

Central Coast Family Law Pathways Network's

Submission to the Family Law Council

Overview of our Network

The Family Law Council has asked to hear our views and ideas about Question 5 of their discussion paper:

Q5) How can there be enhanced 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?

Our submission will focus on initiatives we believe could enhance collaboration between the services, make it easier to navigate the family law system and ultimately lead to better outcomes for individuals.

The Central Coast Family Law Pathways Network is comprised of a number of different local professionals working within the family law system including lawyers, family dispute resolution practitioners, social workers and many other professionals. Our aim is to develop stronger cross-sector relationships and collaboration between everyone working in the family law system. The result is a clear pathway for families making their way through a more unified family law system.

We have been fostering collaboration between Central Coast services for some time now and one such collaboration that was successful was our Family Law Aboriginal Roadshow. This was held in August 2014 and focused on providing the Aboriginal community with more information about their rights and options when it came to care of and contact with their children. We also endeavour to hold regular events and forums where speakers deliver a presentation on a particular topic to the network in an effort to educate all sectors of the Family Law system. Some topics we have covered recently include AVERT training for domestic violence and a community dinner/event where presentations were given by Judge Matthew Myers, Haisam Farache and Dr Susan Armstrong about the current state of the law regarding CALD communities.

Self-Represented Litigants

The network is able to make its submission based on recommendations from different services and a gap we have identified is the lack of education in the case of self-represented litigants. Our recommendation to the council is a new initiative to educate and inform self-represented litigants. We propose this information be compiled from a number of different sectors in Family Law including Solicitors, Social workers, Domestic violence workers and other parties which make up

our network. We propose this information take the form of a universal handbook or manual that people could read and refer to whilst moving through the legal process. Of course this handbook could be stored on line for easy access. Services in the Family Law system would know of this handbook through usual communication processes and it could serve as common resource for everyone created by all the services. The handbook could be developed through a Family Law Pathway Network collaboration and be localised to each region.

The ultimate aim would to improve collaboration and information sharing between all the services not just the judiciary. Litigants who cannot afford a lawyer are usually referred to Legal Aid but often these people do not qualify for Legal Aid. Community Legal Centres are there to attempt to fill the gap but a Family Law manual could speed up the process and in smaller matters allow a self-represented litigant to run their case independently without undue disadvantage.

Self-Represented litigants are on the rise according to the current Chief Judge of the Federal Circuit Court of Australia John Pascoe, AO, CVO. He says that somewhere between 30-35% of parties in his court in 2015 were self-represented and that fact presents a number of problems. These include longer less efficient proceedings as parties try to grasp the legal process, irrelevant arguments that waste the court's time and possibly unfair outcomes as litigants are unable to persuasively make their case in the face of represented opposition. What this all means is that the biggest problem facing these self-litigants is how often they are mistaken or misinformed about how the legal process works. Our initiative would allow them to gain some basic understanding of the judicial process, Alternative Dispute Resolution, and help de-mystify the system.

We understand the Federal Circuit Court workload is rising with 80,000+ orders filed according to Court's Annual Report in 2013-14. Educated, informed litigants who are aware of all the relevant services in family law not just the lawyers would not only take the strain off the courts but would also promote greater access to justice for individuals.

Communication between NSW Family and Community Services and the Family Court System

One member of our network who is affiliated with the Victims of Crime Assistance League in NSW (VOCAL) – particularly with their Family and Child safety team has stressed the need for more consistent approaches, definitions, professional education and analysis in relation to Child Protection cases. Upon reading the Family Law Council's Interim report in June we have some further comments to make about Child Protection in the Family Law System.

Currently affected children are caught between the Family Law Courts, Police, the NSW Department of Family and Community Services (FACS) and state Domestic & Family violence

strategies. Although all these aspects may form part of a family's journey, they currently lack consistency, credibility and while interrelated they produce inconsistent outcomes often creating poor mental health outcomes for children. Despite these problems these processes are not necessarily reviewed nor is the Child Protection response viewed through a concurrent Domestic and Family Violence lens, despite the improvements to better define legislation in 2012. Additional changes to the system would ultimately promote better collaboration and safer outcomes for children.

In order to better frame our argument an example of failed collaboration in Child Protection should be examined. In Magellan cases when a Form 4 (Notice of Child Abuse, Family Violence, or Risk of Family Violence) is lodged with the court, FACS are required to produce a report on any safety concerns in the matter. The significant problems with that approach start with the 'child at risk assessment' and the severe under-resourcing at FACS, which often leads to FACS believing the child is safe if they are not living with the alleged perpetrator. Basically if the child is with the safe parent, FACS deems the child to be safe. This assumption is of course not true, and it is possible that a perpetrator can proceed to take action to get access to the child through the Family Law courts. This leads us to an issue between the two sectors.

Even if the FACS' file is large or contains Domestic Violence incidents and child protection concerns, any report sent to the Family Court will not be a thorough report. FACS as we alluded to earlier simply do not have the resources to provide such material and as a result only include recent incidents. Therefore all too frequently the court rules that there are no "child at risk" issues when in fact there are significant child safety issues.

The Magellan case management strategy was supposed to be a new way to fast track serious matters, but it has failed. It has become such a widespread problem that Magellan cases are now widely referred to as 'Mad Mothers' cases by the legal fraternity. In these Magellan cases it is the protective mothers who are usually unrepresented or poorly represented putting them at significant risk of being pilloried by their lack of legal knowledge and their unsuspecting ignorance about how the system works. Furthermore, these mothers risk being discredited by the way the abuse is framed by Court Specialists, Family Report Writers, Independent Children's Representatives and the father. The mothers are often relabelled as alienating or mentally ill rather than the protective parent they are. They are accused of fabricating when they are not.

A new system fostering a more effective collaboration between FaCS and the Family Law Courts, especially in Child Protection cases would be beneficial. An issue facing the two services is the quality of the FACS reports and the courts' treatment of those reports. As a direct result of the deficiencies in the system self-representative litigants (mothers in particular) are unable to combat perpetrators who are represented from recovering the child as the evidence simply is not available. One potential measure that was flagged by a representative of BaptistCare to alleviate

pressure on FACS, was the introduction of specialist domestic violence worker consulting the court. When domestic violence is present such a worker could act as a consultant to the court and could make assessments regarding risk which could ultimately inform decisions regarding care of the child/children. Whilst not considered a complete solution to the problem, it has been alluded to in the Family Law Council's reports on multiple occasions. Such an initiative could alleviate the workload for both parties and also foster collaboration between the Family Law Courts, FACS and Domestic Violence services.