



SUBMISSION

TO | The Australian Law Reform Commission

TOPIC | **Review of the Family Law System**
Discussion Paper 86
By email: familylaw@alrc.gov.au

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Executive Summary

Every day, Australians turn to our Family Law Courts for assistance at what is often the most difficult time of their lives. The Family Law system requires urgent attention, but without significantly improved funding, those who work in the system know that no real improvement can be achieved.

Access to a fair and consistent justice system is a basic hallmark of Australian society, nobody should be excluded from our justice system because of their low income.

The Noarlunga Family Relationship Centre (NFRC) which is a service provided by Uniting Communities, estimate that 80% of clients find the Family Law system confusing and hard to navigate. These people do not know what they need and consequently how to access the information and support that they require.

Fiscal efficiency vs Service Effectiveness

As with many public policy debates, this Review needs to balance the competing demands of:

- Reach: are all people who need assistance able to receive the access they need?
- Effectiveness: are good outcomes achieved for the people impacted?
- Efficiency: are the systems and services cost effective for tax payers?

Our observation is that the Review has given too much attention to measures to achieve fiscal efficiency and risks extracting financial savings that result in further burden being placed in systems, including Courts that are already stretched, thus reducing the capacity to effectively resolve difficult issues. This is particularly so for those in vulnerable and low income bracket who cannot afford the high costs of utilising our legal system. We are concerned that short term cost efficiencies may well come at a longer term cost from poorer health and mental health outcomes and children who are limited in their ability to thrive and contribute to society in the future, instead needing health, support and potentially corrections and other services in the future.

Resourcing

A dominant concern about the discussion paper is the lack of any recommendation to increase resourcing for the parts of the system that are already stretched to the limit. The proposal to merge the Family and Federal Circuit Courts into one court with two separate divisions is of deep concern. While that may offer short-term fiscal efficiencies, we believe there are significant impacts from lack of access to justice. In the medium to longer term, increased costs to individuals, families and society will play out via the associated impact and increases on mental health and criminal justice services.

Adequate funding for Legal Aid and Community Legal services remains critical for decent justice outcomes, however the trend over recent years has been to steadily cut funding to legal aid and community legal services. Unresolved tensions between Commonwealth, State and Territory governments about who is responsible for funding has also played a debilitating role in addressing need. Effective reform of Family Law arrangements cannot

occur with a persistent diminution of funding for legal and justice services that support lower income, vulnerable and disadvantaged people.

Support for Children

The aspects of the paper that give focus to increasing support services for children in the Family Law system are strongly supported, recognising the impacts of their emotional and psychological wellbeing when exposed to prolonged periods of high conflict during parental dispute. The impact of familial conflict continues long after separation and continues to impact on the children's safety, development of self and their relationships with both parents.

Family Hubs

It is crucial for fairness and cost reasons that the systems dealing with Family Law disputes are able to do so effectively and promptly. Mediation for example is very effective for many people and is very cost effective for the people involved and for their communities.

Uniting Communities is supportive of the rationale for Family Hubs, that can offer mediation as part of their service offering. We suggest that many of the functions proposed for Family Hubs would be better integrated into existing services, particularly Family Resource Centres for those communities where the Centres are established, trusted and integrated into the local communities.

About

Established in 1901, Uniting Communities' mission is to create a compassionate, respectful and just community in which all people participate and flourish.

Uniting Communities works with South Australians across metropolitan and regional South Australia through more than 100 community service programs. We are made up of a team of more than 1,500 staff and volunteers who support and engage with more than 20,000 South Australians each year.

Uniting Communities offers programs for young people, families and children and older people, around mental health and wellbeing issues, disability support, respite for Carers, housing and crises, alcohol and other drugs intervention, counselling and rehabilitation, medical issues, and financial and legal services issues.

Our input is driven by specific comments from a number of people who have received services from us and from staff who provide services. We also add the distilled experiences of thousands of individuals, families and communities with whom we work through services, including financial counselling, aged care services, disability services, homelessness support services, Lifeline and many more.

Our specialist mental health services include:

Family Relationship Centre

The Family Relationship Centre provides family dispute resolution (also known as mediation) for families. Mediation can involve children, if appropriate, to provide opportunities for their voices to be included where possible. Mediation for other affected family members is also offered, such as mediation between parents and grandparents about care arrangements for grandchildren.

The Family Relationship Centre can also assist with property dispute resolution. The mediation service helps people to identify and resolve conflict and disputes at an early stage, with a view to avoiding the expense and stress of drawn-out legal proceedings. The service offers face-to-face mediation; 'shuttle' mediation, where parties identify safety concerns; co-mediation involving professionals selected for areas of expertise, for example, lawyers and teleconference mediation, especially for rural and remote clients.

We provide support for separating families in the southern metropolitan area of Adelaide with Family Relationship Centres at Christies Beach, Marion and Aldinga and outreach sites at Victor Harbour and Kangaroo Island.

The service offers a strengthening families approach that includes:

- Family Law Counselling
- Child Focused Information Sessions
- Child Inclusive Practice
- Domestic violence support and safety planning
- Family Dispute Resolution for Children's Matters and Property
- Conflict Management Coaching
- Family Advisor support, referral and case work

Participation is voluntary at every stage of the process and assistance is free of charge to all parties

Our specialist community legal services include:

Law Centre (Community Legal Service)

Qualified legal practitioners provide free legal information, advice, representation, referral and assistance to the community.

Our service supports vulnerable and disadvantaged people who are on low incomes and experiencing disadvantage, and meet the National Partnership Agreement eligibility and priority guidelines.

- family law
- minor criminal matters
- traffic offences
- consumer complaints
- tenancy
- debt

- employment
- Mediation is offered for disputes
 - between neighbours, or members of a not-for-profit club and community association
 - perceived conflict within families or households over care or financial matters
 - especially concerning the care and support of a person with significant disabilities or with deteriorating health in their advancing years
 - workplace disputes between individual employees and/or employers in small business.

Our services are provided from offices at Medindie Gardens and in the Adelaide CBD as well as outreaches at the University of Adelaide and Mt Barker. We can assist people in the city, as well as the inner southern, inner northern, eastern and Adelaide Hills and Mt Barker suburbs.

Social Security Law

Operating across South Australia, our service can provide advice and assistance when dealing with Centrelink and in appeals to the Administrative Appeal Tribunal.

The service is available to people on a government benefit, living in South Australia, and aged 15 and over.

It also links clients in with our Financial Counsellors, Consumer Credit Law team and other Uniting Communities services.

The Centre is funded by the Commonwealth and State Attorney's-General Departments.

Communication Partner Service

Our trained volunteer Communication Partners have experience in law, disability, community services and/or speech therapy. They are able to support vulnerable victims, witnesses, suspects and defendants to who have significant difficulties with (verbal) communication or coherently communicate in police interviews and court proceedings.

The services roles include:

- identify clients' communication needs
- attend police stations and courts to provide communication assistance
- recommend reasonable adjustments to the criminal justice process to facilitate effective communication.

This service is a core initiative of South Australia's Disability Justice Plan. This program is provided with funding support from South Australia's Attorney-General's Department, and run by the Communication Partner Service team at Uniting Communities.

Communication Partners are currently available in Adelaide, Mount Gambier, Murray Bridge, Victor Harbor, Port Pirie, Port Augusta and Whyalla. The service is being rolled out in stages, and will eventually operate state-wide.

The following comments are based on the provision of these services and from our extended history in providing services to vulnerable and disadvantaged people.

Responding to Discussion Paper 86

The Discussion Paper proposes important objectives ensuring the safety and wellbeing of children, collaborative and relevant service delivery, and equity for families and valuing children.

General Comments

Family Law issues impact on a significant number of people in our communities and the disputes involved rarely have a clear cut solution and inevitably involve pain and distress for the people directly affected as well as for broader family group members, friends and work colleagues of those involved in the dispute.

Legal matters can be stressful, debilitating and crushing at the best of times. Family Law carries an extra dimension of intensity, especially when children are involved. This is further exacerbated by corrosive delays in having matters resolved by the courts.

Fair and prompt resolution of Family Law matters can assist with healing and enable the parties to move on with their lives. However, where disputes become drawn out and some parties are better assisted / supported than others, then disputes can gnaw away at some of the people impacted for years and can lead to or exacerbate physical and mental health problems. Ineffectively resolved Family Law disputes can significantly reduce the quality of life for some of the people involved for years, and research shows that high conflict has a significant impact on children's mental health and wellbeing through being caught in the middle of adult trauma.

It is crucial for fairness and cost reasons that the systems dealing with Family Law disputes are able to do so effectively and promptly. Mediation for example is very effective for many people and is very cost effective for the people involved and for their communities.

This Review is welcome because it is able to consider challenges of current systems and propose improvements. The recommendations will also require adequate funding considerations to enhance the quality of the proposed improvements.

As with most public policy debates, this review needs to balance the competing demands of:

- Reach: are all people who need assistance able to receive the access they need?
- Effectiveness: are good outcomes achieved for the people impacted?
- Efficiency: are the systems and services cost effective for tax payers?

Our observation is that the Review has given too much attention to measures to achieve fiscal efficiency and risks extracting financial savings that result in further burden being placed in systems, including Courts that are already stretched thus reducing the capacity to effectively resolve difficult issues. This is particularly so for those in the vulnerable and low income brackets who cannot afford the high costs of utilising our legal system. We are concerned that short term cost efficiencies may well come at a longer term cost from poorer health and mental health outcomes and fail children who are limited in their ability to thrive and contribute to society in the future, instead needing health, support and potentially corrections and other services in the future.

A dominant concern about the discussion paper is the lack of any recommendation to increase resourcing for the parts of the system that are already stretched to the limit. The proposal to merge the Family and Federal Circuit Courts into one court with two separate divisions is of deep concern. While that may offer short-term fiscal efficiencies, we believe there are significant impacts from lack of access to justice. In the medium to longer term, increased costs to individuals, families and society will play out via the associated impact and increases on mental health and criminal justice services.

An opinion editorial in the Adelaide Advertiser (29/10/18) written by Law Society of SA President Tim Mellor succinctly summarises the concerns that we share regarding the thinking of merging the Family Court into a new general Federal Court. He wrote; “Family lawyers believe that it is vital for litigants to have the benefit of a specialist Family Law Court, presided over by judges who have particular skills and experience in dealing with these most complex cases, which present challenging problems facing a great many Australian families.

Simpler procedures which streamline cases are worthwhile initiatives which should provide better efficiencies,

Every day, Australians turn to our Family Law Courts for assistance at what is often the most difficult time of their lives. The Family Law system requires urgent attention, but without significantly improved funding, those who work in the system know that no real improvement can be achieved.”

The fallout and social implications spread far and wide. Health issues and other behaviours that may result in ‘out of character breaking of the law’ are often the result. Family Law Courts directly and indirectly impact family, friends and work colleagues alike, so system defects have adverse multiplier impacts in individuals and our communities more broadly.

Self-represented litigants are put in a vulnerable and fraught position, exacerbating their already heightened emotional state. Added to that, the Court process slows down in an effort to accommodate that lack of experience. The restructuring proposal per se will not speed this process up. The resourcing of more lawyers to advise/represent should be a central. Self-represented litigants are also often perpetrators of violence who are questioning the women who are living with domestic violence, so it is very difficult to understand how fairness and safety can be determined in these circumstances.

The UK has also been reviewing Family Law arrangements. There are a number of elements that mirror our experiences and their impact in Australia.

The warning signs and the collective knowledge gained from other countries such as the UK is clear. An unwillingness to face up to and address this issue by successive governments is why we are now at such a critical tipping point.

Our basic concern is that governments have chosen not to resource the Courts or the support services required to access/advise and represent people who need access to the Family Law and related aspects of the justice system. People who cannot afford to pay their

rent and electricity bills (the first two bills paid by a vast majority of clients of our services) have no capacity to pay for legal costs. Yet access to a fair and consistent justice system is a basic hallmark of Australian society, nobody should be excluded from our justice system because of their low income.

Adequate funding for Legal Aid and Community Legal services remains critical for decent justice outcomes, however the trend over recent years has been to steadily cut funding to legal aid and community legal services. Unresolved tensions between Commonwealth, State and Territory Governments about who is responsible for funding has also played a debilitating role in addressing need. Effective reform of Family Law arrangements cannot occur with a persistent diminution of funding for legal and justice services that support lower income, vulnerable and disadvantaged people.

Comments on Selected Recommendations

In this section we have copied recommendations from sections 4, 5 and 7 of the discussion paper and provide some comments and responses to some of these. The report recommendations are given in italics for reference.

4. Getting Advice and Support

Proposal 4–1 *The Australian Government should work with state and territory governments to 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. 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; and*
- *coordinate the client’s engagement with multiple services.*

The Noarlunga Family Relationship Centre (NFRC) which is a service provided by Uniting Communities, estimate 80% of clients find the Family Law system confusing and hard to navigate. These people do not know what they need and consequently how to access information and support that they require.

A significant part of the work of NFRC is that it finds relevant pathways for information to be made available that includes lawyers, community services, Centrelink, SAPOL, Child Support, child care, schools and health services where families and children go for support.

Parents are confused by the current reference of ‘equal shared parental responsibility’ – with assumptions that this means equal time/care of children. NFRC begins conversations at Intake and Assessment to explore each parent’s understanding and reinforces shared parental responsibility and children’s rights to be safe along with what is in the best interest of their children. These discussion occur at child focused information group sessions where mediators and lawyers share insights regarding non-legal and legal aspects of the Family Law system.

Family Hubs are a key recommendation from the discussion paper though very little detail about how they would be resourced and operated has been included in the report. Uniting Communities believes that the concept of Family Hubs is already adopted within the Family Relationship Centre approach where both 'in house' and external services are tailored to each family with co-ordinated case work provided by Family Advisors. However expanding and exploring 'assertive outreach' models for workers to support families in their homes would almost certainly provide a better level of safety for people experiencing domestic violence and avoid the perpetrator from accessing Family Hubs potentially 'bumping into' the other parent when attending support services within a multi service hub or Family Relationship Centre.

We are supportive of the rationale the Family Hubs but suggest that many of the functions proposed for Family Hubs would be better integrated into existing services including Family Resource Centres for those communities where the Centres are established, trusted and integrated into the local communities. We acknowledge the original vision and strong brand that the Attorney General's Department has now supported by embedding resourcing for Family Resource Centres.

Proposal 4–2 *The Australian Government should work with state and territory governments to explore the use of digital technologies to support the assessment of client needs, including their safety, support and advice needs, within the Families Hubs.*

Digital technologies are an important part of current and future service delivery models, however we are concerned about the propensity for overreliance on digital technologies particularly for those people who have very limited access to these technologies because they are too expensive for many low income households and / or live in poorly served locations. A significant number of Australian citizens remain functionally illiterate and digital technologies exacerbate such limited literacy skills. Consequently it is important that phone and face-to-face services continue to operate alongside of any new digital platforms. Digital technologies also need to be regularly tested to ensure that they are functioning as intended. Digital technologies can 'over promise and under deliver' and cannot be regarded as a 'set and forget' solution.

Proposal 4–3 *Families Hubs should advance the safety and wellbeing of separating families and their children while supporting them through separation. They should include on-site out-posted workers from a range of relevant services, including:*

- specialist family violence services;*
- legal assistance services (such as community legal centres);*
- family dispute resolution services;*
- therapeutic services (such as family counselling and specialised services for children);*
- financial counselling services;*
- housing assistance services;*
- health services (such as mental health services and alcohol and other drug services);*
- gambling help services;*
- children's contact services; and*

· *parenting support programs or parenting education services (including a program for fathers).*

Every family is different and a tailored response that understands their circumstances, with a case worker that can follow their journey (if required) and check on changes particularly to risk, is crucial for effective outcomes. Effective outcomes start by dealing with escalating Family and Domestic Violence, mental health and the safety of children before mediation and continues beyond parenting agreements. Skill building in communication, ways to reduce high conflict and transition to co-parenting skills once the mediation / court process has been concluded are also crucial skills. Funded Case Management for high risk families who experience ongoing crisis and have multiple complex barriers would benefit from pre and post support to maintain engagement and investment in their family outcomes through their input and co-design of relevant services. This should also include the availability of legal advice to clarify/explain the practical and legal effects of any orders made once the legal process has concluded. In so doing, this will help minimise the risk of renewed conflict based on an incorrect interpretation of court orders.

Proposal 4–4 *Local service providers, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations, specialist family violence services and legal assistance services, including community legal services, should play a central role in the design of Families Hubs, to ensure that each hub is culturally safe and accessible, responsive to local needs, and builds on existing networks and relationships between local services.*

This proposal is strongly supported – local communities, local leaders of their communities and culturally appropriate services that join up and understand kinship and family are crucial.

Proposal 4–5 *The Australian Government should, subject to positive evaluation, expand the Family Advocacy and Support Service (FASS) in each state and territory to include:*

- *an information and referral officer to conduct intake, risk and needs screening and triage, as well as providing information and resources;*
- *a family violence specialist legal service and a family violence specialist support service to assist clients who have experienced or are experiencing family violence; and*
- *an additional legal service and support service, to assist clients who are alleged to have used family violence and clients who are not affected by family violence but have other complex needs.*

This proposal is supported.

Proposal 4–6 *The FASS support services should be expanded to provide case management where a client has complex needs and cannot be linked with an appropriate support service providing ongoing case management.*

Family Relationship Centres are resource rich locations that identify and dedicate local service knowledge and expertise to their local regions, for NFRC this is the southern region

of Adelaide. Multiple partnerships and utilising the diverse and relevant services within Uniting Communities has provided clients with assistance and advice. “Wrap around” services are very effective where there is an identified lead agency who can collaborate and co-ordinate service delivery and reduce the ‘leg work’ (transactions costs) for families to find and access supports. We believe that appropriate case management should be made available within the existing regional service areas and where FASS is centrally located at the Family Court. FASS support may be less accessible for families living in regional or outer metropolitan locations, Family Relationship Centres that are currently located across 65 locations can deliver case management with local knowledge and expertise.

Proposal 4–7 *The level and duration of support provided by the FASS should be flexible depending on client need and vulnerability, as well as legal aid eligibility for ongoing legal services.*

It would be seen as an opportunity to extend the support to parents once mediation has finished to maintain and sustain the conflict management strategies / DV support and counselling for families where high risk was identified at Intake.

NFRC currently co-locates with other Uniting Communities programs including drug and alcohol services, family mental health, Communities for Children (dad’s programs) Family Law Counselling, specialised DV counselling and financial counselling and has partnerships with community lawyers. These are warm referrals and supported with Family Advisors who currently provide limited time case work. Clients attending NFRC are provided with an emotionally and physically safe environment – we have invited providers onto our site to meet with clients as part of our warm referral process. These approaches have proved to be very successful.

Proposal 4–8 *The Australian Government should, subject to positive evaluation, roll out the expanded FASS to a greater number of family court locations, including in rural, regional and remote locations.*

This proposal is strongly supported.

5. Dispute Resolution

Proposal 5–1 *The guidance as to assessment of suitability for family dispute resolution that is presently contained in reg 25 of the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth) should be relocated to the Family Law Act 1975 (Cth).*

This is a reasonable proposal.

Proposal 5–2 *The new legislative provision proposed in Proposal 5–1 should provide that, in addition to the existing matters that a family dispute resolution provider must consider when determining whether family dispute resolution is appropriate, the family dispute resolution*

provider should consider the parties' respective levels of knowledge of the matters in dispute, including an imbalance in knowledge of relevant financial arrangements.

We agree that robust assessment for Family and Domestic Violence needs to recognise the potential impact of separating families and the financial abuse that may have occurred within the family and the imbalance of knowledge that would disadvantage one party within property mediation, unless there was appropriate support and legal advice sought.

Proposal 5–3 *The Family Law Act 1975 (Cth) should be amended to require parties to attempt family dispute resolution prior to lodging a court application for property and financial matters. There should be a limited range of exceptions to this requirement, including:*

- urgency, including where orders in relation to the ownership or disposal of assets are required or a party needs access to financial resources for day to day needs;*
- the complexity of the asset pool, including circumstances involving third party interests (apart from superannuation trustees);*
- where there is an imbalance of power, including as a result of family violence;*
- where there are reasonable grounds to believe non-disclosure may be occurring;*
- where one party has attempted to delay or frustrate the resolution of the matter; and*
- where there are allegations of fraud.*

We agree that there is an opportunity for equal exceptions to this requirement similar to the 'inappropriate' considerations for Children's Matters.

There is a need to review the process for showing that the legal requirement to attempt family dispute resolution prior to lodging a court application for parenting orders has been satisfied. This process should be aligned with the process proposed for property and financial matters.

Ongoing education on the benefit of FDR for either/both Parenting and Property mediation to the families and their children – rather than the pathway to court

Proposal 5–4 *The Family Law Act 1975 (Cth) should be amended to specify 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. The relevant provision should indicate that if a court finds that a party has not made a genuine effort to resolve a matter in good faith, they may take this into account in determining how the costs of litigation should be apportioned.*

NFRC recognize that parenting matters and property matters do not sit in isolation within separating families. There are families who are disadvantaged at mediation where property mediation / settlement has not occurred and parents can find themselves sleeping in the car or couch surfing without a safe home environment to care for their children. We believe the success of a parenting plan can be at risk where a property dispute remains unresolved.

Proposal 5–5 *The Family Law Act 1975 (Cth) should include a requirement that family dispute resolution providers in property and financial matters should be required to provide*

a certificate to the parties where the issues in dispute have not been resolved. The certificate should indicate that:

- the matter was assessed as not suitable for family dispute resolution;*
 - the person to whom the certificate was issued had attempted to initiate a family dispute resolution process but the other party has not responded;*
 - the parties had commenced family dispute resolution and the process had been terminated;*
- or*
- the matter had commenced and concluded with partial resolution of the issues in dispute.*

Expanding FDRP Parenting and Property as a mandatory pathway may provide a low cost option for parents with low income, low asset pools, accumulated debt that makes it difficult for the family to transition to single parent households.

At NFRC, Parenting Matters are mediated first and separately – FDR (Family Dispute Resolution) mediators ensure the best interests of children are upheld with ongoing support and assessment of parents’ capacity to negotiate, FDV risk and the complexity of their financial matters, power and control.

Children’s matters as well as property matters need careful consideration. There is an opportunity to review the functions of the 60i certificates and to discuss what the most relevant and represented certificates should be that parties would be issued where issues have not been resolved, and how this may be entangled within both matters

Proposal 5–6 *The Family Law Act 1975 (Cth) should set out the duties of parties involved in family dispute resolution or court proceedings for property and financial matters to provide early, full and continuing disclosure of all information relevant to the case. For parties involved in family dispute resolution or court proceedings, disclosure duties should apply to:*

- earnings, including those paid or assigned to another party;*
- vested or contingent interests in property, including that which is owned by a legal entity that is fully or partially owned or partially controlled by a party;*
- income earned by a legal entity fully or partially owned or controlled by a party, including income that is paid or assigned to any other party, person or legal entity;*
- superannuation interests; and*
- liabilities and contingent liabilities.*

Uniting Communities is interested in extending 60i certificates for property matters as an attempt to mediate prior to lodging a court application (similar to current parenting matters), with perhaps an emphasis of mediating for children first to assess FDV (family domestic violence) risk in particular financial abuse / power / control.

We are also interested in the practical aspects of the upholding “frank and full disclosure” – and the risk of undertaking property matters without an accurate asset pool from both parties; the question is how this can be legally mitigated?

Proposal 5–7 *The provisions in the Family Law Act 1975 (Cth) setting out disclosure duties should also specify that if a court finds that a party has intentionally failed to provide full, frank and timely disclosure it may:*

- impose a consequence, including punishment for contempt of court;
- take the party's non-disclosure into account when determining how costs are to be apportioned;
- stay or dismiss all or part of the party's case; or
- take the party's non-disclosure into account when determining how the financial pool is to be divided.

This proposal links with Proposal 5.2 particularly where there may be insufficient knowledge of financial matters. In this case one party may be disadvantaged with a lack of understanding about the meaning of 'full and frank disclosure' due to a lack of knowledge rather than a failure to disclose?

7. Children in the Family Law System

Proposal 7–1 *Information about Family Law processes and legal and support services should be available to children in a range of age-appropriate and culturally appropriate forms.*

The Family Law Pathways in South Australia piloted the YPFLAG (Young Peoples Family Law Advisory Group) program where children who had experienced the Family Law Court process were provided an opportunity to have a voice and their stories were heard by Judges and Magistrates. There was a clear message that children do want their voices to be heard and the role that they can play in understanding the family break up, as well as what that means for them as children and how they can be supported.

An evaluation of the YPFLAG pilot project that was undertaken in 2016/17 and titled 'THE TIP OF THE ICEBERG'¹ provides useful analysis and recommendations. Two key messages from the report's findings are given as:

- “1. Failure of processes within the Family Law system: - Children and young people feel unheard in the processes and procedures they experience across the Family Law system. In particular, they feel that their experience of and within the court system is inadequate, such that even when they are provided with the opportunity to lend their voice within processes (via a family assessment, for example), their voice is overlooked or misconstrued. Further, they feel that their voice is missing from other Family Law processes, such as child-inclusive mediation, and they want their voice to be better heard across all services for parents within the wider Family Law system.*
- 2. Living with orders: - Children and young people feel that in the aftermath of orders or agreements made by courts, they are abandoned and overlooked. They feel that they become enmeshed in their parents' ongoing conflict following separation, as well as in the court process itself. They believe that the system, as it currently exists, does not allow for flexibility or challenging of orders by children or young people, privileging the needs of parents even when the system is required to consider children's best interests. They also comment that, according to them, there is nowhere for children or young people to seek child focussed advice, support, advocacy or education regarding family breakdown either before, during or following*

¹ https://www.pathwaysnetworksa.com.au/wp-content/uploads/sites/12/2018/09/YPFLAG_REPORT-FINAL3_web-2.pdf

separation. Overall, they experience parental separation and the Family Law system in a way that leaves them feeling isolated, ashamed, dismissed and exhausted.”

These messages resonate with the experience of Uniting Communities services. The report made a series of eleven recommendations, these being:

“1. A permanent and fully-funded YPFLAG (or an equivalent program) is established to offer advisory, advocacy, referral and support services to children and young people who find themselves involved with the Family Law system and to allow for consultation on existing and future policies and procedures involving children and young people across the Family Law system.

2. A Family/Child Advocate Hub is created to offer support, advice and advocacy for and on behalf of children and young people on a range of issues including triage and/or referral services but primarily to explain legal processes they may experience in the Family Law system, especially at court.

3. Legislative and/or procedural reforms are needed to ensure children and young people are heard in the decision-making process, including:

i. Court orders should be drafted in a way that acknowledges the possibility that children and young people may want to vary court orders as their needs change;

ii. That parents are required to use child-inclusive processes during family dispute resolution as a rule and not as an exception;

iii. Parental consent for children involved in child-inclusive services in the Family Law sector should be abolished;

iv. Parents should be required to use an alternative family dispute resolution process when seeking to vary court orders, and that this revised process should always involve their children unless risk indicates otherwise.

4. A Charter of Rights for Children and Young People should be developed as a set of key foundation principles for children and young people experiencing parental separation and that this should act as a cornerstone for future Family Law policies and procedures.

5. That a follow-up service should be introduced for children and young people once court orders are made, to check in and gauge how orders are working on a practical level for them.

6. That all children have access to post separation counselling or support group services.

7. That when children are required to be part of the Court process, that recorded observations of children during Family Assessments are made available for judges to watch when making final orders.

8. Training and education should be emphasised in meeting the needs of parents and children and young people going through the Family Law system; for example, separated parents could be mandatorily required to attend courses that highlight the impact of parental conflict on children following separation.

9. All professionals who work with families who are separating should have access to better training in child-inclusive practices, across Federal and State divides.

10. A specific service should be created for children and young people to access Information about family law; for example, a program should be introduced to schools which provides information and referrals for children experiencing parental separation;

11. That a purpose built communications and social media information hub is created for children and young people to enable children and young people access information about family and parental separation in real time.”

These recommendations are sensible and worth consideration as part of this review.

NFRC embeds a strong child focused narrative that draws parents to understand how their children would feel about their behavior, their decisions and how their life has been impacted. Further to keeping the children ‘in the room’ – child consultancy is an important element of practice that should become part of the ‘family’ assessment. This would mean that there was a place for the perspective of children, not just parents. At the moment there are limitations to providing child consultancy, particularly if both parents do not consent to their children’s voices being heard. This is contrary to enabling a child perspective to be adequately presented.

While the Family Law system has made significant progress in making the environment more accommodating for children and those with complex needs, there are still many examples where the Courts expect children and people with disabilities to accommodate the court, rather than the other way around.

The Court environment can be an incredibly rigid space which is not conducive to providing best evidence. Questions to children and people with disabilities need to be put in a particular way, and not all advocates are skilled in this. Treatment of children is likely to be better in the Family Law system than in the criminal law system, but there is still scope for improvements to be made.

The experiences felt by children and adults with complex communication needs in the criminal justice system are similar to those in the Family Law system, in that their needs are unlikely to be properly recognised and responded to. Our Communication Partners Service has been very effective at enabling communication between people with major communication needs and the court / legal system. The approach should be extended to Family Court setting. Regrettably the SA Government announced in its 2018 budget that funding to Communication Partners Service will be cut. This is an example of a very effective

service, primarily provided by expert volunteers that enhances justice outcomes, but is not seen as economically efficient, when the reality is quite the opposite.

Proposal 7–2 *The proposed Families Hubs (Proposals 4–1 to 4–4) should include out-posted workers from specialised services for children and young people, such as counselling services and peer support programs.*

This proposal is strongly supported.

Proposal 7–3 *The Family Law Act 1975 (Cth) should provide that, in proceedings concerning a child, an affected child must be given an opportunity (so far as practicable) to express their view*

Provision of child consultancy as an additional consideration to enable a child’s voice to be heard before mediation and is strongly supported. Child inclusive practice also enhances the skill base of FDRP’s in maintaining a child focus. Accredited training and supervision to ensure the safety and wellbeing of the children and the staff who work with them would be an improvement for the sector.

Proposal 7–4 *The Family Law Act 1975 (Cth) should provide 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.*

Increasing support services for children is crucial, recognising the impacts of their emotional and psychological wellbeing when exposed to prolonged periods of high conflict during parental dispute. Impact of familial conflict continues long after separation and continues to impact on the children’s safety, development of self and their relationships with both parents.

Proposal 7–5 *The Attorney-General’s Department (Cth) should work with the family relationship services sector to develop best practice guidance on child-inclusive family dispute resolution, including in relation to participation support where child inclusive family dispute resolution is not appropriate.*

We have highlighted the effectiveness of Family Relationship Centres and encourage the Attorney-General’s Department (Commonwealth) to work with the Family Relationships sector. We suggest that much of the work has already been undertaken to apply best practice guidance on child-inclusive family dispute resolution, so this proposal should be straightforward in implementation.

Proposal 7–6 *There should be an initial and ongoing assessment of risk to the child of participating in Family Law proceedings or family dispute resolution, and processes put in place to manage any identified risk.*

This proposal is strongly supported.

Proposal 7–7 Children should not be required to express any views in Family Law proceedings or family dispute resolution.

Proposal 7–8 Children involved in Family Law proceedings should be supported by a ‘children’s advocate’: a social science professional with training and expertise in child development and working with children. The role of the children’s advocate should be to:

- explain to the child their options for making their views heard;
- support the child to understand their options and express their views;
- ensure that the child’s views are communicated to the decision maker; and
- keep the child informed of the progress of a matter, and to explain any outcomes and decisions made in a developmentally appropriate way.

Proposal 7–9 Where a child is not able to be supported to express a view, the children’s advocate should:

- support the child’s participation to the greatest extent possible; and
- advocate for the child’s interests based on an assessment of what would best promote the child’s safety and developmental needs.

Proposal 7–10 The Family Law Act 1975 (Cth) should make provision for the appointment of a legal representative for children involved in Family Law proceedings (a ‘separate legal representative’) in appropriate circumstances, whose role is to:

- gather evidence that is relevant to an assessment of a child’s safety and best interests; and
- assist in managing litigation, including acting as an ‘honest broker’ in litigation.

Proposal 7–11 Children should be able to express their views in court proceedings and family dispute resolution processes in a range of ways, including through:

- a report prepared by the children’s advocate;
- meeting with a decision maker, supported by a children’s advocate; or
- directly appearing, supported by a children’s advocate.

Proposal 7–12 Guidance should be developed to assist judicial officers where children seek to meet with them or otherwise participate in proceedings. This guidance should cover matters including how views expressed by children in any such meeting should be communicated to other parties to the proceeding.

Proposal 7–13 There should be a Children and Young People’s Advisory Board for the Family Law system. The Advisory Board should provide advice about children’s experiences of the Family Law system to inform policy and practice development in the system.

Proposals 7-13 are supported with strong encouragement for all aspects of the Family Law system to commit to achieving the best outcomes for children in all circumstances. We recognise that this is difficult to implement on occasions, but should remain the basic test of any aspect of the Family Law system: are the best interests of a child / children being met in this situation?