

# Response

to the

# Review of the Family Law System

Issues Paper 2018

DP86



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# Introduction

**Better Place Australia** (formerly known as FMC Mediation and Counselling) has drafted its response to the ALRC Family Law Review discussion paper based on its experience of providing Family Dispute Resolution services, Family and Child support services, Financial Counselling, Family Law Pathways support and Mediation training to over 9000 Victorians over the last twelve months. Everyday all our 100 staff are working with clients who are at various stages of encountering elements of the family law system. In our submission we draw upon over thirty years of working in the family law sector. Much has been written and submitted about this review from family law system service providers. In our prior submission we gave attention to the detail of the reform areas and referred to practices or research that we were aware of. We have been very active in the Family and Relationships sector through participating in the working group of the Family Relationship Services Australia (FRSA) submission and driving the forming of a response from the Victorian Partnership of the Family Relationship Centres.

In this submission we have departed from our past submission and gathered case studies that reflect the experience of our clients. We think that the glue that binds the system is the experience of people using the system. An organisational view reflects funding, practices, grants, legal constraints, policies etc. Although not intentional this view is only part of the system. The experience though, of a user of the system, is blind to all these factors. They experience the different system elements as one continuum and hence are invaluable in providing insight to some of the intractable challenges within the system. These selected case studies are intended to demonstrate an issue that the reform should resolve or an example of a situation that may not be resolved. Between the studies we embroider the response with additional commentary and suggestions on where the Commission may need to consider additional focus.

# Executive Summary

In summary we have listed either novel considerations or risk factors that will significantly endanger the success of the system. The case study themes are summarised in these system considerations:

1. If a public health approach is to be pursued, then having a Commission endorse and implement awareness campaigns is not likely to succeed. This would be better responded to by the establishment of a foundation. Such foundations are consumer focused and have expertise in community awareness raising. Examples of foundations are VicHealth and the Victorian Responsible Gambling Foundation.
2. Misunderstanding and lack of understanding about the various jurisdictions of the law are common feature of our case studies. Significant effort will be required to translate legislation and instruments such as court orders into plain and understandable language. This 'translation' should be centralised, as fragmentation of legal information is a symptom of the current system's problems.
3. Steps in the Family Law process reflect various microsystems such as Family Dispute Resolution services (FAR), Criminal Courts, Family Courts, Police, and Child Protection. Users of the system get lost or fall out of the system because of the complexity and the lack of follow up to their situation between microsystems. Policy and guidelines on the following up responsibilities will assist in reduction in attrition of users between microsystems.
4. Money and debt issues are common to users at all stages of their experience. At each point of the system experience users would benefit from an offer of financial counselling or capability services. Anxiety about financial status is a significant element of family stress. Its reduction would benefit all users. This service availability is a key element for facilitating better outcomes.
5. There are opportunities within the FDR and the Family Court system for coercion and control towards the other less powerful party by a controlling party. These coercion points may be cumulative and not visible immediately to service providers within the family law system. Multiple requests to mediation or multiple subpoena demands are all instances where instruments are abused, and process manipulated. Greater visibility is required across systems be it central database of requests for mediation or certificates issued.
6. There are pros and cons regarding the participation of children in family law processes. Participation can be result in undesirable consequences. Wide consultation in the drafting of child participation are required on this matter.
7. Separation and relationships breakdown can harm children through conflict and the absence of a parent. The presence of family violence is a common theme in relationship breakdown. Greater support is required for victims and children. Perpetrators need to be held accountable, but this does not necessarily imply total family exclusion. With a more holistic approach to FDR supported with safety monitoring of the victim, there can be opportunities to

facilitate limited supervised contact between an IVO respondent and the child. This can be based on an assessment of suitability of the perpetrator and the change program they have undertaken.

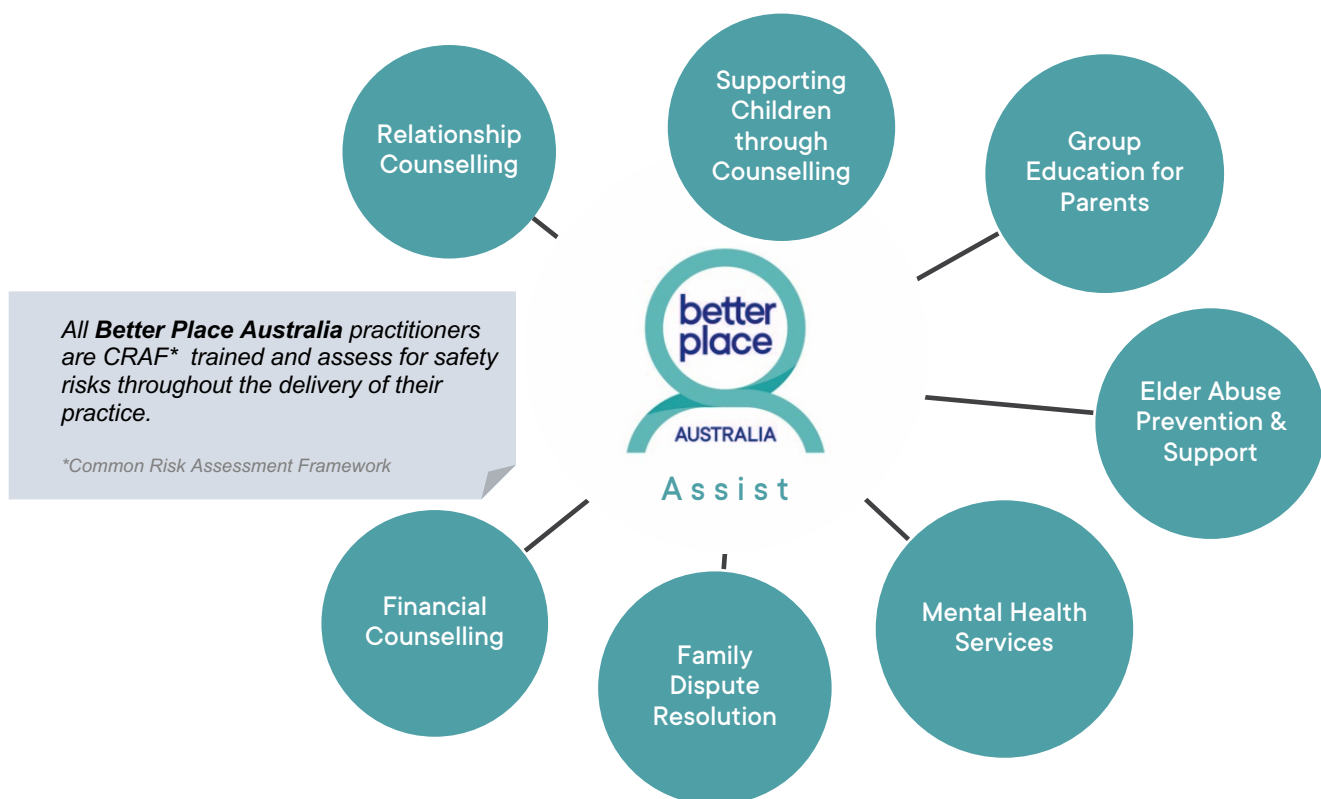
8. The system review should consider the role of follow up communications with past users of the family law system. Issues are not resolved permanently by FDR or Family Courts. A more proactive approach to contacting past participants will prove useful as a preventative measure and to glean how the experience could be improved.
9. No one is happy after a family law experience, yet an adversarial system in effect promises an ultimate advantage over the opposing party. Awareness raising would be useful to temper participant expectations and to change the perception of the family court room as a venue for advantage to one of a last resort and where no one wins.
10. Lastly Better Place Australia reiterates that a system change requires an investment that reflects the quantum of change proposed.

# About Better Place Australia

## Family Dispute Resolution / Our role in its evolution

In 1983 the cost of legal aid in family law matters and the fact that it formed the largest and fastest growing component of the legal aid budget was identified as a concern. The federal government announced funding for two pilot projects to provide services aimed at preventing and resolving family disputes. Initially known as the Family Conciliation Centre. The Victorian pilot was established at Noble Park and became known as the Family Mediation Centre. The centre opened to the public on February 4th, 1985. Its objective was to be a first stop agency for families at risk of breakdown, an informal mediation service which avoids the costs and traumas of the court system and opportunities for separating couples to decide which best meet the needs of their children and themselves. The centre was exposed to an evaluation commissioned by the Federal Government. The evaluation confirmed that the centre was meeting the ambitious objectives set for it. The other pilot project in NSW was closed after six months.

Better Place Australia over the last 33 years has significantly broadened its services. More recently Better Place Australia changed its name from FMC Mediation and Counselling. Our suite of family support services is as below.



The Better Place Australia Assist service provides an intake service that assesses risk, reviews need, and books clients straight into appointments. It also provides warm referrals and pathway referral advice.

In 2018 Better Place Australia will be providing services to over 9000 clients. 50% of our Family Dispute Resolution service clients report the presence of family violence. The demographic of our clients has the following profile.

## Our Clients

### Gender



### Current Income



\$0 - \$25,000	48.4%
\$25,001 - \$50,000	24.9%
\$50,001 - \$100,000	21.1%
\$100,001 - \$150,000	4.8%
Over \$150,000	0.8%

**Centrelink Payments**  
49% of responded clients receive centrelink benefits.

### Highest Level of Education



Tertiary, University or Institutes	47.6%
Secondary Year 12	21.4%
Secondary Year 10	21.6%
Primary	9.1%
Never Attended School	0.2%

### Marital Status



Single / Never Married



Married



In a relationship



Separated



Divorced



Other Relationship



Widowed

### Employment Status



Employed	58.1%
Unemployed - Seeking Employment	10.9%
Not in the labour force	24.6%
Retired	1.1%
N/A (Person aged under 15 years)	5.4%

# Proposal 1.

## The Need for Reform: strengthening family relationships through a public health approach to family law services

Better Place Australia fully supports the ALRC's promotion of a public health model for family law services based on a coordinated system for reducing risk factors and offering targeted and specialist responses where high risk remains.

We do note that a public health approach starts with a public awareness and that this requires a commitment to an investment in awareness raising. Participants in the system are presented with a disjoint of messages and access points when they are considering what to do about separating. A cursory online search on how to divorce displays the following from the court system:

*The Federal Circuit Court of Australia has the jurisdiction or power to deal with dissolution of marriage (i.e. divorce) under Part VI of the Family Law Act.*

Although this is technically accurate, as a consumer communication it does not engage or invite further reading. Some agencies such as Victorian Legal Aid have focussed on clearer and simpler language and do achieve a more engaging tone. Rather than each agency presenting snippets of information a consistent approach to information provision that is number one in search terms would be of great assistance to participants.

A public health approach implies different levels of 'prevention', Better Place Australia suggests that a model is required based on the principles of prevention. This model should be reflective of a consumer journey of experiences and interactions with agencies and jurisdictions in their family law system. This is not a piecemeal approach and should reflect learnings from health promotion agencies within Australia.

If a public health approach is to be pursued, then having a Commission endorse and implement awareness campaigns is not likely to succeed. This would be better responded to by the establishment of a foundation. Such foundations are consumer focused and have expertise in community awareness raising. Examples of foundations are VicHealth and the Victorian Responsible Gambling foundation.



# Proposal 2.

## Education, Awareness and Information

The Australian Government should develop a national education and awareness campaign to enhance community understanding of the family law system in consultation with state and territories and including CALD, ATSI, Disability and LGBTIQ consultations. This will require working with state and territory governments to support the development of referral relationships to family law services, including the proposed Families Hubs and universal services and be the first point of contact for people who have experienced family violence including state, police & child protection agencies

Better Place Australia endorses consulting with representatives and consumers of the above to create a family law system information package to be provided in print and online. The package will sit on the shelf as a noble endeavour unless it is actively promoted and dispersed. A specific point of confusion for clients is uncertainty about why mediation is required in the family law process. Better Place Australia notes that in its online survey of 700 Victorians in 2016/2017 only 4% of respondents were confident that they knew what mediation was. If Family Relationship Centres (FRC) are to be a prime point of entry into the family law system, then greater awareness raising will be required to explain the system and the role of mediation.

Better Place Australia notes that pathways to FDR are varied, but often start at a legal rather than service-based entry point, for example with a lawyer or community legal service. People are more likely to find out about that legal starting point through friends, family or a community service rather than online. Focusing on public awareness and education provides an opportunity to alter the current paradigm which views separation and serious relationship challenges through a legal lens. Reframing public understanding to see complex issues, even family violence, through a public health lens first, and then, when necessary, also through a legal lens, offers opportunities for broadening responses to encompass other community supports such as support in relation to mental health or family violence issues.

# Proposal 3.

## Simpler and Clearer Legislation

Better Place Australia concurs with the proposals that:

- The Family Law Act 1975 and its subordinate legislation should be comprehensively redrafted with the aim of simplification and assisting readability. This will include the development of ‘smart forms’
- Adapt the principle that the child’s best interests must be the paramount consideration in making decisions about children should be retained but amended to refer to ‘safety and best interests’
- The Act should be amended to explicitly state that, where there is already a final parenting order in force, parties must seek leave to apply for a new parenting order in considering whether to allow a new application. Consideration should be given to whether there has been a change of circumstances that, in the opinion of the court, is significant; and it is safe and in the best interests of the child for the order to be reconsidered
- The Australian Government should work with the financial sector to establish protocols for dividing debt on relationship breakdown to avoid hardship for vulnerable parties, including for victims of family violence and division of superannuation.

It is Better Place Australia’s experience that “the presumption of equal shared parental responsibility is commonly misunderstood to be a presumption of equal time, rather than a presumption of equal decision-making responsibility”. Any re-drafted legislation should be user-tested to ensure that it is understood as intended. Much of the confusion lies not from the term itself, but from other parts of the legislation. The current situation is that parents share responsibility for their children and the law does not seek to regulate how this is exercised. If parents do not agree and one takes the other to court, the matter will be resolved based on the child’s best interests, not the parents’ respective responsibilities. The law should not be made more complicated. In addition, the law needs to be careful to distinguish between the authority of parents in relation to third parties (e.g. in relation to seeking medical treatment), and parental responsibilities to be agreed between the parents themselves, with no need for the law to spell things out.

### Case Study 3.1 / 'Shared Responsibility' and misunderstanding

#### Clients

Chloe, 27

Children, 8 and 4

Troy, 28

#### **Scenario**

Chloe was referred to Better Place Australia by the applicant worker at a local Magistrates Court.

She had applied for an interim IVO. This prevented any contact with Troy whose home was in the same suburb. The final version of the IVO did permit FDR. Chloe was uncertain how to proceed and believed that Troy had an entitlement of equal time. She had agreed with him to an equal time arrangement informally but was regretting this and fearful of changing this. She wanted to have a parenting agreement that she was comfortable with and not feel pressured by Troy.

### **Process**

In the first intake session with Chloe the FDR practitioner explained that responsibility did not mean equal time. Chloe's situation was reviewed for the safety risks for herself and children and a safety plan agreed to. Chloe was also referred to additional support services for herself and her children. She did want her children to have time with their father however felt that she had been coerced into equal time. The practitioner worked with Chloe to ensure she could put forward opinions she felt comfortable with.

Troy was invited to mediation. He was informed of what responsibility means and that this was different from equal shared time. He accepted the invitation to attend a parenting after separation session before any mediation could take place. He was also referred into psychological counselling for anxiety and depression.

Subsequent to this there were several separate room mediations with separate arrival and departure times.

### **Risk Factors**

Family violence through coercion

### **Outcome**

Chloe felt supported and worked with a child consultant in addressing issues she was having with her children. Troy's pattern of controlling behaviour changed as he realised the impact that this had on his family. He has regular time with their children as agreed to in the subsequent parenting agreement.

# Proposal 4.

## Getting Advice and Support

Better Place Australia agrees that the Australian Government should establish community-based Families Hubs that will provide separating families and their children with a visible entry point for accessing a range of legal and support services. As outlined in the Discussion Paper these Hubs should be designed to:

- Identify the person's safety, support and advice needs and those of their children;
- Assist clients to develop plans to address their safety, support and advice needs and those of their children;
- Connect clients with relevant services, coordinate the client's engagement with multiple services.

### The Role of FRCs

FRCs were a central aspect of the 2006 Family Law Reforms, providing an alternative structure and support service for families. FRCs are currently a source of information and confidential assistance for families at all stages in their lives. They focus on providing FDR to enable separating families achieve workable parenting arrangements outside the Family Court system. They actively promote multiple models for resolving conflict and can be used pre and post legal activities to enable effective dialogue between parties. FRCs also support links between legal assistance and other support services, so that people can seek assistance that addresses their whole issue, not just the legal aspects. FRCs work alongside a network of family law services. Promotion of services drive through community awareness, and digital campaign-to-first enquiry and door-to-family law service through FRCs.

The Discussion Paper notes that FRCs were designed to act as the 'front door' to services for separating families, but not a 'one-stop-shop' and were designed to link clients with services through referrals rather than housing a wide variety of services on-site. The Review of the Family Law System presents a perfect opportunity to consider whether the current operations of FRCs could be expanded to further enhance their central role in the family law system. The Discussion Paper states that previous reports and submissions suggest that 'the ability of FRCs to connect families with the full range of legal and support services they may need is limited by a number of factors.' We agree that under the current model and funding structure, FRCs are not in a position to provide the range of support and services that the Families Hubs will provide.

### Systematic change requires investment

For Better Place Australia an internal efficiency drive has seen client numbers rise by 30%. This was the result of revising practices, better scheduling and a centralised intake. The organisation's FDR services are operating at capacity and cannot take an increase in load if

there is no increase in funding and therefore staffing. We also note that more clients are reporting the presence of family violence.

These cases are more complex by their nature and therefore require more time. Better Place Australia is concerned that the system is viewed as closed for further funding and that the review will merely rearrange the existing funding. It should be noted that the Victorian Government's response to family violence has been systematic in its co-ordination and establishment of centralised services. This was not a rearrangement but a quantum funding increase to create a new system – this required an investment of \$1.2B. We think that this level of resource commitment should be noted if the family law system is to substantially improve.

### **Means testing**

An impediment to the funding of FRCs is the severe means testing and limits on charging applied by the government for all FDR matters. While it is appropriate to have means testing applying to the lower socio-economic categories of clients, we submit that the government should not determine the charge rates for those who do not fit into these categories. This charging is already happening in non-FRC locations with no diminishment of client numbers nor reduction in service provision to those experiencing financial hardship.

### **Consider digital means of assessment and engagement of clients**

Better Place Australia considers that the reform agenda should be encouraging systems efficiencies such as digital entry and requests. This will provide out of hours access and also facilitate referral pathways.

### **Legal assistance services**

Better Place Australia has direct experience of gaps in collaboration with legal assistance services but considers that the main reason for this relates to the funding pressures on Community Legal Centres (CLC) and legal aid commissions.

We have been in partnership with the Women's Legal Service to provide Legally Assisted FDR (LAFDR) however this a service that we pay for. The service is excellent however it has to be limited due to its cost impost. We endeavour to have second party legal support provided by CLCs, however they do not generally have capacity to be able to respond to our request. We also note that the standard of the Women's Legal Service is consistent and of high quality and we think provides better client outcomes.

This issue will therefore also exist in relation to newly established Families Hubs and is not particular to FRCs. In order to provide LAFDR, funding will need to be allocated directly to Families Hubs in order to source legal assistance where required. Better Place Australia is proposing a brokerage model for FRC's for the sourcing of LAFDR services. This would enable a rationing out of the services, provide an inducement for CLCs to participate and ensure an effective use of funding.

### **Case management and Families Hubs**

This is an essential element of the proposed Families Hubs as it ensures that clients are closely supported when using various support services and avoids anyone 'falling through the cracks'. We are currently not funded to undertake case management, in order to support our most vulnerable clients we provide a reduced service; however, it is very limited.

With no indexing of funding and increases in rent, utilities and staff costs, the sector has been squeezed. Additional funding will be required to fund the expansion in the breadth of services into Families Hubs locations. FRCs can fulfil part of this Hub expectation but with their current funding they cannot fully meet the service expectations. Case management resourcing will be an issue, property mediation inclusion will substantially increase workloads. Discussion is required about outreach by CLCs into FRCs on specified days. This will enhance the wheel and spokes approach required.

Better Place Australia runs two of the fifteen Family Relationship Centres in Victoria. It also runs another 23 locations where it has offices or outreach services. Access will be a key issue and the Hubs should not be too narrowly defined by the current footprint of FRCs.

### **Demographic changes and Families Hubs**

FRC locations were set over ten years ago. Since then there has been significant population changes in terms of growth and ageing. In consideration of Families Hubs a demographic review is required to identify hub locations. The location of FRCs is out of date - for example the Wyndham region to the west of Melbourne is one of the two largest growth corridors in Victoria, yet it has no FRC.

In regard to demographic changes the nature of Families Hubs should be more reflective of demographic changes by age cohorts. Better Place Australia is very concerned that families and their relationship and legal matters are too narrowly focussed on the 25 to 49-year-old age bracket. There is an evident need to respond to the needs of older people at risk of elder abuse. Through the current pilots that Better Place Australia is undertaking with its Respecting Elders service, the community demand is far exceeding our ability to respond. Locations such as Chadstone have fewer young families but more older people in surrounding suburbs. We found that our estimated case load for twelve months was filled up in four months.

## **Case Study 4.1 / Case complexity and additional work**

### Clients

David, 49

Children, 14, 10 & 6

Stella, 40

### **Scenario**

Mum believed that the interim IVO October 2017 and final IVO November 2017 prevented any contact with Dad whose home was very close to her own. The final version of the IVO did permit FDR after Dad had his initial intake with Better Place Australia in December.

## **Process**

*From intake onwards*

Better Place Australia has been involved over several years with this family. There have been several separate room mediations which initially resulted in supervised time with Dad. At the time LAFDR would have been appropriate however the local CLC was not able to accommodate this request and no local family lawyer was prepared to offer a pro bono service.

Better Place Australia supported both parties with a joint mediation session. Separate arrival and departure times were given.

The IVO applicant was provided with additional support and a safety plan arranged with check-ins.

## **Risk factors**

Family Violence, IVO

## **Case factors**

Dad has used Family and Relationship Services (FARS) on and off for support from October 2017 onwards and received assistance in how to cope and more appropriately communicate in joint sessions. He struggled with Mum re-partnering, with an LGBTI aspect to the family and with separation. He had attempted suicide several months earlier.

Dad has been referred to financial counselling with pressing financial concerns.

## **Outcome**

This joint session enabled the clearing up of misunderstandings and miscommunications that had previously occurred. The parents now work together, and Dad helped Mum to move houses, sharing information. Moving gradually to unsupervised time with Dad, increased communication by SMS on agreed topics was one outcome, with Father's Day and children's sports attendance agreed to.

As the above case demonstrates the need for more mediators and legal representatives is required to respond to the best interests. The model of one FDR Practitioner and two clients works well in, we suggest, a small majority of cases. However, too many couples under the current system get exemptions from FDR and too many require more assistance than is possible with one FDR Practitioner alone. The latter unfortunately leads to section 60I certificates being granted when, with more resources, the matter may have been fully settled in FDR. This ultimately results in unnecessary time and expense, for both the parties and the court.

If our FRCs were able to afford to choose the best process from the above list for their version of FDR for a particular couple, a much larger proportion of clients could be satisfactorily managed through the FDR process. Unfortunately, with the current system of 'bucket funding' from the government to each FRC, and bearing in mind the current demand for services, FRCs are obliged to make the hard decision that most of the FDR cases which they handle will be through a one practitioner/two client process.

## Case Study 4.2 / A hub of services accessed over time

### Clients

Tonya, 36	Belle 6	Sandra, 40
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### Scenario

(Same sex) Parenting and property FDR. Sandra and Tonya have been together 7.5 years. Belle is Sandra's biological child, conceived through IVF prior to the relationship.

Sandra works full time as a lawyer, while Tonya put her catering business on hold to be Elly's primary carer from the time she was 1.5 years old.

When Belle started school aged 6, Tonya has been working to get her business off the ground again, combined with school drop offs and pickups. They all live in a 2-bedroom house Sandra bought aged 30 when she inherited some family money.

Sandra initiated FDR. Sandra feels the relationship is over and is angry at Tonya's 'claims' on her daughter and her house. Sandra feels Tonya has contributed very little to their material benefit as a couple and she is sick of being 'the functioning one who provides for everything'. Sandra is also angry at having to come to FDR and talk about their relationship. Tonya is very distressed. She doesn't want the relationship to be over and feels very hurt at how cold Sandra has become 'it's all about money'. Tonya cries whenever she talks about not living with Belle.

### Process

FDR, Child Informed Mediation, Financial Counselling, Counselling at Queerspace  
No Risk factors

### Outcome

**1st FDR:** Very polarised discussion. Sandra's focus on the burden she had carried to support the family, and her resentment. Tonya's attempts to describe her feelings for both Belle and Sandra and her sadness. Sandra repeatedly referred to Belle as 'my daughter'. The FDRP frequently reframed as both Sandra and Tonya caring for and loving Belle.

FDRP brought attention back to Belle and how she was doing. Did they think Belle was aware of what was going on?

Both strongly felt she was, and Sarah stated that Belle had said she 'wanted to come and talk to the lady you're seeing'. Child Informed Mediation (CIM) was discussed and arranged.

**CIM:** Belle was a very confident and bright 6-year-old. Belle asked the SCASP worker 'to tell both my mummies they are being very silly'. Belle drew numerous pictures of herself with Sandra and Tonya surrounded by hearts and very thick red lines encircling them together. Belle was proud that she was the only girl in her class who had 2 mums and that her best friend Danielle thought she was lucky.



**Feedback:** Shift in session to purely being about Belle. Both Sandra and Tonya felt very proud of Belle and her outgoing positive nature. Both moved by her drawings and laughed at her comment. In talking about her, some natural acknowledgement came into the picture of what they had both had done over the last 7.5 years to care for Belle.

Conversation shifted to: 'If we are going to separate, what's the best way we can do it for Belle.' Both referred to same sex appropriate legal advice.

Tonya referred to Queerspace Drummond St for counselling. Sandra considering whether she wanted to also have some counselling.

**Financial Counselling (Internal):** In discussion with Tonya, she was also referred to financial counselling. Tonya felt keenly that part of the cause for stress in their relationship was that she hadn't been earning any money, and she hadn't easily been able to get her catering business going well again since Belle had started school. Sandra was still paying off Tonya's original loan to buy the van and the equipment for her catering business. Tonya wanted to explore how she could manage that debt herself.

Both parties moved from polarised and fixed positions to more empowered ones.

Instead of just wanting to get through the separation, they were now standing back and considering how they could do it as well as possible and get the support they needed. Belle's happiness had become the biggest consideration for them both, as well as looking after themselves.

Tonya felt more empowered about managing her own finances and not depending on Sandra to support the family, which meant she also made all the decisions.

There was also now an 'if' around the separation, which both were willing to explore.

The above case study illustrates a hub approach that is already in place in practice. Although the capacity is in place within Better Place Australia, the funding is not sufficient to sustain this as services are not funded at all locations and the case management is effectively an unfunded service.

### **Family Advocacy and Support Services (FASS)**

Regardless of whether FASS is expanded, it is critical that case management services start at the 'front door', the first point of entry for a client, wherever that is (it may be a FASS, a court, or elsewhere in the system). In addition, case management services need to be expanded and better resourced so that people with complex needs can be supported over time.

# Proposal 5.

## Dispute Resolution

Better Place Australia concurs that the Family Law Act 1975 (Cth) should be amended/respond:

- To require parties to attempt Family Dispute Resolution (FDR) prior to lodging a court application for property and financial matters (there should be a limited range of exceptions)
- Such that a court must not hear an application for orders in relation to property and financial matters unless the parties have lodged a genuine steps statement at the time of filing the application. A certificate from the FDR service will be required
- Full disclosure will be required of earnings, assets, income, superannuation and liabilities. Non-disclosure to have civil or criminal proceedings.

Better Place Australia supports development work on:

- Examining the feasibility of means-tested fee for service and cost recovery models to be provided by community organisations e.g. FRCs
- Developing further property FDR models with support of financial counsellors and CLCs
- Develop legally assisted dispute resolution (LAFDR) practice guidelines including property, CALD, ATSI, LGBTI, referral pathways and information sharing.

In addition, Better Place Australia considers:

- Developing a digital capacity to enable clients to assemble their own digital financial file prior to attending their intake session will yield significant efficiencies and assist with workloads
- In regard to proposal 5.2, that the focus should include debt assessment not just assets. Financial Counsellors have a vital role in debt responses
- In regard to proposal 5.3, means testing will assist however the majority of Better Place Australia clients are likely to fall under the threshold.

## Fees

There is an inconsistency in the FRC fee schedule and the rest of FDR location fees. This needs to be adjusted. This will be a much more relevant question with an influx of financial cases in which money will, by definition, be available to pay reasonable costs at least upon the sale of jointly owned assets, if not before. The FRCs should be free to charge what they wish and reflective of their financial situation.

Deregulation here would open possibilities of the FRCs making a small profit from those who can afford to pay, to thereby support them delivering more services to a larger number of clients.

Clearly, over time, the number of property and financial cases issuing in the courts should significantly reduce because of the mandating of FDR. Accordingly, funding could be redirected over time from the courts to FDR.

The funding situation for FRCs and FDR in general is a serious matter that needs real attention. The cost of FDR is significantly lower than comparable costs to clients of going through the legal system. Further, the stress, anxiety, delays and potential harm to children involved are also much less.

## Financial matters

FRCs respond to all members of a family. Better Place Australia has seen many cases where financial manipulation is taking place. In the court context a perpetrator may be able to control the process to suit their purposes through subpoenas, delaying payments, additional intrusive psychological evaluations and other means. FRCs are able to integrate victim risk assessments as part of the intake and monitoring of cases. This will enable the voice of the victim and the child to be clearer and more personal so that responses can be expected in a quicker and more integrated way. This 'lens' on risk is more appropriate, we think, for an FRC context. The proposal is for a property/ financial disclosure requirement at the FDR stage. Identifying the risk of financial abuse at this stage, pre-court, we think would benefit the victim substantially.

In regards to Proposal 5.6 of the Discussion Paper, the financial statement used in the courts should be simplified as it is quite an unhelpful document at this stage. For FDR purposes, the financial statement needs to set out the parties' current income (not expenses), property, liabilities, financial resources (if any) and superannuation. Again, to simplify the financial statement, we would not require it to be sworn but suggest a statement of truth much abbreviated from the statement of truth used in the application for consent orders in the Family Court. We would put statements at the end of the financial statement along the lines of:

*The matters stated in this form are to the best of my knowledge true and correct.*

- *I have no interest in property, superannuation or a financial resource or any liability apart from what is described in this form.*
- *Any estimates of value given in this form are given in good faith and are as accurate as I am able to give at this time.*

Such specific documentary provision would greatly simplify the FDR process. In certain cases, it would also quickly alert the FDR Practitioner as to whether a party was going to be wilfully difficult about disclosing assets which would be highly relevant to discontinuing the process.

In regard to the Proposal 5.7 we advocate that a change of circumstances constitutes a breach of orders.

## Case Study 5.1 / No obligation for financial disclosure

Illustrating how a client at financial risk became lost to the family law system because of no obligation for financial disclosure

### Clients

<b>Kim, 32</b> Speaks only Cantonese and Mandarin	<b>Fung, 47</b> Hostile to Kim's wishes
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### **Scenario**

Kim attended with her religious minister as a support person and we supplied an on-call interpreter. She did not understand the legal system in Australia around property law.

Fung was not seeing the children (10, 6 and 4).

The house and business and credit card were in Fung's name. He had refused to sell the family home. Kim wished to consider both property and a parenting plan. She believed Fung would not disclose any financial details and was concerned how she was to maintain her family. She reported that she had received legal advice to sell the family home but was unclear on processes and systems. She reported herself "stressed" and felt controlled by Fung, her former partner.

### **Process**

*From Intake onwards*

At Intake the interpreter put the Cantonese key words on the white board for Kim as the FDRP outlined the legal system for financial settlement at the end of a relationship in Australia.

The FDRP also used visual diagrams. The intake appointment took 2 hours to assist the client in reaching clarity on legal systems and FDR processes.

### **Risk Factors**

The FDRP had to be repeatedly clear that Better Place Australia and FDRPs are not a determining authority in the outcomes of family law financial matters nor could request details.

The FDRP outlined private sessions and shuttle FDR as options. The client indicated staggered arrival and departure times would be needed when discussed.

### **Case Factors**

Isolation, CALD background

### **Outcome**

Party 2 was not invited to attend as Party 1 decided not to proceed with FDR. Both client and support person would be content to give good feedback, further being delighted with the clarity that they now had.

The FDRP provided a legal service referral however suspects that it was not acted on.

In this case the opportunity for disclosure of property and assets details would have assisted to reduce the power imbalance that was evident and therefore make visible the suspected financial abuse.

### **Gaming the system**

At present, people 'game the system' by applying to multiple FDRPs or FRCs. If party A applies to FRC X, there is nothing to stop the other party choosing to refuse for the sake of delay or just to be difficult (or whatever reason) and retaliating by then applying to FRC Y. This might have a longer waiting period, or be geographically more convenient to one party, or there may be a simple desire to draw out the entire process as long as possible.

The operation of a database of requests for mediation and certificate 60i issued should ensure that clients cannot 'shop around' for FDR agencies as a means of intimidation to the other party.

### **Proposal to draw up property plans by FDRPs**

This proposal would address a major concern of staff that settlements are not legally binding in financial FDR.

Parties often go to lawyers after FDR and the settlement 'falls apart' for a variety of reasons en route to it supposedly getting documented and made legally binding.

The above proposal would reduce the risk of this occurring and would be ideally suited for low value cases without significant legal complexity.

The property plan would be prepared by the FDRP and signed by the two parties to document the agreed settlement. It should cover both property and spousal maintenance issues. The proposed Family Law Commission could be engaged to draft some simple pro forma property plans recommended for use by FDRP.

As the law stands, a court will not make an order for a property settlement without being satisfied as a threshold matter that it is 'just and equitable' to make any order. This gives a legal basis for simple and realistic 'property plans' being, in effect, upheld by the courts, thus discouraging further disputes after property plans are signed in an FDR process.

# Proposal 6.

## Reshaping the Adjudication Landscape

### Improving support

Better Place Australia notes that arbitration by an FRC is not considered in the proposals. We had supported the exploration of this in our prior proposal. It would alleviate demand upon the courts and provide speedier resolution of disputes.

Better Place Australia supports the proposition that family courts should establish a teams-based triage process to ensure that matters are directed to appropriate alternative dispute resolution processes and specialist pathways within the court as needed.

The development of simplified court procedures will enable client support services both into and out from the court to better facilitate their services in a more timely manner.

No one in the Family Services sector would dispute that the Australian Government should further invest in the post-order parenting (POP) support service to assist parties to parenting orders to implement the orders and manage their co-parenting relationship by providing services including:

- education about child development and conflict management;
- dispute resolution;
- decision making in relation to implementation of parenting orders; and
- standard intake process.

### Delays can contribute to risk

Our clients, after their separation, struggle enormously with the cost and waiting times to gain access to these services. In relationships where there has been conflict the wait for access can exacerbate the conflict. Mediation may have framed the agreement but in practical terms delays in access may be over twelve months - this causes frustration. The party wanting the access feels deprived and that the system is working against them. This is very detrimental to a positive attitude and respect between the parties.

### Financial stress points

In regards to simplified court procedure and finances Better Place Australia client data shows that small long-standing debt is a constant source of client stress, suggesting that this will also be the case for Family Court situations. This is resolvable through the utilisation of Financial Counsellors, and Triage pathways from Court to external Financial Counselling services. Financial Counsellors provide financial capability development for court participants, so they can better understand their current and future financial situation. For the parties who have not had financial control in their relationship, the issue of planning and budgeting is a critical factor in how resilient they will be subsequent to a family court experience.

Better Place Australia has had a number of financial counselling clients who have attended financial counselling sessions after their experience. All have commented that they wish that they had this at the start of the court process, so they could have adjusted more quickly and made better decisions to relieve their anxiety about their ‘future survival’.

### A reporting question

Some clients come to Better Place Australia seeking mediation whereas in fact they have not understood the court order. Has there been any analysis of breaches due to misunderstanding of the orders? How much court time is taken up with this?

**Case Study 6.1 / How a multi service coordinated approach can achieve encouraging outcomes in a case that could have proceeded to court. The FDRP was able to direct both parties without giving judgement and establish a secure and positive outcome for both parties and child.**

#### Clients

Tomas, 24	Chiara 22	Jack
Alleged recreational drug use	On medication for PND	Now 14 months, breastfed

#### Scenario

Initially attended our service in July 2017, there was no functional parenting relationship. With a 2-year IVO and several breaches, Dad had been told not to attend the hospital when Mum gave birth. Dad reported alcohol and drug use. Dad was angry, upset, and grieving missing the birth of their child, Chiara. He also had a complex relationship with his own mother. Dad was focused on his rights to be with the Chiara.

#### Process

Both at intake and in the first one on one session with Mum, the risk of family violence was assessed and a safety plan put in place by the practitioner. Support services were provided.

Following the practitioner intakes, the FDRP referred both parents to Supporting Children After Separation (SCASP) at Moorabbin (despite the child being too young to engage). This service provided an individualised educational process to increase child focus prior to FDR.

Case factors: SCASP worked with both parents individually to give information on child developmental stages and support to a Dad who was emotionally struggling.

#### Outcome

A parenting plan was the outcome of the FDR process. Regular checks were made with Mum to check up on her security during the process. After the second mediation an agreement was reached that Dad would spend time with the Baby at the gym while Mum exercised to facilitate

frequent regular time with the child and support Mum's mental and physical health. The public place also alleviated family violence concerns.

Both parents had moved emotionally to a more collaborative place by the time of the mediation after 90 minutes intakes and then further time with SCASP.

Dad is reportedly now working with a psychologist and may still use recreational drugs. Following the mediation Dad requested a Certificate to consider legal action on overnight time but on reflection determined to return to mediation.

Dad reinitiated mediation as he seeks overnight time with the now 14-month-old, though not immediately. Mum considers 24 to 48 months a more reasonable time for overnight time with Dad. They settled on this timing.

Post service both parents report vastly improved communication following the mediation, with Mum reporting "it was a good outcome and there is less stress". She also reported no current family violence concerns and no incidents since FDR. Also, an improvement in her postnatal depression for which she takes medication. They report that a baptism for Chiara was happily discussed without conflict. Maternal and paternal grandparents are reported to be in functional relationships with Child and Mum. Each report that Dad has ceased drinking and smoking.

The FDRP suggested that Dad interact with the Maternal Child Health Nurse to again receive individualised information and support on what arrangements and time scales will be best for Chiara around introducing overnight time.

In proposal 6-12 family court premises are identified as requiring investment to make them better suited to family needs and to allow facilitation of integrated services. Better Place Australia considers that courts could learn from how some mediation centres are laid out to respond to family needs and to ensure security of clients and staff.

Some trialling of a satellite approach could be considered to integrate participants of the Family Court where appropriate into the local FRC. This may work best where a Magistrates Court has facilities that are shared by the Federal Circuit Court. From our experience the court environment is one of maximum stress however it can be where clients may be most amenable to responding to support services offered or mandated services if appropriate.

Better Place Australia has trialled placing staff in the court precinct however a number of factors work against its success:

- To be sustainable a steady stream of clients is required – the different court listing times and days means the referrals are spasmodic and cannot sustain enough referrals
- Space in all courts is limited and no regular rooms are generally available
- The security of staff and IVO applicants is not facilitated by single exit room layout and the absence of security/duress alarms
- Different processes and different data requirements mean that streamlined services are not possible. Instant referrals are not possible



- Consideration was given to mobile intake rooms at a regional court however planning regulations and security concerns worked against it. We think this still may have merit in the short to medium term
- Some courts such as Moorabbin court are geographically well placed to facilitate a pilot however, the three systems and lack of resourcing work against conducting a scoping pilot

# Proposal 7.

## Children in the family law system

The proposal that *'in proceedings and FDR process concerning a child, an affected child must be given an opportunity (so far as practicable) to express their views about arrangements but not required to express views'* is a challenging but vital development. This will require development of tested 'best practice' and an opt in process.

Better Place Australia considers that the broader role of a child's advocate will require guidelines and clear definitions of where and when appropriate. The Court should reflect upon the history of legal adversarial approaches and consider the systematic consequences of this approach. Having a three-way tussle in effect may yield outcomes that are not best for the family.

The creation of a Children and Young People's Advisory Board for the family law system is commendable. The representation on this Board of a 'voice of the family' should be considered.

### Case Study 7.1 / The voice of a child can affect outcomes of a process

#### Clients

Jo, 36 (Party 1)	Claude, 32 (Party 2)	Seb and Audrey 4 & 6
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#### Scenario

Party 1 initiated FDR for parenting matters due to recent IVO which prevented Party 2 from seeing children.

**P1 Intake** - Mum's main issue was Dad's previous denial of both children's autism diagnoses, and lack of support in this area. Mum reported being the only parent who took children to see specialists and followed up with prescribed interventions. Mum reported the IVO was put in place after an argument where Dad prevented her from leaving the house by blocking her path then sitting in the car with her. No other family violence was reported.

**P2 Intake** - Dad reported gaining a realisation that his children's autism was not reflective of him and so started to accept the diagnoses. He then accessed referred services with a child consultant who worked with him to develop a deeper understanding of the child's needs and how the child responds to him and his needs. He had contacted an autism support service to get up to speed with Mum's knowledge of the children's needs.

**Mediation (first session)** - The first session was conducted in shuttle with staggered arrivals. Both parties then agreed to sit in the same room, and both were very emotional at the reunion. Mum proposed that Dad could only have supervised contact with the children until he accepted the diagnosis. Dad had begun to participate in children's treatment.

He attended counselling to examine his response to his child. Dad was then able to explain that he had already commenced all these supports and answered any questions mum had.

**Mediation (second session)** - Parties requested to sit in the same room from the start. Parties made very thorough agreements as neither wanted to do anything to breach the order. They outlined future communication and set a time period for review.

There were no safety concerns during the process, even though there was an IVO in place. Mum reported feeling safe, and no risk of ongoing harm was detected. Mum also reported not wanting to extend the Order further.

### **Outcome**

**Mediation (third session)** - Parties seemed grateful for the time to discuss various issues that arose, as they were prohibited by the Order to speak otherwise, unless about the children. They reviewed the arrangement, and both reported that Dad was attending appointments for the children as per their agreement and this was going well. Parents agreed that no further FDR was required as they had devised a comprehensive parenting plan.

A referral for the older child was made for SCASP after intake with Mum. The counsellor saw the child for approx. 8 sessions, and Dad attended these appointments after agreements had been made to do so in mediation.

**Final Outcome** - A comprehensive parenting plan that was very focussed on the high needs of both children. Appropriate internal and external referrals made. Stronger co-parenting alliance gained by parents.

## **Case Study 7.2 / A child's participation can contribute to positive outcomes in a separation**

### Clients

<b>Gary, 36</b> Father	<b>Stacey, 32</b> Mother	<b>Jolie, 11</b>
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### **Scenario**

The parents had been separated for 3 years with 2 of those years under the same roof. Dad had repartnered and was looking forward to getting married later in the year.

With the formal separation in progress they thought they should formalise a parenting agreement. They were both frequently short with each other. In the intake process the FDRP suggested that bringing the voice of their child into the agreement may be beneficial.

Both parents were then keen for their child to have a voice in the process and had indicated that they had become emotionally distant from Jolie and were not fully aware of how she was coping.

### **Process**

Assessments of suitability and risk were completed, and the first joint mediation was held. It was determined that a Child Informed Mediation process would be beneficial.

Jolie attended the session reluctantly and was initially quite angry at having to be there.

As the session progressed Jolie broke down and became very emotional. It became evident that she had not had any opportunity to discuss her parent's separation or the time of conflict that led up to it.

Jolie identified the messages she wanted her parents to hear:

- She wanted to be treated the same way she was by her parents before they separated
- Jolie had felt distant from her parents long before they had separated
- She wanted her mum to be happy and spend time with her friends
- She wanted to see her parents speaking with each other normally again

### Outcome

Mum was hugely impacted by the messages brought back from Jolie. Both parents realised they had been caught up in their own conflict and not focussing on Jolie.

Both parents were able to work out a schedule that suited Jolie and was flexible for Jolie's life.

They also tried to ensure when they crossed paths they communicated in a positive manner.

## Case Study 7.3 / How a child's participation can be negative for the child

### Clients

<b>Stephen, 38</b> Father – repartnered	<b>Terri, 37</b> Mother	<b>Amber, 13</b> 2 Stepbrothers
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### Scenario

Both parents indicated they would like their child to have a voice in their separation process. Both demonstrated a lot of love for the child and Stephen had identified some anger issues in the past. He also spoke of a previous period of suicidal ideation, but it was from over 10 years ago and had not expressed any issues since this time.

Stephen had repartnered and Amber was in the same private school as her step brothers.

### Process

Assessments of suitability and risk were completed, and the first joint mediation was held. Both parents indicated they wanted to hear the voice of the child through a Child Inclusive Mediation process and that they would work with the feedback provided.

Assessments for CIM completed with both parents and session was held with Amber. There was no indication through any part of the process that either parents were not focused on the child's best interest.

Amber indicated that she was very happy with the status quo of the arrangements and she didn't want more time with Dad. She asked that the message be brought back that she didn't want anything to change at this time and that she was happy with the amount of time she spent with both parents.

This feedback was provided to both parents.

**Outcome**

Stephen became angry that Amber did not want more time with him. He indicated that if she wouldn't spend more time with him, he would remove her from the private school. The mediator and counsellor spent time deescalating the father's reaction.

Stephen did not remove Amber from the school, but he chose to spend less time with her which had an impact on their relationship. They are considering counselling to rebuild connections.

# Proposal 8.

## Reducing Harm

Better Place Australia considers that the definition of family violence should be amended to clarify some terms used in the list of examples of family violence and to include other behaviours (in addition to misuse of systems and processes) including emotional and psychological abuse, and when technology facilitated encompasses direct or indirect exposure to family violence and financial loss. While we support clearer definitions, we also note that the current definition already covers a range of behaviours; and in addition, the law is already able to appropriately deal with many behaviours which are reprehensible without calling all of them 'violence.' Any changes to the definition need to be carefully constructed.

The discussion paper refers to dismissal of proceedings that are frivolous, vexatious, an abuse of process or have no reasonable prospect of success. Better Place Australia has observed situations where misuse or abuse of the family law system is a significant issue.

### Case Study 8.1 / Illustrating an abuse of process e.g. multiple requests to mediation (DP Proposal 8.4)

#### Clients

<b>Clive, 59</b> Grandfather to child	<b>Skye, 29</b> Mother to child	<b>Nancy, 5</b> Child
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#### Scenario

Skye contacted the service to request Family Dispute Resolution with her grandfather, Clive, as he has care and guardianship of her child Nancy.

Skye had a history of mental health issues and had recently been released from a correctional facility. Skye was of the understanding she was entitled to equal time with her child, but her father Clive was refusing.

#### Process

Assessments of suitability and risk were completed and due to the nature of the situation Child Protection was contacted to confirm if it was suitable for the process to continue. Child Protection stated that they had no current involvement, but they were aware of mental health concerns for Skye.

Skye produced an IVO that indicated the mediation was allowed in current circumstances.

Clive was sent an invitation to participate in FDR as per the process.

He contacted the organisation and informed us that he had a long-term Intervention Order on the other party that did not allow for contact and he was harassed each year by the other party to participate in the FDR process.

Skye was advised that the matter was not suitable for mediation at this time. She disputed this outcome and demanded that we provide a service to her. Skye was advised to seek further legal advice.

### Outcome

Clive identified that despite having guardianship of the child he fully expected that Skye would continue to make contact via various agencies and demand FDR services. Due to contradicting Intervention Orders any agency contacted would be unaware of previous attempts and that certificates had been issued until they contacted Clive.

A database of Requests for Mediation and Certificate Section 60(1) issued may have alleviated the harassment for the Grandfather.

## Case Study 8.2 / On face value a case not with merit and risk however a non-court process reduced harm and achieved good outcomes

### Clients

<b>Paul, 52</b> Separated, has not seen his child in two years	<b>Cara, 51</b> Separated, concerned with Paul's history of violence	<b>Tyrone, 10</b> wants to have a relationship with Paul
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### Scenario

Paul sought help from Better Place Australia to gain access to his son Tyrone, whom he had not seen in over two years. Cara wanted Paul to have a relationship with Tyrone but was fearful that it would end in violence. Paul has had a history of violence and aggressive behaviour. This resulted in their separation and an Intervention Order taken out against him.

This was affecting Tyrone, who adored Paul and could not understand the complexities involved. Tyrone was seeing a child counsellor for this difficult time with an external agency.

Paul agreed to go to mediation to find a resolution as part of the conditions Cara placed on him to gain access to Tyrone. Both had lawyers involved to assist with the process.

### Process

- Risk and suitability assessments were made to assess the risk to Tyrone and Cara for any concerns from child protection or with Cara's safety due to Paul's history of violence.
- The following factors were considered: history of family violence, financial difficulty, mental health symptoms and communication barriers of both parties.
- Cara received individual coaching sessions to address her concerns as to how to best present her position. Paul's violent history meant she was only open to supervised access.

- Both Tyrone and Paul had been receiving external support. Tyrone was encouraged to continue child counselling to ensure he continued to receive support. Paul was encouraged to continue participating in his men's behavioural change program.
- Cara was also referred to Better Place Australia financial counselling to address her financial difficulties. Counselling helped equip her with the skills to manage her debt which had been giving her significant stress and anxiety.
- Paul and Cara were referred to Better Place Australia Family and Relationships Services (FARS) for individual support. She was able to manage her anxieties and communicate her concerns. Paul received additional support through a referral to an internal support psychological service for men with anger issues.
- Better Place Australia facilitated sessions between both Cara and Tyrone where both were able to have their support counsellors available to provide them the emotional support they needed.
- Paul was referred to Parenting After Separation groups at Better Place Australia to learn how to manage his new parenting role. He gave permission for Cara to be informed of his attendance.

### **Outcome**

They developed a Parenting Plan without the need to proceed further in the legal process. Cara feels safe within the entire process and is empowered to have her concerns heard and addressed.

Cara can improve her financial literacy and take positive steps to improve her financial circumstances.

Paul can see Tyrone and pursue a parental role in his child's life.

Paul attends the Parenting After Separation group which allows him to learn ways he can further enrich his role as a parent to Tyrone.

### **Protected Confidences**

Better Place Australia is of the general view that The Family Law Act 1975 (Cth) should provide that courts have the power to exclude evidence of 'protected confidences': that is, communications made by a person in confidence to another person acting in a professional capacity who has an express or implied duty of confidence.

We have found that subpoenas can be weaponised by legal representatives when parties are in the family court process. They can be used by well-resourced parties to intimidate and control the other party through frequency and the invasive nature of the requests. We consider that a working group should be convened to draft guidelines to consider when a subpoena of sensitive records is in contemplation. A subpoena request requires a senior worker response and may require the representation of a barrister, this is costly and time consuming for not for profit organisations.

For Better Place Australia, subpoenas we commonly receive may be from independent child lawyers or family lawyers involved in a parenting arrangement matter. The information is not usually released. In FDR practice, if a practitioner becomes aware or there is a report of abuse to a child there is an immediate report to Child Protection. Some of these requests seem to be



fishing expeditions. Some requests relate to Freedom of Information where a lawyer's client has been informed that through FOI that they can obtain other party's information.

Better Place Australia also notes that due to the multi-jurisdictional nature of some family's situation that there is a conflict in process and intersections between legal systems. Be it family, crime or even civil, subpoenas can be requested that seem appropriate in one legal area however in another area they are inappropriate. For the victim it is all one system and one experience. We think this overlap and issuing of requests for information requires better mapping and consideration of protection for the victim and/or child.

Discussion Paper's Proposal 8.7's working group should address this situation however we think the Magistrates Court should also be represented. We also recommend that a client journey approach should be taken to map the journey of a victim and child to illustrate the overlapping of systems within their experience and to reflect upon how harm could be reduced.

# Proposal 9.

## Additional Legislative Issues

Better Place Australia wholeheartedly endorses the proposal that the Australian Government should ensure that people who require decision making support in family law matters, and their supporters, are provided with information and guidance to enable them to understand their functions and duties.

Appropriately the Discussion Paper recommends that the Australian Government should ensure that the family law system has specialist professionals and services to support people with a disability to engage with the family law system.

From Better Place Australia's experience, we note that there appears to be a substantially higher separation rate amongst those families where a member has a disability.

The Court needs to be aware of the ongoing needs and requirements of separating parents of a child with disability.

### Case Study 9.1 / Value of family law professionals where a child with a disability is a family member

#### Clients

Marion, 50 Mum	Jim, 51 Dad	Children Olly, 7 & Twins, 14
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#### Scenario

Parents married for 20 years. Had teenage twins and a younger child on autism spectrum. Parents separated when Olly was 5. Mum feeling burdened with the care of Olly. Twins spend every other weekend with Dad, and every other Tuesday-Thursday overnight. Dad has every other weekend with Olly. When Dad does have Olly overnights, or for a week in the school holidays, Mum is concerned that he doesn't give Olly his medication and doesn't agree with the treatment plan or follow it.

Olly is struggling at school and gets aggressive with other children when he is stressed. Dad at intake says there is no problem with Olly, he is not on the spectrum, he just needs a firm hand.

Dad says that Olly never plays up with him. Further, Dad says Mum is very anxious and treats Olly like a baby, which means he gets worked up when things don't go his way. Dad initially saw the paediatrician with Mum but has stopped going to appointments as he feels they are pointless.

### **Process**

Concerns: Olly's wellbeing, struggling at school. Different routines with Mum and Dad, different parenting expectations causing stress for Olly.

Family Dispute Resolution: Both parents able to put their point of view clearly, but very little agreement reached after initial mediation.

Dad adamant that he does not want Olly to take medication, that its 'ridiculous'. Dad has removed himself from being involved with the school and is critical of their support of the diagnosis.

Child centred approach from the FDRP allowed both parents to talk about their wish for Olly to be happy and have friends at school, but no agreement reached regarding treatment plan.

Agreement: Dad and Mum agreed to see family GP together and have a talk about how Olly was going.

Mum referred to autism support group. Mum referred to Counselling Program after consultation with a child counsellor.

### **Outcome**

Mum had several counselling sessions to support her parenting of Olly and to empower her to make the best decisions she could regarding him. Mum reported this as very beneficial.

The practitioner observed in Mediation that Dad could hear Mum's concerns in a more neutral way rather than as a personal attack on him. He had become more amenable and booked in for a child consultant to discuss the developmental needs of children.

Start to improved parental dialogue and both to be contacted for a later date session on how the family is faring.

# Proposal 10.

## A Skilled and Supported Workforce

In developing the workforce capability plan, the capacity for FDRPs to conduct family dispute resolution in property and financial matters should be considered. This should include consideration of existing training and accreditation requirements.

In particular Better Place Australia is mindful of the skill requirement that FDRPS will require should the Act change requiring financial and property mediation to be mandatory within the FDR process. Although property mediation is a component of accreditation, the voluntary nature of this component means that it is not frequently utilised by clients.

In regards to Proposal 10.5, Better Place Australia has offered property mediation training to the sector with very little uptake of this type of training. One reason for this may be that there is the perception that FDR is more of a social science and that numeracy (for property mediation) is a secondary importance. A sector change is likely to be required to move to a core competency level amongst all practitioners. It would not be as efficient to have specialist property mediators given that parenting arrangements are also likely to be required within the same case. Better Place Australia is well placed to advise as it has been training in this area for many years. We observe that the sector will need training not just in financial holdings, but in also in debt responses. A secondary support of financial counsellors will be required to respond to referrals where debt management is an issue for the parties involved. From our experience generally, debts are usually less than \$20K, however they have a significant detrimental effect upon family wellbeing and functioning.

Given the skill gap and the capacity issue, should property mediation becoming mandatory Better Place Australia envisages that there will be capability and capacity issues in the future. We propose that the development of an online property mediation tool will offset some of the increase in the volume of work. This tool would include a simple first step and be recommended to appropriate clients to create efficiencies in caseload handling. This will aid in reducing practitioner preparation time and also alert quickly where the services of a financial counsellor is required. A documented declaration of financial position by the clients will also aid the FDRP in their case management preparation to alert to situations where family violence is being perpetrated through financial manipulation and control.

# Proposal 11.

## Information Sharing

The ALRC paper suggests holistic reforms to information sharing practices involving families and children who access the family law system who sometimes come into contact with multiple and complex services systems all at once or over time. The paper calls for timely information exchange within a strengthened (national) legal framework and strengthened personal and institutional relationships. Better Place Australia supports the principle of information sharing with the proviso that where confidentiality is paramount, it is protected; and that information-sharing protocols and actions are supported by comprehensive guidelines and training.

Information sharing in principle will facilitate greater transparency and accountability particularly where family violence is present. This should enable better protection for victims. Families are less likely to drop out of the family law process if they are visible to more than one agency.

Better Place Australia is concerned that this principle may become a key dependency for the other eleven proposals to be developed and enacted. This area is complex and will be difficult to legislate for due to its multi jurisdiction levels. This should not be the cause to halt what the enactment of the other compelling changes.

### Case Study 11.1 /

How wider information sharing could have resulted in a speedier resolution and a reduction in the resourcing from multiple service providers for this family. Systems don't talk to each other and inadvertently create confusion and consequential tension and aggravation.

#### Clients

<b>Darryl, 28</b> Party 1	<b>Darla 29</b> Party 2	<b>Jake, 5 &amp; Fleur, 6</b>
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#### **Scenario**

Parties were in a de facto relationship for over 4 years. They have two children. In January 2018, Dad was charged with assault with no jail time. Dad described that they had an argument, that Mum was in his face, that he pushed her with his head and Mum then went to the police. The incident resulted in their first IVO (with conditions of no family violence and no drinking).

Parties reconciled and Dad moved back to the home.

On 15 March 2018, an incident led to the final separation. Dad alleged that Mum made up lies that he had hit her. Mum described that Dad was drinking and that he was being aggressive. An interim IVO was granted in March 2018 and Dad also signed an Undertaking of Bail. The IVO prohibited “contact or communication by any means”.

### **Process**

The Bail condition allowed for FDR, however, the interim IVO did not include the exceptions for FDR/ Counselling. Dad was asked by the FDRP to seek legal guidance in his intake session. Dad was keen to avoid another breach. The lack of understanding and inconsistency between the Bail conditions and interim IVO concerned him. He was finding that the lack of communication and common communications between agencies was causing frustration and anxiety. He felt that he was explaining and re-explaining. He thought it was all the one system and wondering why it was so difficult. He was keeping a lid on his emotions and did not want this to play out upon others despite what he was feeling.

On 15 June, Dad stated that the court officers had advised him that he was able to communicate with P2 regarding the children, but he was unsure.

Fortunately, Dad was able to seek legal advice, and at the end of June 2018, the final IVO conditions were altered allowing communication between parties and allowing FDR.

### ***From intake onwards***

Mum called Better Place Australia and indicated that she knew Dad had attended and she wished to take part in a mediation process. Better Place Australia did not initiate contact with Mum to avoid breaching an order but arranged an intake appointment for her at her request.

### **Risk factors**

Repeat family violence. Delay for a family in communication and confusion, pushing the clients to direct communication. Stress and delay in conversations on time with Dad.

In the P2 intake the FRDP established that the police had linked Mum with Eastern Domestic Violence Service Inc (EDVOS) the family violence agency. She was feeling supported and secure.

### **Outcome**

#### ***Parenting Plan***

The mediation was conducted in separate room FDR. Clarity on the IVO was obtained. The Parties have described positive changes in their circumstances. Dad described that he had been able to seek help in relation to his drinking and is now back working full-time. Mum also believes Dad has successfully sought help and believes that Dad has been sober since the incident in March 2018. Parties both described an ability to schedule care arrangements for the children. Their agreements were formalised through FDR. Dad was referred to a Men’s Behavioural Change program and a Parenting After Separation program. Mum was provided with additional support through a child counsellor and financial counselling.

All parties required additional support on court document clarity and education on family law processes.

Case study 11.1 shows how Applicants and Respondents need to be supported so that they fully understand the Orders and their legal obligations and how this impacts the conduct of a family law process. The lack of common communications between legal systems causes tension and potential aggravation. This can elevate the risk for both Party 2 and the children.

Lastly some issues have been identified by the Family Relationship sector and will need consideration namely:

- The confidential nature of the mediation process is respected by FDR Practitioners. How will assurances of confidentiality hold up in an information-sharing environment? What safeguards will be put in place?
- Who/what will determine where information is to be held and who should have access to an Information Sharing Framework, and what that specifically entails (e.g. court documents, police records, child protection reports, expert reports and how what is sharable and what should remain contained will be made clear)?
- Implications for FDR (e.g. should intake and assessment information be confidential and non-sharable, or not?)
- More funding is needed to ensure integrity, security and functional effectiveness of information sharing processes
- The process of reaching effective sharing agreements is complex and needs to be developed in careful consultation with all stakeholders. Consideration also needs to be given to whether clients can give assent to information being shared, or whether a child's advocate/separate legal representative could consent or object to information-sharing.

# Proposal 12.

## System Oversight and Reform Evaluation

There is great virtue in the establishment of a new independent statutory body, the Family Law Commission, to oversee the family law system. The Family Law Commission should have responsibility for accreditation and oversight of professionals working across the system.

Better Place Australia understands that a Family Law Commission would have the desire to have the responsibility for raising public awareness about the family law system, the roles and responsibilities of professionals and services within the system, and will have responsibility for providing information and education to family law professionals and service providers. We have significant concerns that a Commission is ill equipped to be authorising and conducting public awareness campaigns. This function we consider does not align itself well to a body whose primary role and focus is on regulation, legislative reform and professional accreditation. Better Place Australia considers that this role would be much better placed to be in a Foundation structure. Examples of this are VicHealth and the Victorian Responsible Gambling Foundation.

Better Place Australia has concerns that the Commission has the risk of becoming a review body that does not successfully deliver meaningful reforms. Commissions such as APRA and The Aged Care Commission are not compelling examples of successful commissions delivering reforms. We would suggest that the Commission would need to be both reviewing and delivering reforms at the same time.

Lastly Better Place Australia has reflected upon its past submission and has a checklist of principles for reform. We have checked these again and consider that if they are met then the reform will be successful.

### Our recommended reform principles are:

1. Acknowledging the complex nature of families and appropriately shape a services system that is holistic, integrated, flexible and responsive
2. Acknowledging that family law matters can no longer be resolved in isolation from other key services to address issues around substance abuse; mental health; family violence; financial insecurity
3. Delivering decisions and arrangements that are in the best interest of the wellbeing and safety of children, including by ensuring and maintaining their participation in decision-making processes as defined by common guidelines and process where without risk



4. Integrating and sharing information between services (without compromising principles of confidentiality and privacy) in a way that ensures families are clearly guided through a streamlined system in which conflict is minimised and wellbeing is maximised;
5. Establishing a foundation to focus on prevention and early intervention in the delivery of services and education of families
6. Better recognising and responding to the effects of family violence
7. Better accommodation of the diversity and complexity of family and parenting relationships
8. Ensuring family law services are appropriately and adequately funded to meet the quantum of change required
9. Ensuring and maintaining the wellbeing and competency of all practitioners working in the Family Law System.
10. Obtaining feedback from the users of the system to shape a better experience for them
11. Establishing a commission to oversee the system whilst implementing changes and monitoring progress.

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