

Submission to the Family Law Council

Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems

Tamworth Family Law Pathways Network

September 2015

ABOUT THE TAMWORTH FLPN

The Family Law Pathways Network (FLPN) is an initiative of the Federal Government Attorney General's Department, established to provide professional development for those working within the family law sector. The Tamworth FLPN Committee oversees the annual education activities for the FLPN Network covering New England North West NSW, and a project officer is employed to implement them. The Committee comprises a cross section of local organisations involved in family law such as Tamworth Family Relationship Centre, NSW Legal Aid, Tamworth Family Support Services, Women's Domestic Violence Court Advocacy, Indigenous Affairs Network Department of the Prime Minister and Cabinet and local solicitors. Professional development for the FLPN Network occurs in the form of speakers at lunch events, dinner guest speaking events and a monthly newsletter. The Tamworth FLPN is also working with a Federal Circuit Court of Australia Judge (Judge Terry) in its FLPN projects and professional development opportunities.

FORWARD

We thank the Family Law Council for the opportunity to make comments on the terms of reference requested by the Attorney-General. These submissions are in response to the terms of reference issued by the Attorney-General to the Family Law Council on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*.

We note that an interim report on terms of reference 1 and 2 has been submitted to the Attorney-General in June 2015. The following submissions are in response to terms of reference 3 and 4 which are being presently considered by the Attorney-General:

3. *The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.*
4. *The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.*

We further note that our submissions to terms of reference 3 and 4 have been guided by the further questions provided by the Family Law Council and our submissions are set out under the specific questions below.

OUR PERSPECTIVE

Tamworth is a regional town with many support services available to participants in the Family Law system. The services in Tamworth work with smaller communities in the New England North West such as Gunnedah, Narrabri, Moree, Walgett, Inverell etc. We note that our submissions are based upon our experiences in a regional town and working with smaller communities.

SUBMISSIONS

How can the exchange of information between the family courts and family relationship services (such as family dispute resolution services, counselling services and parenting order programs) be improved and facilitated in a way that maintains the integrity of therapeutic service provision?

In the experience of the FLPN committee in Tamworth, the exchange of information between the family courts and family relationship services is minimal due to confidentiality and admissibility restrictions imposed by the *Family Law Act 1975*.

Section 10H and 10J of the *Family Law Act 1975* govern the confidentiality and admissibility of communications during the family dispute resolution process. Under s 10H of the *Family Law Act 1975* Family Dispute Resolution Practitioners (FDRPs) are not able to disclose anything said to them by a party during the conducting of the family dispute resolution process unless required by law to protect a person/child from harm or to prevent a crime. Under s 10J of the *Family Law Act* evidence of anything said or done during the dispute resolution process is not admissible in Court unless there has been an admission that a child has been or is at risk of abuse.

At present, the only documents admissible in Court from the Family Dispute Resolution process are the Parenting Plan and the section 60i certificate. The parenting plan only lists agreements that have been made between the parties. The section 60i certificate is limited in what information it includes to checking the box that best fits the situation, i.e.:

- That one party declined or failed to attend the mediation;
- That the matter is not suitable for mediation;
- That both parties attended and made a genuine effort;
- That both parties attended and one or both parties didn't make a genuine effort;
- That mediation began however then became unsuitable.

Potential avenues for information sharing with the Courts:

Whilst there is an abundance of information collected by FDRP's in the mediation process, not all of this information is necessarily relevant to the Courts in making decisions about the best interests of children. The information that is necessary and that we believe should be shared with the Courts is information pertaining to any risk of harm to children (especially in cases that do not meet the statutory threshold for mandatory reporting) and any family and domestic violence. The question is how this information should be shared with the Courts.

Privilege

As parties would need to be made aware of any lack of confidentiality, parties may not be as forthcoming with information. However, being forthcoming to a Family Relationship Centre, for example, does not assist much if one of the parties, or both, are 'playing the system' and has no real intention of resolving matters through family dispute resolution and are there merely to obtain a section 60i certificate so they can proceed to Court. It is our opinion, that where parties genuinely want to resolve matters out of Court, no

information will need to be passed to the Court. We do acknowledge however that not all matters fall into an 'either/or' category.

Further, in removing privilege from mediation files there would be an abundance of unnecessary paperwork put before the Court taking up valuable time and resources for the Courts to wade through to find the information that is relevant. This could be addressed by making provision in the legislation that any documents subpoenaed be specifically named in the subpoena to avoid parties going on a 'fishing expedition'. If this provision/procedure is considered then it would also be important to consider a further provision which would prevent one party accessing the information provided by the other party without the Court's approval.

Section 60i certificates

As mentioned above, section 60i certificates provide minimal information to the Courts. In paying particular attention to sub-section (b) of a section 60i certificate, this provides that mediation is not appropriate. No further information is provided to the clients or the Courts as to why the matter was not appropriate for mediation. On page 2 of a section 60i certificate it provides examples of why an FDRP may deem a matter not appropriate for mediation however it is not an exhaustive list and a matter may be deemed not appropriate for reasons not listed.

Further, no information is provided to the parties as to why the matter was deemed not appropriate and therefore neither the parties nor their solicitors can be of any assistance to the Courts in providing reasons as to why mediation was not appropriate in a particular case.

A section 60i certificate with a flag that there is a risk of harm or family and domestic violence may be the only information available to the Judge from an independent source at the interim stage and therefore be a valuable piece of information to the Judge.

A limitation to this is that FDRP's would need to make an assessment of the situation based on the information provided by the parties. FDRP's do not gather any material from external organisations to corroborate what a party has told them. Often sessions with the parties take place over the telephone limiting the FDRP's ability to make an assessment. If a section 60i certificate is to include reasons why the matter is not suitable for mediation, FDRP's may need to be trained in particular areas such as identifying situations of family and domestic violence.

Further, providing further information on the section 60i as to family and domestic violence could potentially place a victim or a child at risk of harm as a victim of domestic violence may have disclosed something to the FDRP without the knowledge of the other party, that being the perpetrator.

If the section 60i certificate is used as a means of providing background information to the Court, we would propose that a copy of the section 60i certificate be prepared for the Court and we would envisage that it would be accompanied by a standard Court approved form which would contain, inter alia, the fact that domestic violence has been raised; by whom it has been raised; and whether there is any corroborating evidence and from where this corroboration arises. We would further submit that a space be made

available on the section 60i certificates to include the FDRP's opinion as to why the matter has been deemed as not suitable and why a non-genuine effort was made.

Common risk assessment

At present there is no requirement for FDRP's (or other services) to use a common form to assess the cases for risk of harm. If it was to be a requirement for all FDRP's (and other services involved in family law) to complete a common form with EACH client and be able to provide this document to the Court, the information will be there for the Court without having to wade through unnecessary files and will not place a child or victim at a further risk of harm.

Mandatory mediation and Parenting Ordered Programs

A further avenue of exchanging information between the Family Relationship Centres and the Courts would be for the Courts to consider implementing mandatory mediations between Court sittings. We would suggest that if this was to occur the Courts could provide the Family Relationship Centres with information on what the Courts want the mediators to address in particular with the clients. We would further suggest that the mediators would then provide a short report to the Court on the successful and unsuccessful outcomes. The assistance of solicitors in this area would be of great assistance.

In addition to this we submit that the Courts consider making Parenting Ordered Programs mandatory and a report being provided to the Court after the program as to the client's participation.

What opportunities exist for ensuring the early assessment of risk to children in family law matters?

At this stage it is important that the Court be made aware of any assessment or report that has been done or is being prepared. This allows a Court to a) order that an assessment report be conducted/prepared and/or b) refer the child/ren to a Court based family consultant or other professional for a report.

Such reports that could have been previously prepared could be in the hands of i) doctors ii) hospitals iii) police iv) FACS v) NGO's who deal with families and children including psychologists.

Provision could be made in the relevant legislation for such bodies to provide a report to the Court. The streamlining of provision of reports to Courts (not just family courts) to a special section in perhaps the Federal Court which may be accessed by any other Court would allow such information to be available to any Court which requested such information. This would build a database of reports for access by any Court enabling the Courts to have access to previous reports at the early stages.

How can services such as child protection departments, mental health, family violence, and drug and alcohol services make relevant information available to courts to support decision-making in cases where families have complex needs?

Where agencies have already co-ordinated e.g. as an integrated case management model, a single report could be prepared for the Courts incorporating all aspects from the different stakeholders involved in the case management outlining how each service is working with the particular family. This would ensure that there is no duplication or overlapping of services and would provide the Courts with a more holistic picture of the needs of the children and their families.

What services are needed to support families and children who use the family law system where child safety concerns are identified?

Some of the services we think could benefit children include consultants/psychologists, lawyer, (temporary) foster care (for safety), medical care and schooling.

In particular, where there has been the appointment of an Independent Children's Lawyer (ICL), in our opinion, the ICL needs to be working more closely with children's services to ensure those particular services have all relevant information to ensure that the best interests of the children are being met.

A further area that we believe there is a large gap in the system is with follow ups. In particular, where a report is prepared by a Family Consultant, follow up with the children and the family is important to ensure the child's physical welfare and emotional welfare after the report has been released. The follow up need not necessarily be done by the Family Consultant but could be undertaken by some other body requested/appointed by the Court. It follows that the Court would need a list of relevant bodies who could perform such a task.

We believe that lack of follow up procedures is one of the major flaws in our system at present.

How can interaction between the family courts and relevant services, including child protection departments, family violence, mental health services, drug and alcohol services and support services for Aboriginal and Torres Strait Islander families, be enhanced?

Information sharing

This will necessitate amendments to the Family Law Act allowing the sharing of information between Courts, departments and other services. Such Federal legislation could be modelled on some state legislation allowing for such interaction (section 16A of the *Child and Young Persons (Care and Protection) Act 1998 (NSW)*).

In addition, we suggest the implementation of 2 standardised forms that would assist sharing of information between the services and the Courts and assisting the clients:

1. A referral form that can be used between agencies and also between the Courts to provide the agencies and Courts with further information;
2. A standardised intake that can be easily transferred between services so that clients do not have to tell their story over and over again to each individual service provider that assists them.

Integrated Case Management and Membership

We submit that the creation of the Family Law Pathways Networks has assisted greatly in the area of enhancing interaction in the family law system. In our opinion membership for the FLPN should be mandatory with at least one representative from each field of workers in the family law and child protection system. Mandatory membership of one person from each body could assist in the free flow of information and advice on matters which are relevant to family law for that particular area. This could provide an independent “body” to receive and disseminate information.

Another suggestion is for some form of court users forum for integrated case management. This would involve Magistrates, solicitors, support services, police, FACS, Government bodies such as education, health and housing coming together for meetings to discuss individual cases and how best to proceed to ensure the safety and wellbeing of all parties concerned. The facilitation of these case management meetings could be facilitated by the FLPN committees.

What opportunities exist for developing integrated responses to families with complex needs who use the family law system?

There are currently case management models occurring within the community. These case management models could be delivered more effectively and efficiently if all stakeholders work together as one entity rather than as individual silos. This has been dealt with in more detail in the previous section.

How might a more co-ordinated legal system for families with complex needs be created?

In our opinion, there is much to benefit families and the “system” by having multi-jurisdiction Courts e.g. the same Court could deal with AVO’s, child protection issues and other family matters. A matter could stay with the same Court from inception and the Court should then have a store of knowledge about a particular matter.

Further, we see a need for more efficient communication between the support services and the legal system and also more transparency between services. The implementation of a co-ordinator who has access to the Court would be beneficial in this area. A co-ordinator could liaise with the different agencies and oversee any barriers or inconsistencies and report back to relevant stakeholders and the Court. This would allow for a more co-ordinated legal system.

CONCLUSION

When we consider the number of Federal and State laws which relate to families, crimes of violence and other crimes, there is no lack of legislation providing for the protection of potential victims and punishment of perpetrators.

There is however, a lack of co-ordination of Acts and Regulations both state and federal and this hinders relevant authorities to efficiently apply these laws. The fact that we have multiple systems being applied by various authorities (state and federal, government and non-government) allows gaps to be created by the systems who are trying to prevent the commission of crime or the occurrence of harm within families.

Co-operation and co-ordination is an area where resources are sorely needed. Violence within families is not detectable in the same manner as some other crimes, e.g. armed robbery.

The act of family violence necessarily involves two or more people who may, at one stage both/all be willing participants in a particular relationship. The violence perpetrated within the family may affect the partner of the perpetrator and/or the children of the perpetrator or their partner, or other family members. The nature of this scenario often results in the progressive and continuous perpetration of the violence involved. This violence may not come to light until a major crime (e.g. murder) has been committed or a victim of the violence has sought help through one of the many agencies which can be involved in these cases e.g. police, medical staff, lawyers.

We reiterate that we believe there is no lack of legislation with respect to these matters but there is a lack of co-ordination between agencies when these matters come to light. One of the concerns we have is the reluctance of victims to make reports to relevant agencies early. Another concern is the tendency of a victim to withdraw his/her complaint to authorities, thus allowing violent behaviour to continue unchecked. Whilst it is possible that this aspect of family violence has improved in the last 50 years, it is apparent that many victims still don't trust the system enough.

Whatever changes are made, whatever improvements are devised, one major goal needs to be gaining the trust of and educating the Australian public.

Where changes involve the completion of forms and assessments, it is paramount that the criteria used by all who fill in these forms or make these assessments be standardised so that variances from one form to another are real in fact not just a variance in interpretation by the person filling in the form. Further to this, it is important to ensure that any standardised forms (such as risk assessments) are able to be shared between the services to ensure that victims do not have to retell their story to every service involved.

Further it is vital that any proposed procedures do not act as a means for procrastination or paper shuffling.

These submissions have been made in good faith and we again thank the Family Law Council for the opportunity to make a contribution. We wish the Family Law Council well in their deliberations and with the outcome.