

**FAMILIES WITH COMPLEX NEEDS AND THE
INTERSECTION OF THE FAMILY LAW AND CHILD
PROTECTION SYSTEMS**

Legal Aid NSW submission to the

**Family Law Council
Terms of Reference 3-5**

October 2015

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Introduction

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979 (NSW)* to provide legal assistance to the people of New South Wales, with a focus on people who are socially and economically disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation through in-house and private legal practitioners. Legal Aid NSW also administers funding for 36 community legal centres, 28 Women's Domestic Violence Court Advocacy Program (WDVCAP) services, and three (3) Aboriginal Legal Service (ALS) care and protection solicitors and two ALS (2) field officers.

Legal Aid NSW is the largest specialist family law practice in Australia. The Legal Aid NSW family law in-house practice currently has 2,977 grants of legal aid for family law and care and protection matters on foot. In 2014/2015, 10,481 grants of legal aid for family law and care and protection matters were made. As a consequence both of our statutory mandate and eligibility guidelines, the clients who receive legal assistance from Legal Aid NSW are the most disadvantaged and arguably the families whose needs this reference seeks to address.

This submission forms the second part of the Legal Aid NSW response to the Family Law Council (FLC) consultation, 'Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems.' The submission addresses consultation questions in relation to the Attorney-General's terms of reference 3, 4 and 5 as follows:

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. 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.

5. Any limitations in the data currently available to inform these terms of reference.

Legal Aid NSW considered that a key part of the process of responding to the terms of reference was to gather primary data from practitioners. This second submission to the FLC is therefore primarily informed by a survey of in-house family lawyers undertaken by Legal Aid NSW. The survey also incorporates individual responses from staff with relevant experience in the family law and child protection systems.

Seventy practitioners responded to the in-house survey, which comprised 19 questions. The format of the submission is framed around those responses, which were a rich and instructive source of information about practitioners' frontline experiences, observations and suggestions for reform.

Should you require further information or would like to discuss any of our recommendations the contact officer is: Nicholas Ashby, solicitor, Strategic Planning and Policy, Legal Aid NSW, telephone 02 47254608; Email: Nicholas.Ashby@legalaid.nsw.gov.au.

Background data

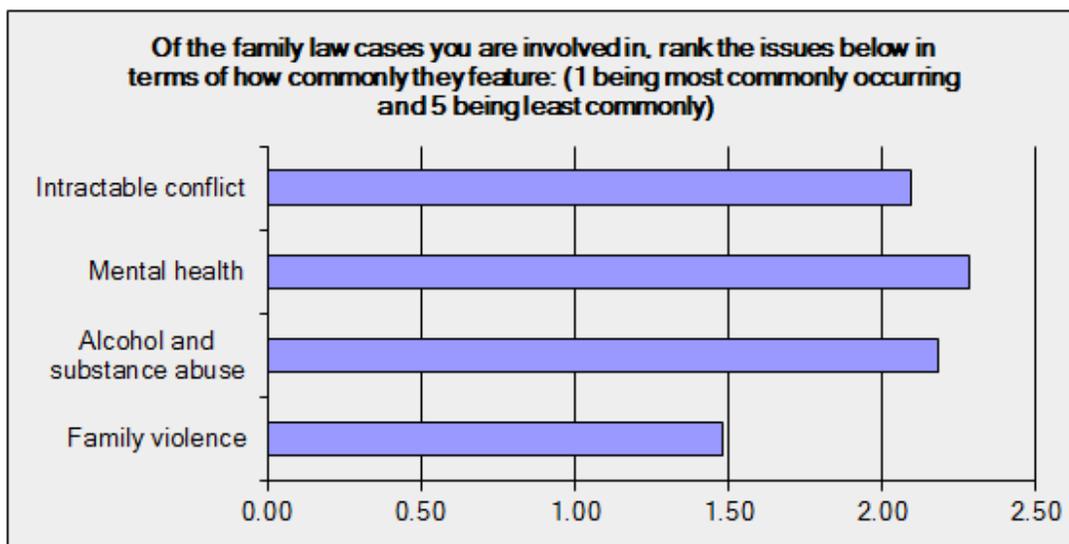
In September 2015 Legal Aid NSW invited around 130 of its in-house family law practice to complete a survey about the terms of reference. As indicated above, 70 practitioners completed the survey. The sample of practitioners surveyed can be broken down as follows: forty-nine per cent (49%) were Independent Children’s Lawyers (ICLs), thirty-eight per cent (38%) were legal representatives for parties, and thirteen per cent 13% were Family Dispute Resolution practitioners.

The practitioners were asked a number of questions about the characteristics of their caseloads and their subjective views on the defining issues in relation to collaboration and the sharing of information within the court system, between services, and between the court system and services. The practitioners were also asked for their views about more wide-ranging issues in this sphere of practice.

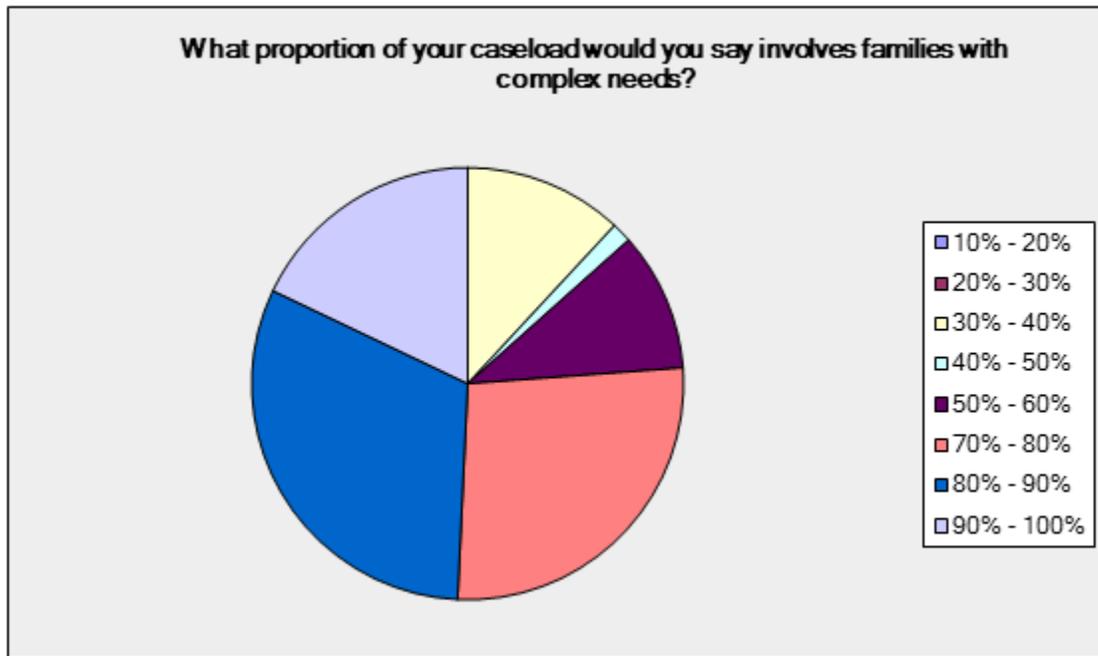
Respondents were asked to rank how commonly they encountered the following issues:

- family violence
- alcohol and substance abuse
- mental health issues and
- intractable conflict.

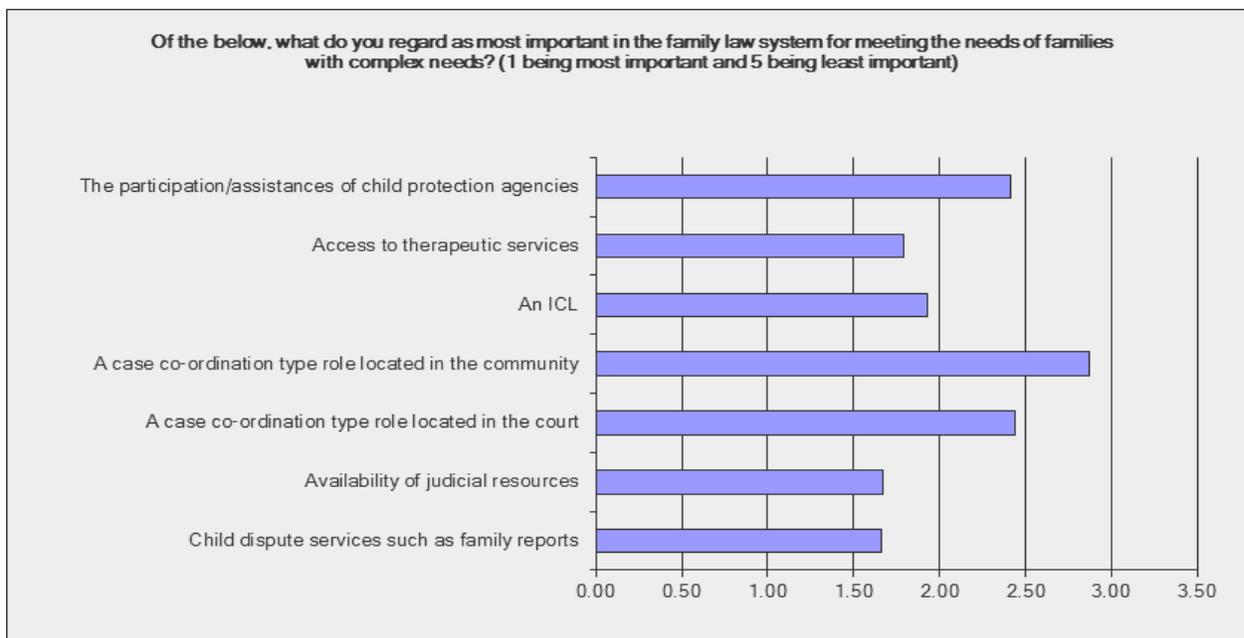
While family violence was cited as the most commonly occurring issue among their client groups, all four issues featured prominently.



Families with complex needs represented a majority of clients amongst our practitioners' caseloads. More than three-quarters of those surveyed said these families made up between seventy (70%) and one hundred per cent (100%) of their caseloads.



In the context of matters being litigated in the family court system, respondents were asked to indicate the most important services in the family law system for meeting the needs of families with complex needs. Child dispute services such as the reports prepared by family consultants were ranked as the most necessary, closely followed by the availability of judicial resources.



Practitioners were asked what they regarded as the change most likely to improve the engagement of families with complex needs in their journey through the family courts. Again an increase in judicial resources was ranked as most likely to improve engagement. This was consistent with substantive answers practitioners provided to an earlier question.

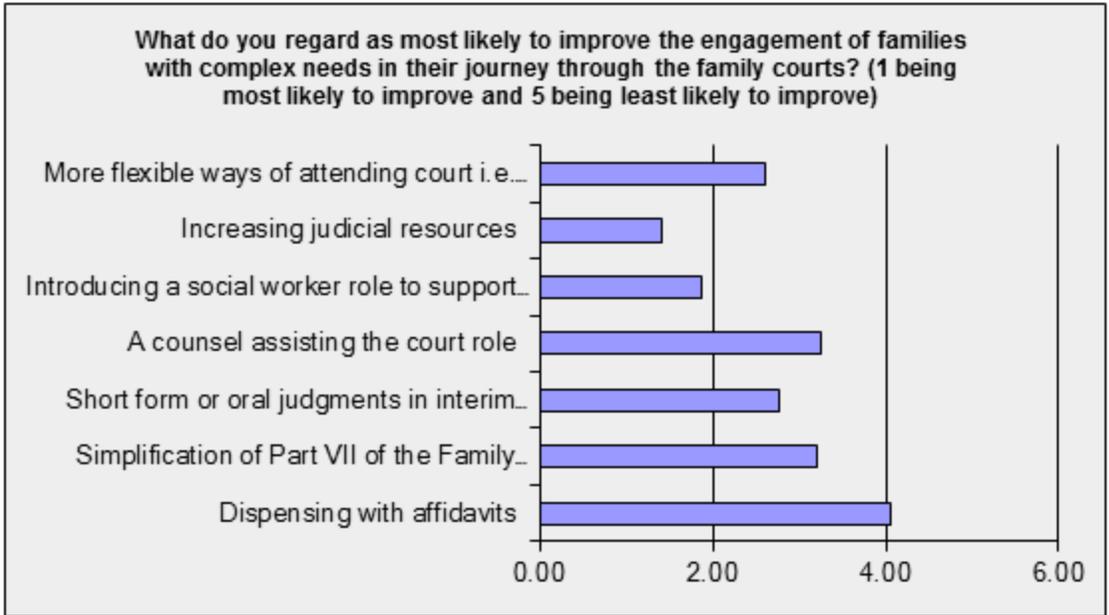
The lack of judicial resources was cited as a cause of a number of related issues, including:

- delays in court proceedings
- insufficient early referrals to services, and
- a lack of adequate information at an appropriate early stage.

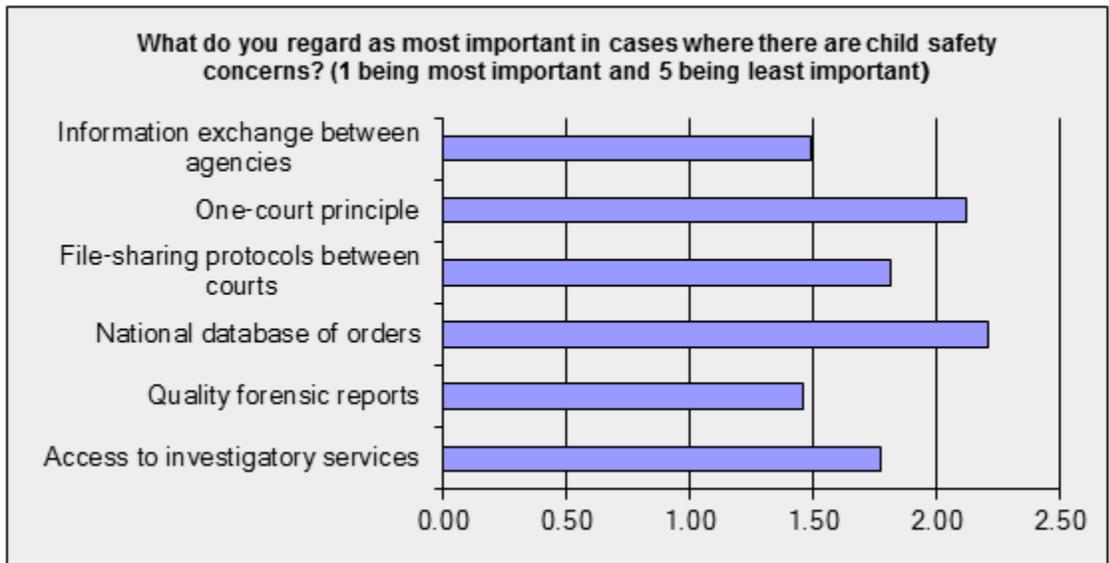
Practitioners ranked the introduction of a social worker in order to support families through the process as very important to improve engagement. In the substantive answers, this role was put forward as central to addressing some of the issues in regard to delay and inadequate service referral early in proceedings.

What do you regard as most likely to improve the engagement of families with complex needs in their journey through the family courts? (1 being most likely to improve and 5 being least likely to improve)							
Answer Options	1	2	3	4	5	Rating Average	Response Count
Dispensing with affidavits	0	5	10	19	23	4.05	57
Simplification of Part VII of the Family Law Act	5	9	23	9	11	3.21	57
Short form or oral judgments in interim proceedings	8	20	12	11	6	2.77	57
A counsel assisting the court role	2	14	19	11	11	3.26	57
Introducing a social worker role to support families	28	16	8	2	3	1.88	57
Increasing judicial resources	42	9	4	1	1	1.42	57
More flexible ways of attending court i.e. telephone	9	19	20	4	5	2.60	57
Other (please specify)							2

Other suggestions included improving access to family programs conducted by Family Relationship Centres (FRCs), availability of psychologists and psychiatrists to work alongside ICLs and adequate funding for expert assessments, such as for drug and alcohol and mental health assessments. Adequately resourced community-based accommodation services for women and children were also identified as important.



The practitioners were asked to identify what factors were most important in cases where there were child safety concerns. They ranked quality forensic reports and information exchange between parties as the two most important factors, followed by access to investigatory services and file-sharing protocols between services. Again, this was consistent with problems identified as most pressing in the substantive answers.



Improving methods for obtaining information from services

Practitioners were asked whether they were satisfied with current methods for obtaining information from services within the family law and care and protection systems. About thirty-seven per cent (37%) said they were, and just over sixty-three per cent (63%) said they were not satisfied. They were asked to reflect on the primary impediments to obtaining information. Three main issues were identified:

- resistance from agencies and services
- the expense associated with subpoenas and
- delays associated with getting subpoenas.

The following brief case studies and observations from Legal Aid NSW matters illustrate difficulties with information exchange.

CASE STUDIES AND OBSERVATIONS

1. I had a mother and her family come in to the office in a very distressed state as they had attended the contact centre to collect a 3 year old boy after he had spent time with his father and the centre advised her the father was not returning the child. I rang the person in charge of the contact centre and asked him to tell me what the father's concerns were in order to seek instructions from the mother and either answer the father's concerns or advise the mother. The contact person would not tell me or give any indication on the grounds of confidentiality. The mother's family were extremely distressed and ready to take the law into their own hands. Luckily, I spoke to the Police, who told me of the father's allegations. I was able to put that to the mother and resolve the misunderstanding. I called the father's mother and between the families we able to arrange for the 3 year old boy to return to his Mum.
2. I had an ICL matter recently where there were significant risk issues in relation to the mother's safety at Court. The matter was dealt with on circuit as a special fixture. Both the maternal and paternal families are Aboriginal. The Court heard the matter and delivered judgment in the area where the paternal family lives. This placed the mother and her family at significant risk throughout the four (4) day trial. The mother and her family were threatened at the Court as were the practitioners involved in the case. This risk was identified and predicted by the Aboriginal family support service which was supporting the mother throughout the trial. Local police were also aware that this particular family may pose a risk. However, this information was not conveyed to the Court. It was suggested that it would have been much safer and culturally appropriate for the proceedings to be heard at a neutral location. The Court did not have any security and the parties and their practitioners were forced to lock themselves inside the Court until police arrived when one particular incident occurred.

3. I act in a current Magellan matter where I urgently needed information from FACS in relation to the children but have waited six (6) months and this has only recently been provided. This related to serious DV, allegations of sexual abuse of one of the children and violence towards the children resulting in time spent in hospital.
4. I acted in a matter involving allegations of serious family violence made by a mother where the father had retained a small child after a visit. Numerous subpoena were issued to NSW and QLD police to obtain detail of the relevant family violence events the mother and children had been exposed to. I encountered continued failure by police to produce full records, resulting in a delay of 5 months before the Court was satisfied the father was a risk.

As well as providing case studies such as these, practitioners provided a number of practical examples of instances where existing procedures were not working. Legal Aid NSW has a memorandum of understanding with the Department of Family and Community Services (FACS) aimed at facilitating a collaborative relationship and the free flow of information between FACS and ICLs. The MOU covers the provision of information by FACS to the ICL to assist the ICL to better understand any child protection concerns and also the provision of information by the ICL to FACS in relation to the status of any Family Court/Federal Circuit Court proceedings and the reporting of any concerns which the ICL may have about the child in relation to abuse or the risk of abuse. Some complained that despite the MOU with FACS, enquiries often went unanswered. One practitioner suggested developing protocols that provide for FACS and the Police to provide brief reports about a particular family or person. Another suggested designated FACS and police liaison officers who would be able to more readily share information with ICLs.

Practitioners generally advised that material produced by FACS has improved but, at times, critical information relevant to assessing risk was excluded pursuant to section 29 of the *Children and Young Persons (Care and Protection) Act 1988* (NSW). When it was included, it was sometimes of limited forensic value because documents and record keeping were difficult to interpret (for example, because of the use of esoteric tools, risk assessments and acronyms) and/or information had passed through a number of hands and its source was unclear (for example, information had passed from a protected reporter to the helpline, to a caseworker to assess through a document, to a caseworker manager through some other kind of standardised assessment tool).

Many practitioners expressed their frustrations about working co-operatively with other agencies such as Family Relationship Centres and post-separating parenting programs. They reported that some agencies required subpoenas to issue which was unnecessary. Some ICL's surveyed wanted direct contact with caseworkers from FACS and complained that they were restrained from receiving information by having to liaise directly with legal officers, as opposed to caseworkers.

Although the NSW Department of Education has published guidelines on family law related issues which state that ICLs should be provided with a high level of cooperation one

practitioner noted, *'schools, as an example, often do not respond to enquiries. It would assist if they could be informed (again) about the benefit they provide to an ICL. I often feel buried in papers from services, much of which is not relevant.'*

Practitioners complained that the process of issuing subpoenas and attending court for their release and/or inspection was slow, onerous and expensive in circumstances where it should not always be necessary. A theme among the responses was the desirability of making certain classes of information available without the need for a subpoena. This was particularly pertinent in urgent matters involving serious allegations of risk to children and also where information was required to determine interim issues.

The issue of delay associated with subpoenas was particularly pronounced in regional areas, where it was more difficult and costly to access court registries. Receiving information in timely fashion was dependant on the workload of organisations involved and the procedures in different States.

A number of practitioners pointed to the need to simplify and streamline methods for obtaining information more generally. Many of these issues stemmed from an apparent lack of understanding by parties being subpoenaed about both the purpose for which information was being requested and the ultimate purpose of its use in court. This resulted in resistance to complying with requests and a tendency to provide irrelevant information.

A system of bypassing the need for subpoenas for certain limited classes of information could save significant time and money. Promoting dialogue between services and lawyers, potentially by way of better training and education to services, would support this process. However, it is also clear that there was great support for finding ways to obtain information about children and families with complex needs without resorting to subpoenas. Within the family violence context, one practitioner noted that information about victims' involvement with agencies should be made available in the family law system in the same way it was in the State criminal law system.¹

Women's Domestic Violence Court Advocacy Services (WDVCASs) regularly report that orders are made in the Family Court contradict NSW Local Court decisions and Apprehended Domestic Violence Order (ADVO) conditions, and vice versa. There is a significant need to improve information sharing between the two jurisdictions to ensure the safety of women and children experiencing domestic violence.

The approach to information sharing between local courts and federal courts might include information about whether a risk assessment had been undertaken, what findings a local court had made and information about the victim's engagement with therapeutic processes. The practitioner stated, *'if agencies are able on a state level to co-operate on domestic violence, it should follow that the same information should be shared with the family courts.'*

¹ The NSW processes for victims are set out later in the submission

On a more general level, practitioners noted that investigative work to determine what information was needed from which source was time consuming and could be better and more efficiently performed by someone designated this role, such as a case worker, social worker or counsel assisting type role. Some practitioners suggested that a more formal arrangement of this kind may not only help to overcome misunderstandings about what material could be disclosed but also allow information about families with complex needs to be provided in a more expedient and co-operative fashion. Comments and recommendations on this approach are made later in this submission.

Recommendations

- **Develop Memoranda of Understanding (MOU) and communication protocols between identified agencies/services to facilitate obtaining information without the need for subpoenas**
- **Extend section 69ZW orders for the Department of Family and Community Services (FACS) and the Police to other services**
- **Develop a similar system to that used by FACS (section 248) to obtain information from other agencies**
- **FACS undertake a review of the standards of information provided in relation to risk assessments.**

60I certificates - should there be more information on the outcome of the FDR process?

Practitioners were asked whether certificates should provide more information on the outcome of Family Dispute Resolution (FDR). Nearly forty-three percent (43%) agreed, with just over fifty-seven per cent (57%) disagreeing. As these figures indicate, the responses were roughly evenly divided along lines supporting preserving the confidentiality of the process on the one hand and greater transparency on the other. Risk issues in relation to a child's safety and welfare was the reason most commonly cited in support of this.

Those in support of further information on section 60I certificates nominated the following instances where this should occur:

- where a matter was exempt following an intake procedure, the specific issue causing exemption, for example, allegations of family violence
- the parameters of the dispute
- the willingness/attitude of the parties to negotiation
- whether there was partial or interim agreement on issues, and if not, why not
- if mediation was terminated, why it was terminated

- how many conferences took place and for how long
- whether parents were provided with legal advice
- whether parents attended any post-separation workshops as part of FDR
- whether a party refused mediation as separate from whether they failed to respond
- a list of issues raised; for example, if relocation is an issue before court, the court would know whether it was raised at mediation, and
- whether mediation was face-to-face or by phone or shuttle.

Others said FDR should take place in an environment where parties felt free to negotiate and exchange information without the concern of it being used in court. Any change to this could inhibit the process. One practitioner noted there might be reasons for reluctance to participate, such as undisclosed violence and intimidation, which may not emerge at the early mediation stage.

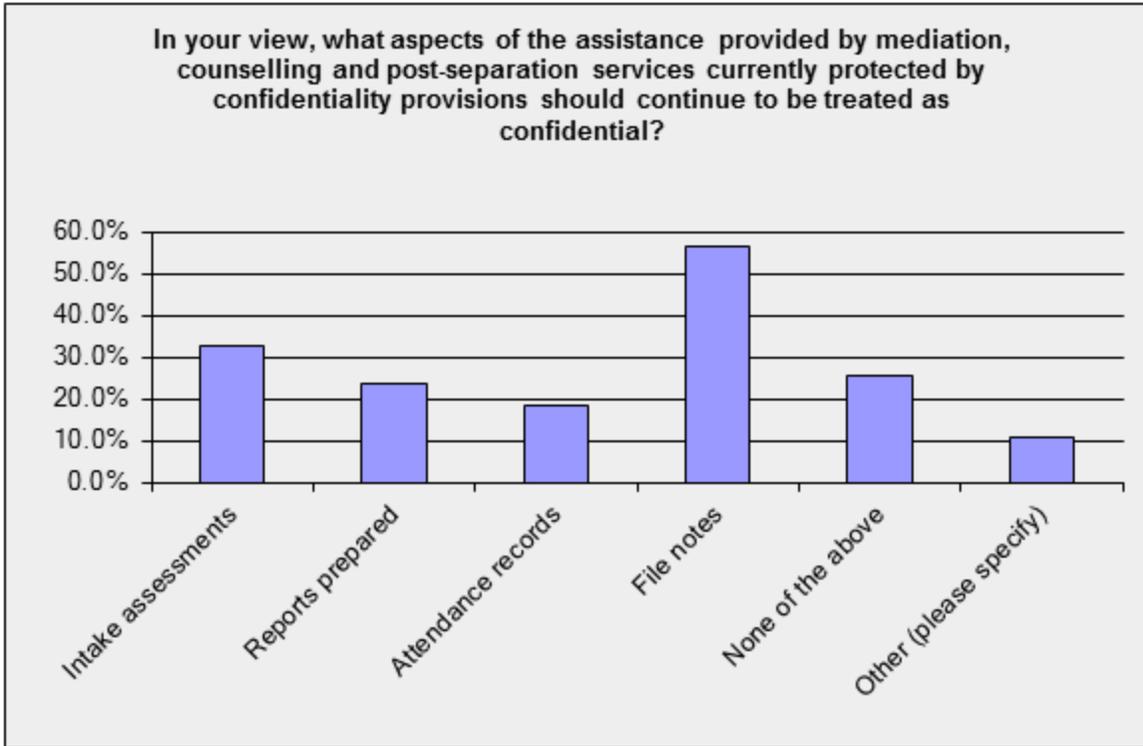
The alternative view was that if a matter is deemed unsuitable for FDR because of family violence concerns or a mediation process terminated because of these kinds of allegations it was important for courts to be given advance warning or notice of these matters:

'If a party refused to engage or attend, they should be named and reasons they have given for their behaviour also included. If the agency undertook a risk assessment and deemed the matter unsuitable, again the court should be advised. The certificate should be served on all parties as well and maybe attached to the application so it is on the record in a more public way.'

However, careful consideration would need to be given to the potential safety implications for victims of family violence if their concerns were disclosed through a section 60I certification.

Mediations, counselling and post-separation services - confidentiality provisions

Practitioners were asked what aspects of the assistance provided by mediation, counselling and post-separation services currently protected by confidentiality provisions should continue to be treated as confidential. The results are depicted in the table below.



As with the previous question in relation to section 60I certificates, there were arguments in favour of preserving confidentiality in the interests of promoting frank negotiating on the one hand, and identifying issues for the benefit of the process going forward, on the other. Preventing abuse of confidentiality provisions was another reason cited to relax them.

Most practitioners agreed that in the interests of promoting the use of mediation as a form of conflict resolution, details of discussions should remain confidential. This included mediation, counselling and FDR notes.

Some argued that a report prepared at the conclusion of mediation, especially about outcomes, would be useful in narrowing issues in court disputes. Further information could also be useful in helping to identify why certain services were not working for parties and to formulate programs or appropriate future referrals for clients. However, it was acknowledged there was a risk that this information would be used inappropriately for the advantage of one party given the adversarial nature of the process. The situation where confidentiality was trumped was where there were risk or child welfare issues.

The following brief case studies are from Legal Aid NSW practitioners and illustrate the impact of confidentiality and admissibility provisions on case preparation.

CASE STUDIES

1. I had a child who had disclosed information about her treatment by her mother to a counsellor from Unifam as part of the Anchor programme. Although I was able to subpoena a notification made to the Department, I could not subpoena the notes setting out what the child had said. In my view, these notes were critical to support an application the child not spend any time with the mother.
2. In another case, community based (no legal representation) mediation was conducted that was very disadvantageous to our client. Our client entered into an agreement because (a) she thought she had to and (b) she thought it would make the father happy and therefore end the violence. Neither of these things was true. However, we could not look behind the agreement to demonstrate the conduct of the parties.
3. In a matter where I acted for a mother, during an intake assessment a disclosure was made by a father as to sexual abuse of children of the relationship. The intake disclosure was protected by confidentiality provisions at Relationships Australia. Regrettably, there was no other disclosure of the abuse by the perpetrator. As a result, a child of the relationship over the age of 18 was required to provide evidence of the abuse on affidavit in proceedings to corroborate the mother's concerns as to risk.

Another approach would be to consider amendments to section 10H of the Family Law Act which would clarify the circumstances in which a family dispute resolution practitioner might disclose a communication. The removal of the word "imminent" from section 10H(4) would be a relatively simple way to achieve this, combined with education for family dispute resolution practitioners about the situations which may give rise to the need for disclosure.

Recommendation

- **Consider amending section 10(4) of the Family Law Act to clarify the circumstances in which a family dispute resolution practitioner might disclose a communication made during FDR.**

Sufficiency of services to support families and children who use the family law system where child safety concerns are identified

Eighty-six percent (86%) of respondents to the in-house survey believed there were insufficient services to support families and children in the family law system where child safety concerns were identified. A lack of integrated, case-managed support for families with complex needs was singled out as a major issue.

Practitioners pointed to a lack of resources across the board, including insufficient funding to existing services and service provision which occurred too late in proceedings. The siloed

nature of services, and an absence of any kind of mechanism to link them together, was especially problematic.

Some of the issues this question raised are summarised below, and are explored in greater depth by case studies and more detailed substantive responses later in the submission.

Better case co-ordination

Practitioners agreed enhanced case co-ordination within the court system would be extremely beneficial. Just over seventy-three per cent (73%) of respondents to the survey identified this as an area in need of improvement. It was suggested that better case coordination would improve access to courts, services and decision makers for parties most urgently in need.

Self-represented litigants who were ineligible for legal aid and unable to pay for private presentation would particularly benefit from better case co-ordination. In many instances, self-represented litigants were ignorant of how the system worked and what they had to do. Practitioners were not able to provide the additional support and assistance some parties needed. It was noted that in these cases ICLs are often appointed by the court to assist with case management. It is our view that self-represented litigants and family courts need to be assisted. However, some thought should be given to whether this is an appropriate use of an ICL resource and would the system be better assisted by a different approach.

Particular matters required ongoing monitoring which, despite their best efforts, judges were not able to provide. One practitioner said, *'case co-ordination could take place from the court by way of telephone call-overs to adjourn matters ... make procedural directions and filter matters requiring judicial (as opposed to administrative) decisions.'* The practitioner commented that some matters *'jump the queue'* for no apparent reason when in fact those families could benefit from time to *'settle down'*, while other matters *'wait around for ages before anything can usefully happen at court.'*

One practitioner suggested that the resources dedicated to the Magellan Program could instead be applied towards a consistent case management approach, especially for complex matters. Practitioners pointed to the need for such co-ordination to cover wide areas so that regional courts were not overlooked or disadvantaged.

One practitioner suggested the use of social workers to assist with non-legal referrals and support. Many identified family consultants attached to the court system as appropriate to play this case management role. Another raised the importance of culturally appropriate assistance to guide participants in the system towards services targeted to them. These issues are addressed in more depth later in this submission.

Practitioners emphasised the critical importance of getting early background information on families where risk had been identified, arising from family violence, neglect, or drug and alcohol issues. One noted that the ICL would have *'a heightened obligation in these matters.'*

Another practitioner suggested a return to the Family Court of Australia registrar system, including senior and judicial registrars with appropriately delegated authorities. In children's cases, these registrars could be assisted by Family Consultants at appropriate court events. This would mean cases could be properly triaged and judicial time could be spent deciding cases instead of on the '*clutter*' of the daily list. The practitioner said, '*duty lists are filled with administrative matters, such as adjournment applications and requests for reports, which take away from judicial resources being directed towards resolving substantive matters.*'

Practitioners tended to agree that a case co-ordination should be based at court, similar to family consultants, allowing easy access to files. '*I would like to see a case co-ordinator based at each court or at least have responsibility for a set circuit. This would assist especially in self-represented matters,*' one practitioner observed. Improved case coordination would provide a '*bridge*' between registries and regional areas.

The issue of court delays exacerbates problems with service referral and delivery shortfalls. This is an acute problem in court registries across NSW. Legal Aid NSW is concerned that many families with complex needs have been waiting for judicial determinations for excessive periods of time due to judicial resourcing shortages. While they wait for access to judicial time, little of a productive nature takes place and disputes becomes much more entrenched. In the context of extreme court delays, there is a pressing need for professionals with a high level of expertise to assess safety and risk, make recommendations and provide or refer families for remedial therapy and other help. This type of service is often not provided in the family law system as a result of a lack of resources across the system.

Legal Aid NSW supports the development of a special list for complex cases with the ability to relist when interim issues arise. We also support this special list working closely with a range of agencies in the family law system so parties could be referred for case management externally. As one practitioner said this approach would allow for '*something productive to happen*' when proceedings were delayed. This system would assist these parties with accessing therapeutic services, such as drug and alcohol services or perpetrator programs. These services would need to be reportable. The special list system would allow matters to come back urgently if a critical incident took place.

Recommendation

- **Develop a special list for complex cases with the ability to refer families to external agencies for case management and relist when interim issues arise.**
- **That a social scientist or family consultant is attached to complex cases.**

Centralisation

Practitioners noted that it would be much easier for families to be linked up with services at court rather than relying on parties to engage with those services later. Families were often referred to services which were drastically under resourced and with long waiting times, so the expectation they would successfully engage with these services independently was unrealistic. A centralised court based service devoted to connecting families with services could help overcome some of these issues.

Legal Aid NSW has worked collaboratively and supportively of the 'Kiosk', established at the Sydney Registry of the Family Court. It has been an effective way for legal practitioners to be informed of available services for their clients. This process is obviously separate from court processes. However, the ability of a court based service to map and monitor parties engagement with external service providers and report back would be beneficial. This process would need to be undertaken with the consent of clients and ideally in co-operation with a case co-ordinator.

Recommendation

- **Establish a centralised court based service to assist families to connect with range of support services and build into this approach a report back mechanism.**

Insufficient services

Practitioners said insufficient services were available to families. Many services were stretched, with long waiting times, and some were unaffordable. There was a particular dearth of services in the following areas:

- family violence
- early family therapy, including child-inclusive conferences
- culturally specific services
- alternative accommodation services for men and women
- contact centres, and
- regional services generally.

Access to services to address safety concerns at the start of proceedings and in the medium term would mean protective measures could more readily be put in place.

Practitioners said an integral issue was insufficient funding for report writing, including expert assessments. Some respondents felt that reports were sometimes of dubious quality. Once experts had identified needs, there were often insufficient resources to appropriately refer families.

Recommendations

- **Increase resourcing for family support services, particularly in regional areas of NSW**
- **Review current report writing services across NSW and consider increased funds to improve the availability and quality of those services.**

Judicial resources

Practitioners identified lack of judicial resources as a major issue in terms of the insufficiency of services to support families and children in the family law system. Judicial resources was probably the most prominent issue identified in the survey² and, not surprisingly, concomitantly identified as one of the measures most likely to address systemic issues.

Practitioners said that one of the most important flow-on effects of increased judicial resources would be the expedited hearing of both interim and final matters, particularly in matters involving allegations of domestic violence and where there were child safety concerns.

It should be noted that Legal Aid NSW practitioners appear in the most complex of matters. Notwithstanding pre-mediation requirements imposed by both the Family Law Act, as a pre-action procedure, and Legal Aid NSW, often as a funding pre-condition, matters proceed to court because they are less capable of settlement and ultimately require a judicial determination.

Recommendation

- **Increase funding for Family Law Courts to allow sufficient time for judicial officers to adequately consider the issues at an early stage of the proceedings**

Better cooperation from care and protection services

Practitioners identified multiple issues with care and protection services and their interactions with families, the family law system and practitioners. Of particular concern was FACS' lack of resourcing, will and capacity to properly investigate claims of risk of harm raised via the family court system. As a result, those issues are not thoroughly explored until final hearing potentially exposing families to risk until that time. Under resourcing was identified as a key cause.

² At the time the survey was conducted there were judicial vacancies in all NSW Federal Circuit Court registries.

The limitations on child protection resources means some reports were not investigated at all, or, if they are, resources are not put in place for change or additional support. The lack of involvement of child protection agencies means judicial determinations are often made on a 'least worst' basis, with children left in risky environments because there is no other viable alternative. One practitioner said although case management was essential, it *'only really happens when the State welfare services become involved.'*

FACS was often reluctant to intervene in family law proceedings, even in complex matters and despite requests from ICLs or judicial officers. Child protection agencies needed to be part of the solution, not *'muddy the jurisdictional waters with applications in the Children's Court when family law proceedings are already on foot'*, one practitioner said. Response times were also an issue. One practitioner noted:

'We will often not hear anything from them for six (6) to ten (10) months ... I have an urgent Magellan matter where it has taken six (6) months to get documents from the department about an urgent issue despite orders being made.'

The need to be able to more readily access information from FACS, even in situations where they had declined to intervene, was imperative. Practitioners argued for greater and more constructive FACS involvement in the family law system. One said the introduction of social workers for individual families who have FACS involvement and family law proceedings on foot would result in a *'more integrated response with proper access to therapeutic interventions ... to address their needs and improve parenting skills where necessary.'*

A further issue in relation to FACS was the exclusion of families who had a history of violence, where safety concerns were not enough to meet the threshold for FACS involvement but children were still at risk. One practitioner observed that FACS and police outcomes should focus more on child safety and supporting the protective parent than they currently do stating:

'Services need to be better trained to deal with these families. They are the ones who need help and often respond well to assistance.'

Cross-agency sharing of information

Another consistent view expressed by practitioners was the limited ability for agencies who hold information about a child to easily share or exchange that information. Some questioned why FACS was not able to supply details of their involvement with a family by way of a caseworker affidavit or evidence early on in proceedings or, at the very least, make their records available on the first return date. Practitioners argued that options for cooperative involvement of child protection services in matters before the family courts were too restricted.

Legal Aid NSW appreciates that child protection authorities operate with limited resources and in a climate of fiscal constraint. This understandably means that invitations to intervene in family law proceedings are rejected. However, we suggest that better collaboration and understanding could be achieved by the attendance of case workers at an early court event, in matters where they have had an involvement with the parties. This might be a more efficient way of providing family courts with relevant and timely information about these families and risk issues.

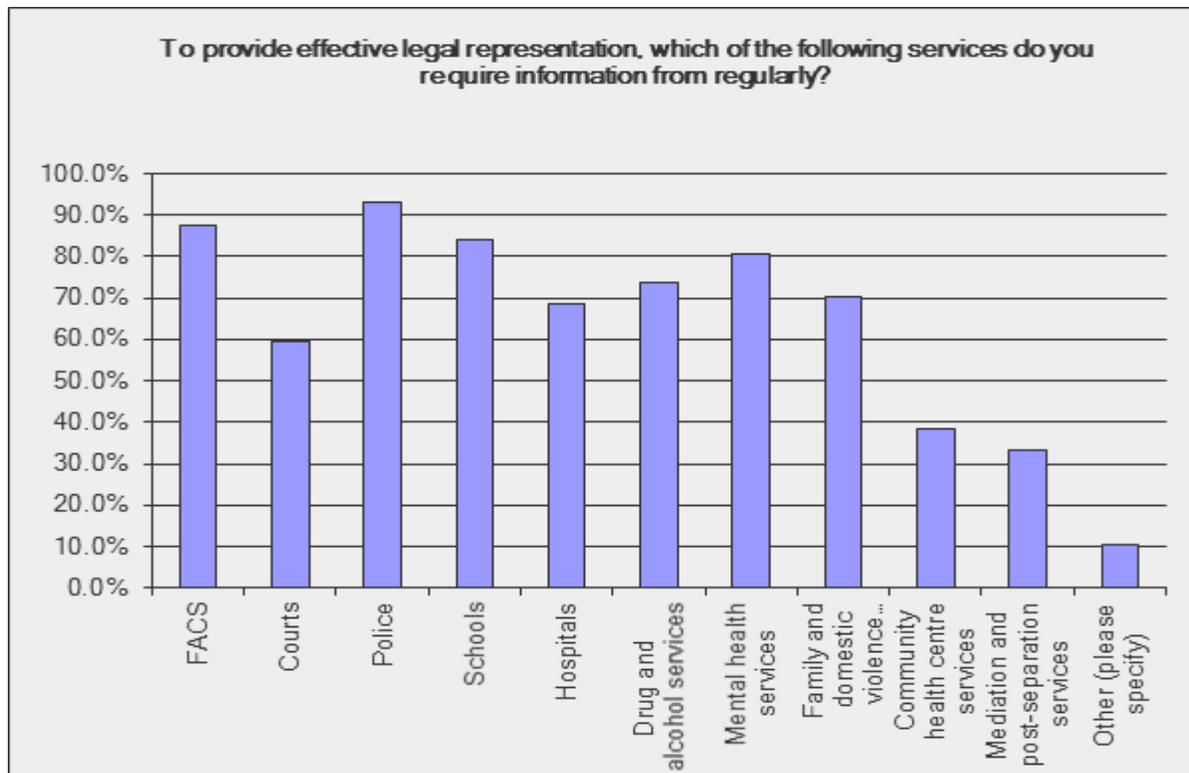
Recommendations

- **Design a court event that allows people who have previously worked with the family to provide information about them and the extent of agency involvement**
- **Explore the possibility of obtaining authority from families at the start of proceedings for information about them to be shared**

Services required

Practitioners were asked which of a list of services they required information from regularly to be able to provide effective legal representation.

To provide effective legal representation, which of the following services do you require information from regularly?		
Answer Options	Response Percent	Response Count
FACS	87.7%	50
Courts	59.6%	34
Police	93.0%	53
Schools	84.2%	48
Hospitals	68.4%	39
Drug and alcohol services	73.7%	42
Mental health services	80.7%	46
Family and domestic violence services	70.2%	40
Community health centre services	38.6%	22
Mediation and post-separation services	33.3%	19
Other (please specify)	10.5%	6
answered question		57
skipped question		12



The results of this question were interesting. While in the past many enquiries have focussed on the exchange of information between mediation and post separation services and courts, these were not the most necessary information providers in the eyes of the respondents. This result leads us to believe that a more case managed approach for families with complex needs would target a range of other agencies in the context of information exchange.

Other services identified were children's contact and changeover services for contact reports, pre-schools and day-care providers.

Integrated service models

This part of the submission considers whether integrated service models being used in some jurisdictions such as drug courts, specialist family violence courts, and integrated models such as the Legal aid NSW Early Intervention Unit (EIU) and the Court Ordered Mediation Program (COMP) in the Parramatta Family Court Registry, could be usefully adopted for families with complex needs.

Legal Aid NSW is supportive of the use of integrated service models as a way to facilitate pathways to referral and address complex issues holistically. Perhaps for this reason, Legal Aid NSW practitioners are experienced working with integrated service models and support an improved case management model for the family court system.

Practitioners emphasised the usefulness of triaging processes, in particular, and argued that Legal Aid NSW was particularly well placed to participate in that process. One practitioner with experience working with the EIU and COMP programs observed that they made the systems less 'monolithic' for clients, stating, *'these are excellent ways of seeking to triage and focus our clients on their safety and the safety of the children. Outlining the pathways and assisting with ... referrals makes the family law system seem less monolithic'*.

In focus: Safer Pathway reforms

The NSW Government launched the Safer Pathway reforms in 2014 to improve the response to domestic violence across the state. Safer Pathway aims to ensure that every victim of domestic violence receives a timely, effective and coordinated response, regardless of where they live. Safer Pathway comprises:

- a standardised risk assessment tool, the Domestic Violence Safety Assessment Tool (DVSAT)
- a streamlined referral pathway for victims
- consistent access to specialist support for victims through a state-wide network of services, and
- a collaborative response to victims at serious threat of further injury or death, known as Safety Action Meetings (SAMs).

Safer Pathway currently operates in six locations in New South Wales, at Orange, Waverley, Bankstown, Parramatta, Tweed Heads and Broken Hill, and is scheduled to be rolled out across the state in stages. Legal Aid NSW is leading implementation of two key components of Safer Pathway. There are the Local Coordination Points (LCPs), specialist domestic violence services hosted by the local Women's Domestic Violence Court Advocacy Services (WDVCAS); and SAMs.³

The Safer Pathways program and SAMs were cited by practitioners who responded to the survey as another example of integrated services and information sharing which successfully address legal and social issues concurrently for victims of domestic violence and family violence and their children. SAMs operate in the following manner:

- SAMs are fortnightly local meetings of key government and non-government service providers aimed at lessening or preventing serious threats to the life, health or safety of domestic violence victims and their children. Attendees share information relevant to a victim's current situation, and develop a list of practical actions they can take to reduce the immediate threat to the victim's safety. SAMs are chaired by a senior Police officer and organised by the Local Coordination Point. The meetings are attended by representatives from government health, housing, child protection, education and corrective service agencies, and various non-government services depending on the area.

³ More information about Safer Pathway can be found at <http://www.domesticviolence.nsw.gov.au/for-service-providers/it-stops-here-safer-pathway>.

- SAMs are delivering excellent outcomes for victims, ensuring services work collaboratively to reduce the number of domestic violence-related homicides, and reducing duplication in service delivery. Examples of good SAM outcomes include: priority rehousing for victims or perpetrators; increased legal protection for victims through new or amended ADVOs; increased accountability for perpetrators through improved bail/parole/ADVO compliance monitoring; and increased support for victims.
- Information sharing at SAMs is made possible by Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007*. Part 13A was introduced in 2014 specifically to enable information sharing in cases where domestic violence poses a serious threat to a person's life, health or safety, without consent in certain circumstances.

Legal Aid NSW supports consideration of equivalent legislation at the federal level. The interaction of Part 13A with Commonwealth and other state/territory legislation is not yet fully understood, and consistency across jurisdictions would support effective responses to victims.

Perhaps the most significant lesson from SAMs is the importance of collaboration between service providers in responding to clients with complex needs. SAMs are premised on the idea that no one agency or service has all the relevant information about a case, or the ability to take all the actions necessary to address the issues involved.

Multiple coronial reviews, most recently the Luke Batty case, have demonstrated the need for formalised information sharing protocols to better respond to high-risk situations. SAMs work because they are an official yet localised information sharing mechanism, with a clear policy direction, roles and responsibilities for members, dedicated training, and legal basis for information sharing. The SAM Policy Manual is at [Attachment A](#).

One practitioner advocated a specialist family violence court within the family law and care and protection systems.

A Central Coast practitioner described a local service called ADVICE (Area Domestic Violence Integrated Case-Management and Education), which provided assistance to family violence victims. This service provided help through the ADVO process, and referrals and assistance with practical matters such as changing locks at home and other safety measures. The system operated out of police stations and triaged matters according to whether or not there had been police involvement. The practitioner suggested that a similar service within the family courts could link in with the EIU duty service.

In focus: the EIU service

Legal Aid NSW supports services designed to triage clients at their point of entry into the family law system. In 2011 Legal Aid NSW established an Early Intervention Service at the Parramatta registry of the Family Court and now provides services at all family court registries in New South Wales.

The Parramatta registry service was evaluated by the Law and Justice Foundation on NSW in 2012. In their report, *An Evaluation of Legal Aid NSW Family Law Early Intervention Unit Duty*

Lawyer Service (November 2012) the Law and Justice Foundation comment on the effectiveness of the service, as follows:

A particular feature of the Parramatta EIU duty service that makes it notable as an early intervention strategy is its placement in a site of complex and often immediate legal and other needs ... With a broad remit, the EIU duty lawyers were able to prioritise clients and shape the assistance provided according to the urgency of each matter, and the capacity and need of the client. (page 36)

The introduction of the EIU Service at Parramatta Family Court resulted in a one hundred and sixty per cent (160%) increase in number of duty matters provided by Legal Aid NSW. In nearly forty per cent (40%) of matters, clients who should not have been going to court were assisted to take more appropriate action. Where matters did progress to court, the EIU service assisted clients to progress their matters more efficiently with sixteen per cent (16%) of matters finalised by the court on the day or finalised by consent.

One of the objectives in establishing the EIU was to increase the number of people who could be assisted by Legal Aid NSW. A firewall separates the EIU from the litigation practice in the electronic case management system. The EIU is located separately from Legal Aid NSW offices, delivering casework and other family law services. This addresses conflict issues and allows services to be provided by the EIU to Party B in matters where the in-house family Law litigation practice is representing Party A or is the Independent Children's Lawyer.

The successful way in which the EIU has been structured to address conflict issues offers lessons in the family law system. There is no reason why legal assistance agencies such as Legal Aid Commissions could not be charged with operating other schemes in courts with a case management focus, such as counsel assisting roles.

Examples of how the EIU Information and Referral Officer (IRO) operates are below:

CASE STUDY

1. An EIU outreach solicitor met with a client in Broken Hill. The client had difficulties spending time with his infant son as the mother had relocated to Tasmania. Only few lawyers in the Broken Hill undertake legal aid work. The outreach solicitor helped the client complete his application for legal aid and the IRO arranged representation by a solicitor based in western Sydney. The client was very grateful that representation was arranged for him. The IRO followed up with him two weeks later. He confirmed he had received a letter advising legal aid was granted, and said her was also instructing his solicitor in relation to an ADVO which had recently been served on him.
2. A young Aboriginal mother was seen by an EIU solicitor at an outreach location. She had a current matter before the Family Court. The client's three year old child had been

removed from her care by the father and the client was determined to re-establish a meaningful relationship with her child. While the Legal Aid NSW in-house family law practice acted for the child in the matter, but EIU could still provide some assistance to the mother.

The recent history of that matter had been that the client's legal aid matter had been assigned to a private practitioner, but relations had broken down between them and legal aid had been terminated. The client had a court deadline fast approaching. The EIU solicitor determined that the case still had merit. The EIU solicitor assisted the client to make representations to the Grants Division of Legal Aid NSW and the client's grant of legal aid was reinstated. The IRO then found an appropriate private solicitor experienced in assisting Aboriginal clients and the client was able to pursue her case to have her daughter reinstated to her care.

3. A father had orders for three children to reside with him. As agreed, the children went to stay with their mother interstate in the school holidays. However, only one of the three children was returned after this contact visit. The father's income put him just over the threshold for eligibility for legal aid. The father came to court with drafted contravention orders, and was referred by counter staff to the EIU duty service. The duty solicitor advised the father not to proceed with contravention orders, which would have re-opened the children's proceedings, and instead re-drafted the application and orders for recovery. The father was advised on how to run the recovery proceedings. The duty solicitor assisted with filing and sought urgent short service. The father had the documents served and represented himself in the urgent hearing. Orders were made for the children to be returned.

In focus: Mount Druitt Local Court Pilot Scheme

This Mount Druitt Pilot Scheme model of service delivery brought legal and non-legal services together at a busy local court in a region with high social and economic disadvantage. It operated on the day that applications for family violence protection orders (Apprehended Domestic Violence Orders or ADVOs) were listed in the local court.

Family law advice was provided by the EIU to respondents to ADVOs. Other services, including those which offered parenting courses, mental health case work, and tenancy advice and casework, were also at the Court and available to assist defendants to address underlying issues which may have contributed to the ADVO being sought. These services had effective working relationships and were able to provide the holistic wrap-around services which clients required.

The Mount Druitt Pilot highlighted the impact of children's contact arrangements on securing workable ADVOs, and the significant need for family law advice for both victims and defendants. In attempting to work collaboratively with complex needs clients affected by domestic violence, the Mt Druitt pilot also highlighted:

- the need for the roles and relationships of all stakeholders to be clearly defined, with an agreed and explicit stated common purpose. Multiple stakeholders work in this space, often with diverse purposes and methods. Lack of a common, client-focused purpose in working together can be a significant barrier to collaboration, and
- the need for regular stakeholder meetings, such as court users meetings, and other regular communications are critical in monitoring and achieving collaboration and problem-solving, and in particular, addressing the unintended consequences of placing a duty lawyer for defendants in the court.⁴

As a result of the operation of the pilot, Legal Aid NSW established new family law clinics for victims and defendants attending Mt Druitt Local Court.

In focus: Burwood Local Court Pilot Scheme

Legal Aid NSW undertook a second ADVO pilot scheme at Burwood Local Court, drawing on the learnings from the Mount Druitt Pilot. Burwood Local Court was selected because it is a court with a high volume of AVOs and a diverse client group. Legal Aid NSW identified local services and court stakeholders who were engaged with the scheme. Legal Aid NSW partnered with the Bureau of Crime Statistics and Research (BOCSAR) for evaluation of the pilot.

Legal Aid NSW engaged two experienced private practitioners to provide the duty service and established clear referral pathways for family law and related advice for victims and defendants. A very deliberate process of consultation and co-design was conducted with all service partners, including regular discussions through court users meetings, email communication and one-on-one communication. Roles and referral pathways were clearly documented and communicated, including mechanisms for problem-solving and conflict resolution.

The Burwood Pilot again revealed that:

- there is a high demand for family law advice for ADVO defendants with just over a third of all legal advices being family law related, and
- there is a high demand for family law referral for ADVO defendants, with family law being the top referral made for ADVO defendants. This was followed by Relationships Australia/ Counselling, criminal law advice/representation, Mental Health services and Drug and Alcohol services.

⁴ “The ADVO Defendant Pilot Mount Druitt Local Court: Final Review Report” June 2013 Legal Aid NSW www.legalaid.nsw.gov.au/__data/assets/pdf_file/0007/16477/Mt-Druitt-pilot-Final-Review-Report-June-2013.pdf - pdf - 264k

BOCSAR found that:

Although the Legal Aid NSW intervention had no clear short-term impact on breaches, the pilot legal service did produce a number of other beneficial outcomes. Stakeholders noted that different agencies within the courthouse worked together constructively, initiating procedures to streamline court processes. Matters proceeded more smoothly in the courtroom, saving time and ultimately cost.

The workload of several categories of stakeholders was eased with the operation of this legal service. Receiving legal advice at an early stage meant that defendants were able to make informed decisions about how to proceed at first mention, thus eliminating the need for adjournments and eliminating the need for both the defendant and the associated protected person to return to court; this, in turn, made the courthouse less crowded, the court process less stressful and more efficient for all parties, including the court.

The recruitment to the pilot service of a specialist family law practitioner allowed the development of ADVOs which could operate cohesively with parenting and contact orders to ensure the safety of all parties. Obviously, if the orders do not operate in conjunction with each other, the protection they offer could be compromised. The specialist family law knowledge of the duty solicitors was also a valuable resource for the DVLOs at court.

The legal service had the added advantage of identifying other issues which could be affecting defendants' offending behaviour (e.g. issues relating to housing, mental health, relationships, drug and alcohol and immigration), enabling defendants to be referred to the appropriate agencies. Resolution of these issues at this early stage may have reduced, or even eliminated, future offending associated with one or a combination of these issues.⁵

Team approach with more intensive case management

In the survey practitioners were asked whether a team approach with more intensive case management for complex matters would be a positive development. More than ninety per cent (90%) of practitioners agreed it would. The practitioners were also asked why. This raised many of the same issues as the question in relation to integrated service models, with similar observations and recommendations emerging.

⁵ Trimboli, L. 2014 "Legal service for defendants in Apprehended Domestic Violence Order (ADVO) proceedings: An evaluation" *Crime and Justice Bulletin* Number 179, Nov 2014, NSW Bureau of Crime Statistics and Research)

Practitioners regarded the ability to address fragmentation of service delivery as particularly important. They noted that better coordination of service delivery could only be positive in circumstances where many families were engaged with a number of services but the ultimate service delivery was compromised because of poor communication and coordination. One practitioner said targeted responses to an issue such as family violence, could help determine where there are underlying mental health or substance abuse issues, and a multi-disciplinary team could help address these issues.

Many of the families and children involved in the family law and care and protection systems had issues that were beyond the scope of any one agency or jurisdictional process. Practitioners pointed to the likelihood of better outcomes for children, especially in the early stages, if formalised intensive case management was carried out. They argued people were less likely to *'fall through the cracks'* or not follow up referrals and that it could reduce the rate of matters coming back to court. It also had the potential to improve efficiency by ensuring there was less duplication of services.

Practitioners argued that potentially fewer children would be removed if underlying issues were better addressed and at an earlier stage. If social workers were able to help high needs families, for example, it would increase the likelihood of issues being recognised and reduce their risk of exposure to the care system and possible removal of children.

One practitioner remarked:

Families with complex needs are likely to need a number of different supports and assistance, legal, socio-medical and other. A team approach involving lawyers and social workers would potentially make court proceedings more streamlined and assist with the implementation and effectiveness of court orders. Ongoing case management is likely to lead to concerns being addressed before they become crisis, with less risk of sudden removal or change of living arrangements for children with the inevitable trauma this creates.

Practitioners advocated a multi-disciplinary approach. One practitioner said:

We are lawyers without formal training in social welfare issues. A multi-disciplinary, holistic approach to our matters would benefit everyone in the system.

Many of the more complex cases require the involvement of multiple services and professionals with different skills. Rather than referring families for "treatment", it would be of assistance for someone to case manage that engagement. Greater case management through this process would take pressure off the judiciary to make decisions without the necessary social science and investigatory resources. It has the potential empower families and improve communication between service providers and the court. One practitioner observed:

Often I have tried to do that work as an ICL but it requires specialist knowledge and time which I do not have.

Another commented that if the complex needs were addressed it would in some cases probably resolve the family law issues before the court.

Practitioners said case management should be tailored to an individual or family's social and legal needs. *'There should not be a one-size-fits-all approach. Some matters need more intensive case management and others work well with a more typical court approach,'* one practitioner said. It was noted that there was already a team based approach in much of an ICL's work, with a school, counsellor, and mental health provider and/or family therapist working together. One practitioner argued:

I am not sure that there would be a benefit in trying to design a one-size-fits-all case management framework because this could just create another layer for families to work through. In principle, though, intensive case management would be useful, particularly in the context of the lack of judicial resources and the failure of the legal system to even give parties the chance of a timely resolution.

Support workers, including those with backgrounds in family violence, CALD communities and drug and alcohol, could be useful both for assistance in preparing a client's evidence and also to support clients at court. One practitioner observed that such a system would help ensure progress would continue, particularly in relation to therapeutic services:

When we see clients they usually have a wide range of issues, including the need for a social worker, family support service and the like. If it was a more centralised system, it would avoid the need for the client to repeat their stories, and mean that information about progress could be shared with less barriers.

This would also help to ensure that delays were not compounding already difficult situations.

Among concerns raised about such an approach was that it may cause further delays and that it would be extremely expensive to properly fund. One practitioner said their view was that the services were already there but they simply needed to be better resourced.

In focus: The Shed

The Shed is an Aboriginal men's suicide prevention service based in Mount Druitt, western Sydney. The service is located on the grounds of Catholic Church and is funded by the Western Sydney University. It provides a range of casework and advocacy services to anyone in need in the local community.

Each Wednesday at The Shed a free, healthy lunch is provided to anyone seeking a meal. The Legal Aid NSW Family Law Early Intervention Unit provides a free family law legal outreach service to coincide with the lunch at the Shed. Other services that provide services at the Shed each Wednesday include:

- a team from the Western Sydney University Podiatry clinic
- psychologists from the Westmead Hospital Aboriginal Health Unit
- Mootang Tarimi (Living Longer) mobile outreach service which provides free public health screening
- Probation and Parole

- Centrelink's Aboriginal team
- an Aboriginal tenancy service, and
- Housing NSW.

Clients who attend the Shed are able to obtain effective one-stop shop services from health, legal and other support services. We see clients who have a particular challenge such as alcohol or drug addiction, mental health or anger management issues. We recognise the benefit gained by these clients when they receive this professional help which is evidenced in improved parenting skills leading to better outcomes in the family or care proceedings in which they may be involved.

CASE STUDIES

1. An Aboriginal grandmother referred to Legal Aid NSW by the Shed had her grandchild living with her full time because of the mother's drug use. FACS were supportive of the grandmother continuing to care for the child, but due to a historical criminal charge against the grandmother, she was likely to fail a working with children check. FACS were therefore proposing to remove the child from the grandmother's care and to place the child outside the family. The EIU solicitor was of the view that the grandmother would be able to establish under the *Family Law Act* that it was in the child's best interests to continue to live with her. This solicitor advised her she should bring an urgent application in the Federal Circuit Court seeking that the grandchild live with her. The EIU solicitor advocated on behalf of the grandmother with FACS that rather than take her grandchild into care, the client should be permitted to file an urgent application in the FCC seeking that the child live with her. Following this intervention, FACS were satisfied that the safety issues for the child would be appropriately considered in the FCC and they did not remove the child from our client's care. The client was assisted on a duty basis by another EIU solicitor with filing an urgent live-with application in relation to her grandchild. On the first return date, interim orders were made for the child to live with our client. The client has since been referred to an indigenous private solicitor for on-going representation
2. An Aboriginal client first seen at the Shed was assisted by the EIU to be joined as a party to Children's Court proceedings after her two younger brothers were taken into care. Following the assistance of the EIU and the support of advocacy provided by the Shed, the two young boys were placed into the care of the client.

Connection between Local, Children's and Family Courts

The survey asked how courts could be better connected, such as by co-location, a unified family court or agreed transfer arrangements. While practitioners were mixed in their views about this proposal, there was general support for improved mechanisms for sharing information. However, as this question was wide-ranging and entailed a complex range of issues, the answers were varied and broad in scope.

Some practitioners supported a unified family court system but acknowledged that it was presently neither realistic nor cost-effective. One practitioner argued that, alongside a national child protection agency, a single system would ultimately be the best case scenario. However, it would need to be properly funded or there would be a risk of harming both systems. In the absence of such a system, practitioners advocated co-location, the transfer of certain powers between courts and agreed transfer arrangements.

Most practitioners agreed that more streamlined transfer arrangements to facilitate exchange of information between courts was imperative. Better sharing of information was identified as a pressing issue by almost everyone who responded in the survey. A number of practical instances where this would assist were provided, including:

- addressing delays in expert reports and assessments being made available between family law courts and children's courts, and
- obtaining information more quickly that would otherwise be available only through requesting the Local Court file or subpoenaing Police, and thereby enhancing the information available about risk, especially in interim proceedings.

Practitioners also put forward a number of suggestions about the manner in which information exchange could be improved. These included:

- transfer of information between the Local Court and the Family Court where there are ADVO applications, police charges and concurrent family court proceedings
- liaison officers in each court to assist with the transfer and exchange of information
- a centralised listing system where each of the courts could identify filings in another court or list matters referred between courts, and
- co-location of courts.

One practitioner argued in favour of trying to keep matters within the same jurisdiction. This might include having FACS intervene in Federal Circuit Court proceedings rather than starting separate proceedings in the Children's Court:

I think Legal Aid may hold the key here. We act for all of the vulnerable parties whether they are in DV lists or in the care courts. We are literally on the scene at all of those courts. Whilst arrangements for the transfer of these clients, their files and their representation to the next jurisdiction would be great, a central database of lists so local courts can see that the client has a matter in FCC and can then avoid that date would be a good start.

Another practitioner pointed to the utility of being able to make AVOs in the family court, stating”

If parties are in the local court, and additional orders affecting family law arrangements are made, perhaps the matter should automatically be transferred to the family law courts for additional orders to be made/or the matter adjudicated to address the needs of the children in the family violence situation.

Practitioners observed that there was a problematic discrepancy between the connections that children were able to maintain with their birth parents in the two jurisdictions. One practitioner said:

I do not perceive there is an issue with the way the courts are currently set up. The issue is in the attitude of FACS in the care jurisdiction in terms of the type and frequency of contact that is proposed in care proceedings, which is in stark contrast to that discussed in family law proceedings. Given that both jurisdictions have the child’s best interests as paramount, this stark difference makes no sense, resulting in poorer outcomes for care kids than family law kids.

Another practitioner observed that there are already protocols between the Family Court and the Children’s Court about the appropriate jurisdiction for certain matters, and while it could sometimes seem arbitrary whether the Minister would give consent to a matter going to the Family Court, there was no arbitrariness about the primacy of the Children’s Court once children were removed. It would assist if there was more consistency in the response of FACS when requested to intervene in family law proceedings or if guidelines were available to assist in knowing whether any request for intervention was likely to be granted. Having the Federal Circuit Court and the Family Court broadly responsible for care and protection, family law and domestic violence was another proposal.

Some practitioners felt the court systems should remain separate. One practitioner said:

I think the Children's Court should be separate to Family Court ... In the Family Court the dispute is between two competent parents or other family-members. If there are no competent family members then the matter can be transferred to the Children's Court if the Department needs to intervene in the proceedings. The system would come to a grinding halt if the courts were combined because the needs of the children with no competent parent would overwhelm the resources.'

Recommendations specific to regional areas included increasing the number of circuits to combat over-listing, which left little time to deal with matters urgently or in detail, and introducing a better filing system. *'Often the only option to have something deal with quickly is to file in the local court, hope you get orders you want and then wait to be transferred to the FCC/family court,'* one practitioner said. Another way to address this would be to set up an urgent line to call, fax or email and have an on-call judge or registrar to attend to the matter. Having court staff available until 5pm for matters outside metropolitan areas was also recommended.

Recommendations:

- **Develop a system of ‘on call’ judicial officers to attend to urgent matters.**

Common risk assessment tool

More than eighty per cent (80%) of practitioners believed that a common risk assessment tool should be used across both the family law system and child protection/police and court sectors. The reasons provided for this included:

- continuity, so that that same risks were being assessed in the same manner and with the same degree of prioritisation
- better identification of issues
- earlier identification of issues, resulting in better service referral and safety measures
- greater awareness of risk/urgency
- providing a flag to all services involved about safety concerns
- facilitating preparation of matters and representation of clients in a system with many cross-overs between agencies and courts
- improved communication between services and jurisdictions, and
- collection of consistent data.

Practitioners recognised that this presented various challenges. One noted that the focus of agencies tended to differ, so that developing a tool adapted to the needs of each one may be difficult. Using such a tool could be confusing to lawyers and judicial officers. But training of those working in the system to identify risk would help overcome this issue.

Others regarded its simplicity as its strength. Such a tool would focus agencies on client safety rather than different modes of assessment. It would clarify the definition of risk and apply it to the same range of actions, thereby creating a commonality of language. One practitioner said:

I can see the benefit of using a risk assessment tool that clearly identifies whether there are risk issues for a family or a child. I think it would need to be broad and inclusive and clients would need to be clearly advised about what the tool was being used for.

The practitioner observed that often clients were unaware that they were victims of domestic or family violence, and it could illuminate this situation. Another practitioner said:

It would mean I could pick up the phone to FACS or a WDVCS worker and be told something I can understand, like 'on our risk assessment the safety of the mother was rated as 'x'. I think that ultimately it assists us to start better collaboration and conversations about client safety.'

However, it was identified that the Police and FACS, rather than the federal jurisdiction, generated most risk assessment tools. The risk assessment tool used by FACS was too

rigid and could be finessed by caseworkers to justify their ends, one practitioner said, adding, *'A more nuanced approach is required based not on a formula but the particular needs (evidence-based) of a family.'*

A further advantage of a common risk assessment tool was increased transparency. Clients did not always provide relevant information, and a standardised tool would help ensure this information was brought to light. One practitioner said:

Violence and other problems are rarely a stand-alone issue and there is usually a drug/alcohol or mental health problem. An early assessment would identify these issues and parties could be directed to relevant services.'

Practitioners observed that given what appeared to be an increasing similarity between risk issues arising in the child protection jurisdiction and the family law jurisdiction, it made sense to take a consistent approach to risk assessment:

There is a common test between the jurisdictions, and that is unacceptable risk. Using that as the foundation, an assessment tool should be able to be formulated.

Some practitioners pointed to dissimilarities between the child protection and family law systems as an impediment. One practitioner said;

The risk assessment used in the child protection context is focused on whether a child is at risk of harm and therefore should be removed from their carer. In the family law context, a risk assessment is usually based on whether it is appropriate for a child to maintain a relationship with a parent and, if so, under what circumstances. The boundaries in the child protection and family law contexts are different.

Another practitioner argued that their different guiding principles (best interests of the child' versus 'in need of care and protection) *'meant that different risk assessment tools should be used. Risk should be 'much higher' to warrant state intervention as opposed to its role in interparty disputes.'* But this practitioner acknowledged that a family violence or child protection *'screening'* tool might assist in referring families to support services. There was also a danger that such a tool could be too simplistic and could be manipulated to justify funding or other partisan decision-making.

The Legal Aid NSW Womens' Domestic Violence and Court Advocacy Program (WDVCAP) noted that over time it is hoped that all service providers working with domestic violence victims use the same tool so that a shared understanding of threat is developed. The Domestic Violence Safety Assessment Tool used by the Police and other agencies has already demonstrated that a standard tool has great benefits. For example, a service provider can instantly understand how serious a situation is, even if they do not have an existing relationship with a victim or the other service provider with whom they are liaising. The WDVCAP supports consideration of a standard tool in the legal context.

Any tool could not replace sound clinical judgment, which ultimately has superior forensic value, especially in relation to sophisticated and nuanced judicial decision making. But as a preliminary screening mechanism, and a technique for enhancing objectivity and commonality of approach, practitioners agreed this would be extremely valuable. It would ensure that services had to talk to each other to provide a coherent response to child abuse and family violence. It would also help to bring the jurisdictions together.