unjust outcomes for parties. We suggest that non-legally assisted FDR is not suitable for complex financial matters involving complex corporate structures, trusts, and valuation of business.

**Legal advice**

Many parties with property disputes are not able to access FDR because they are screened out of mainstream FDR services due to lack of suitability either on the part of the provider or the matter, and then do not fall into the limited eligibility guidelines for legally aided FDR services.

The Discussion Paper notes that the take up of FDR for children’s matters was significant following the 2006 reforms but has been slower for property and financial matters. While some of this difference is likely due to the differences in legislative support as noted in the Discussion Paper, we suggest that the take up of FDR for property matters might also have been higher had safe, case-managed LAFDR been more widely available since 2006.

There can be significant power imbalances in property and financial disputes which can be addressed through LAFDR and appropriately managed by trauma-informed practitioners. Increasing the availability of LAFDR would prevent these parties from having to initiate litigation (without access to representation) or being unable to resolve their dispute.

Legal advice will be important for parties to be able to engage in mediation informed by the legislative provisions on property and the likely outcome in a property dispute if the matter were to be decided by the family law courts. We note that our recommended reforms to the legislative provisions governing property matters, including the introduction of clear guiding principles into the legislation and factors to guide decision-making, would also assist parties to negotiate at LAFDR, better informed about the possible outcome if the matter were to be decided by the family law courts.

**Training for practitioners and links to support services**

Proposal 5-3 raises some concerns, however, which the government will need to consider if it accepts this proposal. The first relates to the lack of experience of some FDR providers in overseeing property and financial disputes. In our view, the exceptions provide enough safeguards for FDR to not go ahead in property and financial matters unless appropriate, but it will be important that there is training for FDR providers to do FDR in property and financial matters. We therefore support proposal 10-5 in the Discussion Paper. We also strongly support additional funding for appropriate services to be available for families if this proposal is implemented, such as access to financial counselling.

**Enforceability**

Another issue is the lack of enforceability of agreements entered into during FDR and, therefore, how parties are supported to understand and commit to the arrangements. For most people with small property issues – a car to transfer, superannuation to split, debt to split – any agreement reached in an FDR conference will still need to be turned into an order to make sure that it is adhered to; it is highly unlikely that third parties such as lenders or superannuation trustees will act on the agreement unless it is a court order.

The process of FDR will take some of the acrimony out of cases and either resolve them by agreement, so the court can make simpler consent orders, or narrow the issues in dispute, so the court process is shortened. This is where a small property list in the family law courts will be very useful, along with improved disclosure mechanisms and simplified forms, in improving the family law system’s overall response to small property disputes. We have also recommended earlier, further consideration of appropriate mechanisms that Registrars could employ to strengthen enforceability of orders.

**Disclosure in FDR**

As mentioned earlier, VLA strongly supports better disclosure of financial assets and arrangements to address the possible imbalance of knowledge parties bring to mediation. We therefore welcome the ALRC’s proposals in relation to disclosure.

Disclosure is already considered by some FDR providers, including VLA’s FDRS. FDRS asks for disclosure of financial arrangements prior to attempting FDR and will not proceed with mediation if disclosure obligations are not met.

**Client story**

Anna initiated mediation through VLA’s FDRS. Anna had obtained legal aid funding for a parenting dispute with her former partner, David, and for an FDRS conference about a property dispute between them.

Anna was unable to work due to a physical disability. Her income was limited to a disability support pension and family tax benefits. Anna and David had one child, who primarily lived with Anna.

Neither Anna nor David disclosed any current safety concerns, history of family violence, substance abuse or mental health issues. The matter was assessed as suitable for FDRS and the service successfully convened two conferences about parenting issues in joint format.

In preparation for the FDR conference about property arrangements, Anna told the FDRS Case Manager that David worked in high paying employment, owned multiple properties, and had other investments and a self-managed superannuation fund.

David agreed to participate in a FDRS conference about property issues but failed to provide a financial statement when requested. The Case Manager had regular discussions with him about providing the financial statement but, although he verbally agreed to provide it, it was never received, and FDRS were subsequently unable to convene a conference about property issues.

Anna was therefore left to pursue the property dispute through the court system due to non-disclosure by David in circumstances where it would otherwise have been appropriate to mediate the dispute.

We agree that the proposals 5-6 and 5-7 to move into the Act the more specific list of disclosure obligations required of all parties (rather than keeping it in the Rules) will greatly assist with reducing failures to disclose. It will be beneficial having a clear list of the information you need to have given to the other party and will likely improve the efficiency of these matters.

Disclosure is crucial to effective and safe LAFDR; VLA strongly asserts that the disclosure proposals must be implemented at the same time as reforms to the FDR and property provisions. They are mutually reinforcing, and each requires the other to be in place to work effectively and ensure power imbalances can be addressed.

We also suggest an additional option could be included in the FDR certificate to indicate if either party or the FDR service considers that there has been inadequate disclosure. The court could order costs if FDR has not been attempted or disclosure not made, or could adjourn a matter to give parties more time. See further below.

**Certificate process and ‘genuine steps’**

VLA acknowledges efforts of the ALRC to simplify the FDR certificate process for property and financial matters.

The Discussion Paper proposes to split the ‘genuine effort’ factor in the FDR certificate for property and financial arrangements into a separate provision, rather than including it in the certificate, as happens with parenting disputes. In our view, however, adding in another separate process of preparing a ‘genuine steps statement’ places unnecessary additional burden on parties, particularly those who are more vulnerable and may be experiencing family violence and/or self-representing.

Courts should instead consider information provided on certificates when making orders about disclosure and considering whether costs should be ordered against a party. In this way, certificates would more clearly link to costs provisions and provide a stronger disincentive to litigation unless necessary.

Rule 1.05 and Schedule 1 of the Family Law Rules currently contain a mandatory pre-action procedure that parties ‘make a genuine effort to resolve the dispute before starting a case’, noting there is no equivalent in the Federal Circuit Court Rules. We suggest that the ALRC proposals could build on and reinforce the requirements of the existing pre-action procedure, rather than creating an additional and separate element and administrative task of providing a ‘genuine steps statement’.

When initiating an application in court, the party would either have already attempted FDR and have a certificate as to the outcome of that process, or they would be outlining why an exemption from FDR should apply. The onus should then be on the court to determine whether that party has made a genuine effort to resolve the dispute or whether further action is required.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Recognition of the need to preference LAFDR models for FDR in property and financial disputes;
* Resourcing appropriate services to be available for families if proposal 5-3 is implemented, such as access to financial counselling;
* Recommending that the disclosure proposals be implemented at the same time as reforms to the FDR and property provisions;
* Introducing an option in the FDR certificate for property and financial matters to indicate that one or more parties or the FDR service considers that there has been inadequate disclosure.

## Supporting child-inclusive LAFDR

VLA welcomes proposal 7-4 in the Discussion Paper which asserts that, in any family dispute resolution process concerning arrangements for a child, the affected child must be given an opportunity (so far as practicable) to express any views about those arrangements. We acknowledge that child-centred and child-inclusive mediation practices that bring the child’s concerns, views and wishes to the attention of their parents or carers have been found to facilitate better outcomes for children post-separation.

VLA stresses, though, that we support the participation of children in FDR processes if it is appropriate and safe to do so. Our Kids Talk program is a useful example of successful child participation in FDR, including appropriate screening, ongoing risk assessment, case management, and well-trained child consultants.

In our view, the key elements of the Kids Talk model could be adopted and rolled out in FDR programs more broadly as essential to supporting the safe participation of children in FDR. The key elements could also be applied to the development of the child advocate model suggested by the ALRC in proposal 7-8. The key elements are discussed further below.

We would also recommend additional resourcing of Kids Talk and similar programs to enable them to be more widely available for children and young people in Victoria.

**Supporting children to safely participate in FDR: Kids Talk**

Kids Talk is a current initiative funded by VLA and delivered by VLA’s legally-assisted FDRS. Kids Talk is a child-inclusive intervention, where it is assessed appropriate, that facilitates a child meeting with a child consultant.

In these meetings, children express views about their experience post-separation including their day-to-day lives, interactions between their parents, the impact of the separation on confidence, school performance and social relationships, adult behaviours that they feel have placed them at risk, and their feelings where there has been a breakdown in the relationship with any parent. The program provides parents and others (grandparents, step-parents and other extended family) with the opportunity to hear the views, concerns and wishes of their child.

The aim of Kids Talk is to increase parents’ and significant others’ capacity and openness to understand the child’s views, concerns and wishes. The child’s developmental, psychological and emotional needs form the basis of generating options and proposals at the FDR conference. Kids Talk aims to assist parents to manage their post separation relationship and parenting arrangements in a way that stabilises rather than undermines their child’s wellbeing and development. In 86 percent of cases where Kids Talk was used in 2016-17, the case settled.[[17]](#footnote-17)

**Kids Talk key elements**

Assessing suitability

Kids Talk is currently delivered only for a small percentage (approximately six percent) of families engaged in FDRS each year. For children to participate in Kids Talk, FDRS requires the consent of all people with parental responsibility for the child. Assessment of suitability for Kids Talk generally rests on the child being of school age and a genuine willingness of the parents to take into account their children's perspective.

Assessment of suitability for Kids Talk is not issues-based; families in Kids Talk often experience multiple and complex issues. High settlement rates of FDR where there is a Kids Talk component show the usefulness of Kids Talk in focusing decision-making on the needs of the children and reducing the likelihood of complex matters requiring court determination, or at least reducing the issues in dispute.

**Client story**

FDRS assisted the parents of a child under ten who lived with their father and periodically spent time with their mother, who had diagnosed mental health issues.

During court proceedings, the child had told their father that they did not want to spend any more time with their mother.

FDRS assessed the suitability of the child engaging in Kids Talk. It was deemed suitable; however, the mother did not want to consent to Kids Talk as she was afraid the child would tell the consultant that they no longer wanted to see their mother. The mother was supported by the FDRS case manager to understand the process of Kids Talk and its benefits, and mental health counselling and other supports were put in place prior to the conference. She agreed to her child participating in the process.

There was very positive feedback from the child consultant about the child's engagement in the process, and the mother was supported to hear the feedback in a safe environment.

It became evident that the child wanted to see their mother, as long as her mental health issues were not impacting on her capacity to engage with the child during their visits. With additional supports put in place, the parents agreed to a parenting plan and the parenting dispute was fully settled on an interim basis.

Risk assessment and case management

All Kids Talk screening processes review the circumstances of the child and consider their best interests before determining suitability, and ongoing risk assessment is conducted throughout the process. This includes a specific focus on safety, particularly in matters where there is family violence or other complex issues.

Indicators that suggest Kids Talk is inappropriate include where there may be a risk of harm to a child, where systems abuse may occur through multiple interviews of children by professionals regarding similar issues, and where parents may have no capacity for child-centred reflection and action.

There is also ongoing assessment of situations where a family is screened as suitable for Kids Talk but it becomes evident that one or both parties have limited capacity to constructively consider the child’s view, and the child may then also be at risk in terms of safety and a compromised relationship with a parent, in which case Kids Talk would no longer be appropriate.

Ongoing risk assessment and case management by well-trained case managers throughout the Kids Talk process, supports appropriate safety planning at all times, enables families to be linked into appropriate supports at the early stages of family law matters, and also reduces the likelihood of systems abuse.

**Client story**

FDRS initially assessed Kids Talk as suitable for a young teenager, Santi. Santi experienced mental health issues and was accessing counselling and mental health support services. Santi’s mental health had improved when FDR conducted the initial assessment. Both parents agreed that Kids Talk would be appropriate.

However, prior to the Kids Talk session, Santi’s mental health began to deteriorate. The school raised concerns about her health and implemented safety plans.

When the FDRS case manager called the mother to discuss the Kids Talk process, they decided that Santi’s mental health had deteriorated to a point where Kids Talk was no longer appropriate. The matter proceeded to an FDR mediation without Kids Talk, and then to a further mediation. Information about Santi’s experiences and health was considered during these conferences and the matter was fully settled.

Highly-trained child consultants

Kids Talk is supported by highly-trained child consultants who have expertise in working with children and relevant qualifications. They also play a risk assessment role throughout the process to make sure that Kids Talk is appropriate and in recognition of the dynamic nature of risk. Importantly, the consultants do not conduct specialised assessments of children (such as those of a Family Report writer) but focus instead on discussing with the child their needs, wishes, and experiences in a way that suits them.

Role of the lawyers

Another benefit of the Kids Talk model is the critical role the lawyers play. Lawyers advise their clients whether to participate in Kids Talk. The Kids Talk written report is released to lawyers at the same time as the parents, after verbal feedback to each parent from the child consultant. Clients can react to aspects of the feedback that may surprise them or is not in line with their own views; they benefit from working through these issues with their lawyer prior to the conference, so that they come prepared. During the FDR conference, lawyers can effectively ‘reality test’ proposals with their clients, with reference to the Kids Talk report and feedback.

**Adopting the Kids Talk elements**

We support greater participation of children in family law processes and stress the need for appropriate screening, risk assessment, and case management processes to be adopted more widely, and Kids Talk and similar program capacity increased, so that all separated families engaging in FDR are provided the opportunity to participate in discussions better informed by the experiences of their child post-separation and their child’s wishes. Training in child-inclusive mediation for all new family lawyers would also be important for ensuring lawyers are supporting parents to consider Kids Talk. We also suggest further consideration of these elements in the development of any children’s advocate model in litigation proceedings.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Adopting and rolling out the key elements of the Kids Talk model in FDR programs;
* Applying the key elements of Kids Talk to the development of the child advocate model;
* Increasing the capacity of Kids Talk and similar programs to enable them to be more widely available for children and young people in Victoria.

# Creating a cohesive and coordinated court intake, triage and case management process

The court is not only a site for determination of disputes but an important touch point for contact with and providing assistance to families in the formal family law system, regardless of whether they are legally aided, privately represented or self-represented. One role of the system should be to maximise the opportunity that the court as a touch point represents to ensure a holistic response for children and families with complex needs.

It is therefore pleasing to see recognition in the Discussion Paper of the often complex and multiple needs of families using the family law courts and efforts to improve the family law system’s response to those families.

Better integration of family court, child protection and family violence jurisdictions will promote safety and lessen the burden on victims who currently manage their matters across multiple jurisdictions with very different policy and legislative frameworks. For these reasons, we are strongly supportive of the ALRC’s proposal to co-locate family law court registries in state and territory local courts. We are also strongly supportive of the proposals to expand FASS.

We suggest some remaining areas for further consideration. The family law system needs to treat family violence as core business particularly for the courts, not as an area of specialisation, and we reiterate the need for identifying family violence in the early stages of a matter. We would also recommend further guidance in the ALRC’s final report on the core functions of the proposed court triage, risk assessment and case management processes.

## Recognising family violence as core business

VLA welcomes the significant focus of the Discussion Paper on improving the family law system’s response to family violence and consideration of safety. VLA welcomes and is supportive of proposals in the Discussion Paper relating to family violence, including proposals to improve professionals’ and judicial officers’ knowledge and understanding of the nature and dynamics of family violence, strengthen definitions of family violence, and introduce risk assessment processes into the court.

As recognised in the Discussion Paper, a significant proportion of family law matters involve family violence; NLA data shows that about 79 percent of legally aided matters in the family law system involve family violence.[[18]](#footnote-18) Our experience is that in many cases, experiences of family violence are still minimised, deemed ‘historical’, or irrelevant to decisions about contact arrangements with children. There is responsibility placed on victim survivors of family violence to ‘prove’ that family violence has occurred, and emotional, financial, and psychological violence and abuse is often not viewed as seriously as physical violence.

The family law system has a responsibility for ensuring that family violence victims are identified early and risks are appropriately managed. Identifying, responding to and managing family violence in the early stages of a family law matter, both in the pre-litigation stages of a matter and after proceedings have been issued, is critical to ensuring the safety of victim survivors including children in the family law system and will also assist the court to manage matters involving family violence more efficiently and effectively.

In our view, there are additional measures that could be considered to ensure that family violence will be identified early and the risks appropriately managed. We suggest the ALRC further consider:

* the need for early determinations of family violence and associated resourcing;
* specialisation in family violence for all judicial officers.

### Early determination (finding of fact) about family violence

Proposals 6-1 and 6-2 to introduce a triage, risk assessment and case management function in the court, coordinated by appropriate court staff, will be a critical aspect of the family law courts’ ability to identify and manage family violence risk from the early stages of disputes. VLA strongly supports these proposals.

However, risk assessment is not a determination of whether family violence has happened for the purpose of the legal process. There is still a clear gap and lack of clarity about how those processes will impact on parenting arrangements and interim orders agreed to in proceedings.

To address this gap, we recommend legislative amendments to the *Family Law Act 1975* (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing.

VLA’s support for early determinations regarding family violence stems from our practice experience of seeing how family violence may not be considered in the development of interim orders, resulting in interim arrangements that may be inappropriate or unsafe. We recommend additional resourcing for courts to undertake early hearings and safeguards to protect victim survivors of family violence.

**The problem with the current process**

Presently, there may be many months (even years) before an allegation of family violence made by a party in a family law proceeding is considered at final hearing and there is a determination about whether family violence had occurred. Without this finding, interim decisions – or final orders by consent between the parties and then approved as orders by the court – are made without information that is vital to ensuring safety. Although increasingly a court priority, safety currently remains the subject of later determination.

**Client story**

VLA assisted a client, Samantha, with several matters that began with a Protection Application in the Children’s Court of Victoria brought by the Department of Health and Human Services (DHHS).

There was a history of family violence in Samantha’s relationship with her former partner and there had been a number of family violence intervention orders (FVIOs) put in place and subsequently revoked as the couple reconciled.

After a concerning family violence incident, a FVIO was put in place excluding Samantha’s partner from the home and from contact with her and the children. The Protection Application in the Children’s Court ultimately led to the children being placed to live with Samantha but spend supervised time with their father, her former partner.

After a period of time, DHHS decided that the father was acting appropriately during supervision and that a protection order was no longer required. Samantha agreed given that there was still a full exclusion FVIO in place.

The father subsequently made a parenting application in the Federal Circuit Court. He was self-represented and continually would not attend court. The default position of the Federal Circuit Court was for him to spend time with the children and it made interim orders to that effect. However, the case kept getting adjourned when it came back to court, so Samantha’s VLA lawyer could not present any of the evidence about the history or risk of family violence, which had been proven in the Children’s Court and Magistrates’ Court of Victoria. Therefore, Samantha’s lawyer was unable to rebut the presumption of shared time.

During the family court proceedings, the father breached the FVIO and began stalking Samantha. The protracted legal proceedings and FVIO breaches created further traumatisation. Had there been an earlier determination of family violence, interim arrangements would have taken family violence into account in the parenting orders and resolved the issues in a timelier manner.

Section 67ZBB of the *Family Law Act* requires courts to take prompt action in relation to allegations of child abuse or family violence; however, in our experience, this is not by itself resulting in early findings in matters involving family violence allegations. Resourcing constraints, in particular a lack of judges to hear these interim matters, and an unavailability of the information required to make the decision at this early stage, contribute to there being few matters where findings are made at an early stage.

It is also our experience that there is some reluctance by judicial officers to make a determination at an early stage about whether family violence occurred as alleged. This determination is often deferred because it would be resource intensive, requiring the hearing and testing of evidence, and there is concern about making an incorrect determination without enough evidence.

However, this deferral prolongs the risk to victim survivors of family violence and risks interim care arrangements that are unsafe for children. In addition, were determinations about family violence risk made earlier in family law proceedings, we anticipate there would be a significant reduction in the number of matters that reach final hearing, because in many cases the degree of the family violence perpetrated and its implications for future risk (and therefore the orders that are in the child’s best interests) is a primary issue in dispute at the final hearing. We anticipate that this earlier resolution of disputes with a focus on safety would also reduce the trauma to victim survivors and families arising from protracted litigation.

**Early determinations regarding family violence**

In our view, the most effective way to prompt earlier findings of fact relating to family violence would be to include a stronger and more specific legislative requirement that family violence allegations be determined early, with this legislative change supported by increased resourcing to the family law courts to enable this earlier decision-making.

This change would place enquiry about safety at the start and centre of the court’s task and increase the court’s impact in managing and responding to family violence risk. It would require all professionals, not only judicial officers, to turn their mind to family violence. Greater use of earlier determinations about family violence in family law proceedings would also reduce the need for a specialist family violence list (discussed below). The recent parliamentary committee inquiry into a better family law system regarding family violence also considered these issues and recommended early determinations such as by way of urgent preliminary hearings.[[19]](#footnote-19)

Under the current Act, all judicial officers can exercise the power to make findings of fact on an interim basis. Judicial Registrars, Registrars or Duty judges could conduct preliminary hearings and make interim family violence orders. Preliminary hearings to make early determinations would not require a high threshold for evidence; it could have no rules of evidence and link to the broad definition of family violence in the *Family Law Act* *1975*, including recognition of cumulative harm.

**Safeguards**

We understand that there are concerns that introducing early determinations of family violence may encourage an incident-based approach to family violence and that it places the onus on victim survivors to prove that family violence has occurred. VLA acknowledges that any such risks identified with the process would need to be addressed by introducing safeguards to protect the safety and wellbeing of victim survivors of family violence.

Our assessment of the UK model is that there were a number of concerns raised in relation to their context of practice, including that fact-finding hearings were inconsistently and rarely held because domestic violence was considered irrelevant to contact, there were difficulties establishing an evidentiary threshold, and fact-finding hearings were seen as an unwelcome intrusion into the conciliatory, forward-looking ethos of family proceedings.[[20]](#footnote-20) We believe that the concerns identified could be addressed in a model in Australia, building in strong risk assessment and management processes, clear processes and guidance about when the hearings are necessary, appropriate understanding by professionals of family violence and how it impacts contact arrangements, and support from the judiciary.

A key safeguard would also be access to legal representation for the hearing, as recognised in the *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018* as crucial to supporting victim survivors of family violence. Other safeguards would include existing protections available to the court:

* Ban on direct cross examination where parties are not legally represented;
* Directing or allowing a person to give evidence and/or appear by video or audio link;
* Disallowing questions asked in a manner or tone that is inappropriate;
* Changing the venue of a hearing to a safer location;
* Closing the court to the public or excluding specific persons from the courtroom;
* Giving directions or making orders about how particular evidence is to be given; and
* Receiving into evidence the transcript of evidence in any other proceedings before the court or another court or tribunal.

Additional safeguards would also be required that recognise the high occurrence of cases where the perpetrator of family violence has been misidentified.[[21]](#footnote-21)

**Specialist family violence list**

While VLA strongly supports strengthening the family law courts’ response to family violence, we have concerns about the proposal to establish a specialist list for family violence matters.

In the Discussion Paper, there are several reasons given for establishing a specialist family violence list, including the need for:

* high risk cases to be supported by early risk assessment and triage and early decision making;
* expert assessments at an early stage; and
* case management for cases involving families with more complex needs to support faster, better informed decision making.

While the above functions are important, in our view the coordinated risk assessment, triage and case management process proposed by the ALRC to sit in the courts should already perform those same functions.

This proposal implies that family violence remains a specialist matter in a more general family law jurisdiction but, as noted above, family violence is present in a high number of family law matters and should be recognised as general core business for the courts. The high number of family law matters where family violence is a factor would also present a challenge to how cases would be prioritised for a specialised list.

If, as the Discussion Paper suggests, all professionals and judicial officers in the family law courts were to have a strong understanding of the nature and dynamics of family violence, we believe that all judicial officers should be able to oversee family violence cases. Similarly, if safety considerations are central to the operation of the family law system, then all judicial officers (not only those assigned to overseeing a specialist list) should be able to ‘make a range of orders, including in relation to recovery of children and contravention, and be able to make orders quickly to respond to safety issues, such as suspension of a child's time with a violent parent.’[[22]](#footnote-22)

VLA supports the intention of this proposal to encourage timely decision-making about whether family violence occurred and have that factor into all judicial and non-judicial decision making throughout the proceedings. In line with our suggestions above, increasing the use of earlier determinations of family violence more generally, where appropriate and according to risk assessment, would reduce or eliminate the need for a specialist list.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Introducing legislative amendments to the *Family Law Act 1975* (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts;
* Providing associated resourcing to enable early hearings to occur;
* Introducing safeguards into the process for early hearings to protect victim survivors of family violence.

## Risk management and triage process

As noted above, we welcome the proposals 6-1 and 6-2 to introduce a risk assessment, case management and triage process into the federal family law courts.

Consultation with our family lawyers suggests that the current absence of a dedicated case management role within the court contributes to delays in proceedings, poor documentation, a lack of coordinated response for children and families, and other roles in the system taking on case management functions without the appropriate training or resources (such as Independent Children’s Lawyers).

We agree with the ALRC’s splitting of the case management functions into two separate functions for clients: case management of proceedings by the court-based triage team and case management of service engagement by FASS. We stress that the two case management models in the courts should be clearly and transparently differentiated from each other and will need to be sufficiently resourced to avoid increasing risk for families and children.

We also support the proposed ‘matter case management’ model that would be administered and carried out by appropriate court staff, and that will free up the time of judicial officers to hear matters and enable more effective oversight of matters to ensure they are ready for the next hearing date. The ‘matter case management’ model, as proposed, will be a useful accountability measure, ensuring that reports and documents are filed on time, disclosure obligations are met, and families are linked to appropriate supports.

Conversely, based on our experience operating FASS in Victoria to date, we suggest FASS case management responsibilities should focus on coordinating clients’ involvement with support and legal services. Where a client is referred to a FASS family violence support worker, that worker should continue to undertake family violence risk assessments and safety planning to respond appropriately to the client. Any relevant information should be shared between the court case management role and the FASS program where appropriate and generally with the client’s consent.

We suggest that the ALRC could consider providing further guidance in its final proposals on what the court triage, risk assessment and case management roles would include, for example:

* Making or organising ongoing risk assessments in recognition of the dynamic nature of risk, and implementing safety plans where plans envisage steps being taken by the court for each hearing date;
* Liaising with FASS if the family is linked into FASS’ case management model;
* Identifying where a matter might need to be referred for a preliminary hearing to make an early determination regarding family violence;
* Providing ongoing management to ensure matters are ready for the next hearing date, including coordinating subpoenas and other appropriate documentation, making sure reports have been prepared, following up compliance with disclosure obligations of parties, liaising with the best interests lawyer (Independent Children’s Lawyer/separate legal representative) and/or the child advocate; and
* Coordinating with FDR services where a matter can return to FDR for an additional attempt, including referrals to LAFDR for those with small property claims once a determination has been made that the parties have provided full and frank disclosure.

With regard to coordinating with FDR services, we consider the court triage team would be well placed to provide referrals for parties with small property claims to LAFDR where appropriate. Registrars would be able to assess whether parties with small property pools have been assisted in LAFDR, and make appropriate referrals if they have not, before referring them to the court’s small property claims list. This will be critical in minimising the issues in dispute that are heard in court, thus lessening delays and cost.

In terms of ongoing risk assessment,we also reiterate the need for children to have their own risk assessment conducted (including of abuse, trauma, and mental health) that prioritises their safety and needs and provides a specialised, tailored response. Our Independent Children’s Lawyers practice experience suggests that a court-based risk assessment process could include assessment at early stages of disputes of children at risk of family violence, abuse or neglect or of being alienated from their parents. Alienation of children from their parents is a significant risk factor as children who experience alienation can have serious emotional and psychological problems in the future. Early identification of a child being in the stages of alienation (including alignment, rejection, or refusal) would assist in linking children into appropriate supports and reducing longer term negative outcomes.

**Recommendations**

We recommend the ALRC consider providing further guidance in its final proposals on the responsibilities of the court triage, risk assessment and case management process, including:

* ongoing risk assessments for parties and for children;
* identifying matters that should be referred to preliminary hearings for early determinations of family violence, after identifying family violence as a risk factor and issue in dispute;
* ongoing case management to ensure matters are ready for hearing dates and parties have complied with disclosure obligations; and
* coordinating with and making referrals to FDR where appropriate.

# Enabling safe information sharing

VLA supports and has advocated for improved information sharing between the federal family law system and the state and territory child protection and family violence systems, underpinned by principles of safety, to develop better co-ordinated responses for vulnerable children and families and to better identify and manage risk.[[23]](#footnote-23)

VLA welcomes the work of the Council of Attorneys-General Family Violence Working Group to improve information sharing between jurisdictions, including the development of a national information-sharing regime and the provision of joint training for judicial officers across the family law and state and territory systems.

In our experience, information sharing can lead to better decision-making informed by the best evidence and all relevant information. However, it is critical that only appropriate information is shared and that the receiver of information understands its relevance to the decision they are making. We recommend further consideration in the ALRC’s final report of the risks of sharing information and how these will be addressed.

## Principles for safe and appropriate information sharing

It will be important that the implementation of a new national information sharing regime is based on appropriate principles. We recommend the ALRC consider the following in more detail in its final recommendations to government about the development of information sharing between state and territory and commonwealth jurisdictions.

**Safeguarding against inappropriate sharing of information, particularly where family violence is present**

VLA holds concerns about the possibility of information being shared inappropriately and subsequently escalating risk. This is primarily a concern where family violence, including child abuse, is present. There are three main problems we see:

* inaccurate information being circulated;
* information being shared about third parties (for example, the new partner of a perpetrator) without their knowledge, placing them at risk; and
* information being provided to perpetrators who identify as victims or where there is misidentification of the primary aggressor.

Our practice experience demonstrates that sharing information inappropriately can escalate risk for victim survivors of family violence (including those other than biological parents), primarily if information is provided to a perpetrator about a victim survivor. Under new information sharing provisions of the *Family Violence Protection Act* in Victoria, victim survivors are entitled to be provided with information personally, including about the perpetrator, to help them manage their own risk.[[24]](#footnote-24) If a perpetrator is misidentified as a victim, they could inadvertently receive personal information about the victim survivor.

This risk exists, although is less relevant in a court context because if the information is going to be relied upon in litigation it is already able to be requested and viewed unless objected to. Moreover, parties can object through existing channels.

**Ensuring procedural fairness**

Procedural fairness is essential to the rule of law in Australia and an important consideration when sharing information between jurisdictions. In our view, to ensure procedural fairness, any shared information that is going to be relied upon in a litigation context needs to be available and provided to all parties’ legal representatives, including self-represented litigants.

The regime would also need to determine who in the court would be receiving the information. For example, if the information is provided to the judicial officer, it may enable more inquisitorial approaches to hearing matters based on all relevant information being provided to the court.

VLA is concerned about what support will be provided to self-represented litigants to make sure that they receive all the information relevant to their matter that is shared with the courts and are able to understand and interpret the documents they receive.

**Purpose and relevance of sharing**

It is important for the information sharing regime to articulate the purpose of sharing information. This is critical for determining what information should be shared and with whom. VLA supports information being shared to inform risk assessment and risk management purposes.

The purpose of sharing information relates to the relevance of the information being shared. Only information that is relevant to the proceedings should be shared. It is therefore important that the regime articulates factors to consider when determining relevance and who holds responsibility for determining relevance.

**Interpretation of documents**

Professionals in the family law system who lack knowledge of other jurisdictions may remain unaware of what information would be useful or relevant to seek, or how to interpret information shared from other jurisdictions.

It is important for there to be training for professionals in the information sharing regime to alert them to the fact that the information can be provided, the mechanism by which the regime is activated and the relevance and import of shared information from other jurisdictions. Training should be required in the following topics for the regime to be appropriately implemented:

* family violence
* child wellbeing, development and vulnerability
* trauma-informed practice
* knowledge of the other jurisdictions’ areas of law.

Judicial officers in the family law system will require training about child protection reports in order for them to understand the context in which the reports are written. Child protection reports are not necessarily tested (even if the matter is resolved by consent) and may contain unproven information or allegations. There is very little opportunity (unlike say with a family court affidavit in response) to counter these allegations in a written form which may become accessible to another judicial officer. This is discussed further in the section below on Types of information to be shared.

**Sharing information about Aboriginal and Torres Strait Islander peoples**

In our view, it is important that any information sharing regime acknowledges and recognises the colonisation and historical government policies of dispossession, dislocation, systemic racism/discrimination, and child removal experienced by Aboriginal and Torres Strait Islander peoples and their ongoing impact on Aboriginal and Torres Strait Islander clients. Aboriginal and Torres Strait Islander children are overrepresented in the child protection system and the fear of child removal is one of the most significant deterrents for Aboriginal victims/survivors of family violence to report violence and seek assistance from services.

The regime should include emphasis on the responsibility of the family law system to ensure that its services are culturally safe, and that Aboriginal and Torres Strait Islander people’s views are always obtained and considered, where it is safe to do so, to avoid creating an environment of mistrust with the system.

**Earlier and streamlined processes**

At present, information sharing is often requested when a family law matter is proceeding to a court contest because that is when a subpoena is issued, for example, at the first or second directions hearing. There is not a culture of issuing subpoenas in the early stages of matters.

In VLA’s view, it would be helpful if this information could be available at the first substantive return court date or shortly thereafter (usually three to four weeks after proceedings are issued), particularly in the child protection context, as it would impact upon the course of proceedings and inform the advice given to clients. This would require a very streamlined process for sharing information to prevent the creation of a burden on the requesting agency.

**Links to state-based information sharing regimes**

A national regime needs to determine how it aligns with or diverges from state-based information sharing regimes, such as the recently introduced Family Violence Information Sharing and Child Information Sharing Schemes in Victoria. These allow prescribed entities to have access to a wide array of information. Clarifying whether these entities can share information they have received through the state scheme with bodies in the commonwealth scheme is critical.

**Recommendations**

We recommend the ALRC consider the following principles in more detail in the development of final recommendations in relation to information sharing between jurisdictions:

* Safeguarding against inappropriate sharing of information, particularly where family violence is present;
* Ensuring procedural fairness;
* Clarifying the purpose and relevance of sharing information;
* Ensuring family law system professionals understand how to interpret shared information;
* Taking responsibility for the culturally safe sharing of information about Aboriginal and Torres Strait Islander peoples;
* Providing for earlier and streamlined information sharing processes; and
* Clarifying alignment with state-based information sharing regimes.

## Types of information to be shared

A large portion of the information identified as needing to be shared between the federal and state jurisdictions is already accessible, primarily through subpoenas. In our view, the benefit of an improved information sharing regime is that it would streamline processes and make it easier to share relevant information in a timely manner to effectively gauge and manage the level of risk.

For example, generally records from family law proceedings are already able to be shared with family relationship services if there is an order from the court allowing their release. VLA supports streamlining of the process to share records from family law proceedings with family relationships services such as family dispute resolution services, Children’s Contact Services, and parenting order program services.

VLA also supports the sharing of court orders, judgements and transcripts (where available) between federal and state and territory jurisdictions.

We suggest that more consideration is given to the sharing of police records and child protection (care and protection) records, but generally support these being shared between jurisdictions. However, VLA does have reservations about some documents being shared from state child protection services to the federal family law jurisdiction, including:

* intake reports, case reports or case files
* applications
* descriptive information about involvement in child protection
* investigations into abuse
* case plans, placement records, closure summaries.

This is because these documents are often based on notes from workers rather than from expert assessments and they may not have been tested as evidence in court.

It is important that any unproven or untested allegations shared with the federal family law system are received with an understanding of the context in which they were developed. Family law proceedings should have access to information to be informed of possible risks and ensure information contributes to the family law system’s safety planning and risk management. However, if the information from police or child protection has not been tested, the lack of reliability of the information should be considered by the court.

Training should therefore be available to family law judicial officers and professionals to understand the context of child protection documentation. If a child protection agency has referred a parent to the family courts to obtain parenting orders, we also suggest they should provide information to the courts about the conditions on which they withdrew from involvement with the family and documentation indicating identified risks and safety considerations.

Aligned with our focus on sharing information safely, VLA also supports police checking the status of family law proceedings before issuing or renewing gun licences.

**Recommendations**

We recommend the ALRC consider the following in its final proposals:

* Excluding unproven or untested allegations from any national information sharing regime, without clarity of the context of that information;
* Providing training for family law judicial officers and professionals in state child protection (care and protection) documentation and processes.
1. Legal aid representation is only available for eight percent of Australians, despite fourteen percent of the population living under the poverty line: Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No. 72, Canberra, 2014), Appendix H. [↑](#footnote-ref-1)
2. Victorian Government, *Access to Justice Review: Report and recommendations* (Volume 1), (2016), 151. [↑](#footnote-ref-2)
3. Victorian Government, *Access to Justice Review: Report and recommendations* (Volume 1), (2016), Recommendations 2.1 and 2.2. [↑](#footnote-ref-3)
4. Victoria Legal Aid, *Submission to the Access to Justice Review* (March 2016) <<http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-access-to-justice-submission.pdf>>. [↑](#footnote-ref-4)
5. Women’s Legal Service Victoria, *Small Claims, Large Battles* (Research Report, March 2018), 15. [↑](#footnote-ref-5)
6. Belinda Fehlberg and Lisa Sarmas, ‘Australian Family Property Law: “Just and Equitable” Outcomes?’ (2018) 32 *Australian Journal of Family Law* 81, 88–91. [↑](#footnote-ref-6)
7. *Federal Circuit Court Rules 2001* (Cth) r24.03(1)(a); *Family Law Rules 2004* (Cth) r13.04. [↑](#footnote-ref-7)
8. See also Women’s Legal Service Victoria, above n 5, 22: ‘obstructive former partners might withhold information about their financial situation to delay proceedings, elevate stress and increase legal fees’. [↑](#footnote-ref-8)
9. Women’s Legal Service Victoria, above n 5, 28. [↑](#footnote-ref-9)
10. R. Kaspiew and L. Qu ‘Property division after separation: Recent research evidence’ (2016) 30(3) *Australian Journal of Family Law* 1, 24. [↑](#footnote-ref-10)
11. Productivity Commission, *Access to Justice Arrangements*, above n 1, 20. [↑](#footnote-ref-11)
12. Ibid, 30. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Ibid, 24. [↑](#footnote-ref-14)
15. This includes grants of aid, legal advice, legal information, duty lawyer, and minor work legal assistance. [↑](#footnote-ref-15)
16. The settlement rate is based on settlement of some or all issues in a dispute on an interim or ongoing basis. [↑](#footnote-ref-16)
17. The settlement rate is based on settlement of some or all issues in a dispute on an interim or ongoing basis. [↑](#footnote-ref-17)
18. National Legal Aid, *COAG commitment welcomed as new DV figures released* (Media Release, 18 April 2016) <<https://www.nationallegalaid.org/resources/nla-media/>>. [↑](#footnote-ref-18)
19. House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence*, (2017), xxxi. [↑](#footnote-ref-19)
20. Adrienne Barnett, ‘“Like Gold Dust These Days”: Domestic Violence Fact-Finding Hearings in Child Contact Hearings’ (2015), *Feminist Legal Studies.* [↑](#footnote-ref-20)
21. Women’s Legal Service Victoria, *Policy Paper 1 “Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria,* (2018). [↑](#footnote-ref-21)
22. See Australian Law Reform Commission, Review of the Family Law System Discussion Paper, (2018), 133. [↑](#footnote-ref-22)
23. See our submission to the Family Law Council’s Terms of Reference for their Inquiry into Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-families-with-complex-needs-submission-family-law-council-terms-of-reference.doc>> [↑](#footnote-ref-23)
24. See Family Safety Victoria, *Family Violence Information Sharing Guidelines,* (2017) <<https://www.vic.gov.au/system/user_files/Documents/fv/Ministerial%20Guidelines%20-%20Family%20Violence%20Information%20Sharing%20Scheme.pdf>> [↑](#footnote-ref-24)