

Submission to Family Law Council  
Families with Complex Needs and the Intersection of the  
Family Law and Child Protection Systems  
30 September 2015  
from the Family Law Practitioner's Association of  
Western Australia

**Summary of FLPAWA position**

FLPAWA supports the expansion of jurisdiction so a decision maker has concurrent jurisdiction in Child Protection and Family Law matters, subject to appropriate levels of funding.

FLPAWA has reviewed the interim report and in particular those references to Western Australia in part 1.4 of the interim report. FLPAWA supports the interim report.

Training and resourcing of the Judiciary, Legal Profession and those providing services to these families will be necessary to achieve the desired outcome.

**Terms of Reference**

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**

FLPAWA is addressing the above Terms of Reference by reference to the questions set out in the Final FLC Discussion Paper distributed 13 August 2015

***Question 1:***

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

FLPAWA considers a standard risk assessment tool should be triggered at the first entry point in the system for these families, wherever the entry point is. There will need to be notice to parties that the risk assessment will be made known to the Court.

This information should then go on a central data base and be available to all parties at the same time as it is available to the Court. We consider it might be possible to include this as an extension of the existing Commonwealth Courts Portal system.

The intention being that people don't have to go through several risk assessments, particularly those undertaken in a short period of time as people move between the various organisations.

We are also concerned to achieve consistency in the risk assessments being done, which we say will be achieved by having a single risk assessment process.

Some additional comments on each of the family relationship services referred to in the question:

### **Family Dispute Resolution Services**

The information that is currently put to the Court is whether the parties have attended such a service and when. The concern is the Court is relying on the parties giving reliable information to the Court about the process. We consider it is in everyone's best interest if the Court can access the information directly on the Portal, and everyone had the same information.

FLPAWA considers the Court should know if a standard risk assessment has been undertaken and the outcome of that assessment.

The benefits of doing it this way:

1. does not re-traumatise people have to repeatedly go through risk assessments and retell their story;
2. reduction in costs if these services only have to provide screening once, rather than multiple screening;
3. there can be rescreening if circumstances change and with the passage of time;

FLPAWA acknowledges there may be disadvantages which include:

1. there may be IT costs upfront;
2. different systems exist in each organization at the present time, which would need to be standardized;
3. training costs.

### **Parenting ordered programs**

FLPAWA considered what information should be provided by the Court to the parenting programs, which needs to include whether the parties have been risk assessed, and if so, when and the outcome. Access to a standard form would ensure everyone sees the same information.

In return, the Court needs to obtain back from the parenting ordered program:

1. the party / parties attended the program;
2. the number of sessions attended;
3. whether the program was completed;
4. whether the party / parties made a genuine effort to participate in the program.

### **Counselling programs**

Again, FLPAWA considered what information needs to come back to the Court if parties participate or have participated in Counselling, which includes:

1. details of the attendance;

2. if there has been notification to DCP by way of mandatory reporting.

FLPAWA has also considered the overarching concern to protect the safety of children and adults and the exchange of information where privacy issues emerge should not prevent the exchange of information that can be justified on the basis of concerns for safety.

**Question 2:**

***What opportunity exists for ensuring the early assessment of risk to children in family law matters?***

FLPAWA is of the view that an early opportunity to assess the risk to children in Family Law matters is when matters commence at the Family Court of Western Australia during the hearing of a matter. However the Court is a tribunal of fact administering the law and does not have general inquisitorial powers or resources to make inquiries. However, the Court does have extensive powers under Division 12A of Part VII Family Law Act 1979 (Cth) and the corresponding provisions in the Family Court Act 1997 (WA) although there is a concern they are not used as widely as they could, particularly when parties are self-represented, where they are not able to articulate the concerns which may be present in the case.

If risk assessments are undertaken by organisations such as Department of Human Services, Police, Department of Child Protection and Family Support, prior to any Family Court proceedings being on foot then the standardized risk assessment information needs to be put into a centralized database so it is able to be accessed by the Court if proceedings are commenced.

FLPAWA also notes the Family Court of Western Australia has its own risk assessment at a Case Assessment Conference, which is different to the risk assessment applied by the Department of Child Protection and Family Support, and is then different again from the Federal Government's suggested DOORS.

Department of Human Services are already mandated to undertake ongoing risk assessment of clients. It is not an additional requirement being imposed on the Department, just some of the information being uploaded to a new central system.

FLPAWA also observes the Case Management Guidelines of FCWA and Family Law Rules (as applicable to WA) gate keeps the filing of all information available, that is, page limits, no annexures to the Case Information Affidavit, which can be difficult when identifying risk.

**Question 3:**

***How can services such as mental health, family violence and drug and alcohol services make relevant information available to the Courts to support decision making in cases where families have complex needs?***

There should be an opportunity for the external providers to report back to the Court especially where the parties have been referred to the provider by the Court or as part of the Court process, eg: by single expert.

It should be reporting as to outcome, that is, that the person attended, person completed the course / requirements and has the objective of the course been met. The report should not include commentary about the issues which are before the Court for determination.

Any information provided to the Court must be made available to the Court and ICL (if appointed) and subject to any direction from the Court, otherwise to the parties as soon as practicable.

**Question 4:**

***What services are needed to support families and children who use the family law system where child safety concerns are not sufficient to trigger are identified?***

In answering this question FLPAWA is assuming the child safety concerns not sufficient to trigger Department for Community Protection involvement.

The services needed to support these families include:

1. funding for the Independent Children's Lawyer's role;
2. counselling services with better funding and reduced waiting time;
3. funding for Legal Aid Grants for parties;
4. additional or additional funding for child supervision centres, with reduced wait times;
5. monitoring mechanisms.

**Question 5:**

***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?***

FLPAWA understands several of these relevant services have in place risk assessments already, as well as mandatory reporting requirements to DCP.

FLPAWA is suggesting the existence of a risk assessment and any mandatory report needs to be feed into a database accessed by the Court (and others) so this information is available.

FLPAWA also notes there should be consistent definitions of family violence across the entire Family Law system, including all the service providers being talked about these terms of reference.

FLPAWA supports the Final Report: Enhancing Family and Domestic Violence Laws, The Law Reform Commission of Western Australia, produced June 2014, as to the definition of Family Violence.

**Question 6:**

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

See comments in question 5 above

In addition, relevant information from criminal proceedings should be available to the Family Court and from the Family Court to the criminal system. For example, a Form 4 Notice of Abuse filed in the FCWA being available to a Magistrate determining a Violence Restraining Order Application or bail conditions in the criminal jurisdiction. If the Court exercising jurisdiction is aware of protective bail conditions or a Form 4 then this may promote consistency in Court Orders between jurisdictions or allow a decision maker to have relevant information to consider if any inconsistent orders are to be made (and are permitted to be made).

### **Question 7:**

***How could the approach taken to families with complex needs by the family courts be improved?***

1. training of the Judiciary and the profession about dealing with families with complex needs;
2. resources;
3. standard risk assessment tool.

## **About FLPA**

The Family Law Practitioners' Association of Western Australia (Inc) (FLPAWA) is a not for profit association incorporated in Western Australia.

FLPAWA was first incorporated in 1980 and has been in continuous active operation from that time through to the present day.

## **Membership**

Membership of FLPAWA is open to legal practitioners (both barristers and solicitors) practising in the field of family law in Western Australia.

FLPAWA has 404 members.<sup>1</sup> So far as FLPAWA is aware, there are not any formal statistics available as to the total number of family lawyers in Western Australia. However, the anecdotal view is that the majority of the legal practitioners who have a significant portion of their practice in the field of family law in Western Australia are members FLPAWA.

## **Objectives**

The objectives of FLPAWA include:

- (a) To promote public welfare by improving knowledge of family law and the standard of representation available to the public in family law within the legal profession generally by the organization of lectures, seminars and dissemination of material to the legal profession as a whole, and otherwise by the application of the other objectives of this Association.
- (a) To promote high standards of ethical conduct and excellence of representation available to the public in the field of family law.
- (b) To promote the professional interest of members by:-
  - (i) furthering their knowledge of developments in family law;
  - (ii) providing a forum for mutual study and discussion of family law;

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<sup>1</sup> Figure shown is the number of paid ordinary members as at August 2015. There are other classes of membership including life members.

- (iii) organising seminars and lectures to provide opportunities for such study and discussion.
- (c) To establish a method by which recognition may be given to legal practitioners with a specific knowledge of or interest in or experience of family law.
- (d) To provide a means by which outstanding contribution to the knowledge or understanding of family law may be recognised.
- (e) To represent legal practitioners practising in the field of family law in negotiations with Federal and State Governments, law reform bodies, public enquiries concerned with family law, Government instrumentalities, Courts, Registries, and all other persons or bodies to whom it is appropriate that representations be made from time to time on behalf of the public and on behalf of legal practitioners with a special interest in the field of family law.
- (f) To make recommendations to members as to the mode of carrying on their practice, the establishment of a recommended scale of fees, and otherwise to assist members in the conduct of their practice in family law.
- (g) To co-ordinate, foster and encourage liaison, mutual co-operation and understanding between legal practitioners practising in the field of family law.
- (h) To promote or conduct studies and research projects and courses of lectures or other instructions, of relevance to family law.
- (i) To publish and assist in publishing magazines, journal articles and other publications of special interest to practitioners in family law.
- (j) To establish and maintain funds for the purposes of financing legal education or research in the field of family law.
- (k) To promote the interest of members.
- (l) To promote public understanding of the role of the legal practitioner in family law.

## Activities

Activities undertaken by FLPAWA include:

- (a) Presenting seminars and conferences for members to attend (including for the purpose of meeting the continuing professional development obligations imposed on legal practitioners in Western Australia).
- (b) Representing the interests of members in consultations with external bodies including the courts and government.

The majority of the work of FLPAWA is performed by members of FLPAWA on a voluntary basis.

## **Governance**

The members of FLPAWA elect a Council and the Council then conducts the business of FLPAWA during the course of the year. The current office bearers of the Association are:

- (a) President – Teresa Farmer;
- (b) Vice Presidents – Nicole Croft and Michael Berry SC;
- (c) Secretary – Adam Spashett;
- (d) Treasurer – Rachael Oakeley;
- (e) Assistant Secretary and Treasurer – Framy Anne Browne.

## **FLPAWA relative to other organisations**

Lawyers who are members of FLPAWA may also be members of other organisations, including:

- (a) The Family Law Section of the Law Council of Australia. (FLPAWA represents family lawyers at a state level, whereas FLS represents family lawyers at a national level.)
- (b) The Law Society of Western Australia. (FLPA is specific to family lawyers, whereas the Society represents lawyers more generally.)

FLPAWA is independent of these other organisations but enjoys constructive working relationships with each of them.

## **Contact details**

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