

Submission to the Family Law Council

from

Women's Legal Service Tasmania Inc

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

Information provided during Family Dispute Resolution is confidential. There are strong policy reasons to support this, as it enables parties to have a full and frank discussion about their situation. We support such sessions remaining confidential, however, in the instances of where family violence, neglect and abuse are raised, we believe there should be a way for Family Dispute Resolution Practitioners (FDRPs) to provide information to the Court.

FDRPs are mandatory reporters so there are several exceptions to their confidentiality, including if they believe it is necessary to protect a child from harm, or to prevent a serious and imminent threat to the life or health of another person.

FDRPs are in a unique position. Their insights into the dynamic between parties could be of great value. They speak to both parties separately and together, and witness exchanges between them. They often see parties at their most vulnerable, and also unfiltered. There is usually no legal intermediary in FDR sessions so the FDRP can see how the parties interact with each other. They are also not decision-makers, which means they have no vested interest and the parties often do not feel pressure to "behave" or act in a way that they would when with their peers or in a legal environment.

It is not uncommon for clients to tell us information about the other party that an FDRP has told them. For example, that he won't stop until he gets what he wants, that they believe him to be mentally ill or that for the woman's safety she should not speak to him about certain matters, or disagree or challenge him. Some FDRPs will act as an intermediary between parties, so will pass on messages or arrange time with children because they believe this is necessary for the safety of the woman.

Not all behaviour FDRPs witness would require that they make a mandatory report. Parties may show behaviour that indicates mental illness or substance abuse, but not to the extent that children would be at risk. They may also see manipulative and controlling behaviour, and verbal and emotional abuse. While these behaviours do not necessarily place a child at risk of harm, they are relevant to the Court in terms of how they may affect the other parent in their capacity to care for the child and in assessing the risk of the child being exposed to family violence.

We support the possibility of FDRPs providing further information regarding the issuing of a section 60I certificate, especially in situations where they have determined that the matter is inappropriate for FDR. In this case, the s60I certificate only says "having regard to the matters mentioned in sub-regulation 25(2), *that it would not be appropriate to continue.*"

Often, providing this information could place a party at risk, especially where a woman has disclosed family violence or concerns about the mental health of her ex-partner. This would need to be taken into account, and it may be more appropriate for them not to record the reasons on

the certificate provided to both parties, but have the information available to provide the court if the matter proceeds.

In addition to providing further information about s60I certificates, FDRPs could provide reports to the Court on their observations in cases where family violence, substance abuse, mental health issues or neglect have been raised. To limit this occurring unnecessarily, we propose that such a report could only be sought with leave of the Court.

Observational reports are commonly provided for proceedings where a child is spending time with a parent at a children's contact service. Amendments could be made to allow FDRPs, if certain conditions are met, to provide observational reports on the conduct of parties attending FDR. These reports could be based on observations of behaviour and conduct only, and not on the contents of the discussions. This would mean that parties still have the capacity to have a frank discussion without the fear of anything they may disclose being used against them (other than behaviour that is reportable).

With regard to FDRPs providing reports as to how they believe the matter should proceed, Women's Legal Service has concerns that FDRPs do not necessarily have the expertise of knowledge of Court processes to do this.

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

Although we acknowledge tools such as DOORS can be useful, we believe it is dangerous to become overly reliant on screening tools. They are no substitute for training and professional instinct.

There is a risk when relying on tools that clients will strictly answer the questions asked, but may do so without detail or explanation. Some tools require the client to assess their view on their personal safety, which may be under or over estimated. Despite the recognition that family violence is not only physical abuse, but includes, emotional, verbal, spiritual, sexual and economic abuse, many people still do not recognise these behaviours in their partners.

Many of the tools available are confusing and time dependent. Low-literacy is prevalent, so forms that parties need to fill in for themselves can often be incorrectly answered.

Using tools, either electronically or in paper form can also distance you from your client. Clients may believe that you see their issue as one that can be reduced to ticks on a piece of paper, and this can prevent them providing you with insight and particular details. It can also hinder the relationship of trust building, and clients may be reluctant or not believe you need or want to know about any behaviour that occurs in the future after the tool is complete, or information they assess to not be important.

If screening tools are provided for workers to use, it is vital that they are trained in how to handle the responses and answers they may get. There is no point being able to identify risk if you cannot then find a way to manage the risk. It is also important that any assessment is undertaken with sensitivity, as clients may be revealing information about themselves and their relationship that they have never told anyone before.

If screening tools are to be used, there is a benefit in a consistent tool being used. Sharing these tools with other services (with client's consent) assists new workers in getting a basic background to the issues, but a pre-existing assessment should not mean that a new tool or background should not be taken from the client.

3. How can services such as child protection departments, 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?

Once a Notice of Risk is filed in the family courts, it is common for Child Protection Services to provide a letter to the court and parties advising that they have information relevant to the matter that can be subpoenaed.

It can be difficult for practitioners to obtain instructions from their clients about what services they and their children have come into contact with, and if they should therefore subpoena files from those services.

There may be a benefit to services involved with families with complex needs to flag to the court or parties that they have a file or information that is available through subpoena. This would rely on services being aware that there are proceedings. It would therefore be most beneficial for services that are currently working with such families, as they would then be aware.

Alternatively, Child Protection Services could provide the court with information regarding services known to them that are assisting the family.

Information sharing, particularly around outcomes of referrals to Child Protection Services or court proceedings, is often lacking.

While it is acknowledged that Child Protection are very busy, and have confidentiality requirements, it can be very difficult for services involved with families or lawyers representing parties in the family courts, to know what Child Protection's position is. This is particularly so when a notification has been made to Child Protection and they do not open a file, yet they often have continuing views as to what the safest arrangements for children are.

This means that if the parties are not involved in court proceedings, service providers have to support the family within parameters of safety unknown to them. If the matter is in the family courts, it can be difficult for lawyers to negotiate matters without knowing if Child Protection will view the arrangements negotiated as suitable or not. Although Child Protection Services are given the opportunity to intervene in family court proceedings, it is rare in our experience for them to do so.

An example in our experience of Child Protection Services not providing feedback regarding a file that they had closed and information sharing breaking down is as follows:

Case Study

Sexual abuse allegations were made by a six-year-old girl against her father and grandfather for abuse that occurred when she was four years old. After a police investigation and Family Court proceedings, all involved were of the view that the father was no risk to the child, but orders were made by consent that the grandfather was not to come into contact with the child or her siblings.

We had initially assisted the mother to apply for Family Court orders to protect the child as Child Protection, while indicating that they would remove the child from the mother's care if the mother were to allow her to come into contact with the father, had not commenced proceedings to protect the child in the Children's Court. Child Protection Services advised the Family Court that they did not want to intervene or be heard in the Family Court proceedings.

Proceedings in the Family Court took several years. An Independent Children's Lawyer was involved. The child saw an expert in child sexual abuse matters, regularly spoke to a psychologist and sexual assault support workers. Police records were subpoenaed, as was the video of the child's police interview. Experts also spoke to the parents and reports were produced for the proceedings.

The matter was finally settled by consent, with both parents, lawyers for the parents, the Independent Children's Lawyer, several expert witnesses and the Judge agreeing that the child would not be at risk if she were to spend regular time with her father. They did assess there would be a risk if she came into contact with her grandfather.

Recently, the child (now eight years old) has had behavioural problems at school unrelated to the historic sexual abuse. She also started menstruating. There were no further allegations of sexual abuse regarding the father.

Because of her young age and history a report was made to Child Protection Services and the child was referred to a specialist. The specialist reported that she had no concerns and that the child was in good health and her early puberty was unrelated to any abuse that may have occurred.

Through the report, Child Protection Services became aware that the child was spending regular time with her father. Although being given the option to intervene or become involved, not reading the reports made in the intervening period, and despite the Judge, experts, the parents and family law practitioners all believing the time was appropriate and that the child would not be at risk, Child Protection Services have now said that they do not believe the child should be spending time with the father and have shared this view with the mother.

Women's Legal Service believes that Child Protection Services should continue investigations where appropriate even if family law matters are underway. The family courts are often having to choose between two bad options of parents, and if further information comes to light about the parenting capacity of parties, Child Protection Services could assist by stepping in and removing the child and placing them with a carer if necessary.

Family law proceedings take time, and during this time circumstances can change. It is also very common in our experience for Child Protection Services to not take action as one parent is acting protectively, but because of the risk the other parent may take the child, the protective parent is forced to commence proceedings in the family courts. If Child Protection Services were continuing investigations or were updated with regard to proceedings, they could intervene and orders could be made in the more appropriate setting of Children's Courts. This takes the matter out of the protective parent's hands, as an order can be made that the child live with them yet they do not have the additional stress and expense of family court proceedings.

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

The key concern that we have regarding integrated responses is that they are properly funded and resourced. Funding needs to be long term, it cannot be ad hoc or on a yearly basis. Services and families need stability, they need to know that if they are involved with a multi-agency collaboration that they will not be under supported due to inadequate resources, or left in the lurch due to sudden funding cuts.

We otherwise support services working closely together given the high need and variety of issues often affecting vulnerable families.

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

Women's Legal Service Tasmania can see the value of having specialist case coordinator roles as an effective approach for families with complex needs. Issues affecting vulnerable families include housing issues, financial issues (often including significant debt), family violence, low

literacy levels, alcohol and drug issues and mental health issues. It can be hard for parents to address all these issues simultaneously, while dealing with a recent separation and court proceedings. Arrangements for children however are often heavily reliant on parents being healthy and having the housing and financial capacity to provide for their children. Legal practitioners, including Independent Children's Lawyers, are often too under resourced or underfunded to provide the assistance required by these families that falls outside a strictly legal sphere.

An example of how complex such cases can become is as follows:

Case Study

Our client is the maternal grandmother of three granddaughters who are aged between 2 and 9 years old. The children lived with their mother interstate. The children's father was not around, and there was a history of severe family violence. The mother is a drug user, and has had a string of abusive partners. The children were often left at home alone for long periods of time and the eldest child was basically raising her younger siblings, frequently missing school to care for the youngest.

Two years ago the mother and her partner left the children at home alone for several days while they went on a road trip. The landlord had no option but to call Child Protection Services, who made contact with the children's grandmother. Child Protection assisted the grandmother in collecting the children and bringing them to Tasmania to live with her. Child Protection Services did not apply for orders to formalise this arrangement.

The mother and her partner eventually followed and moved back to Tasmania, as did the children's father. The father sought time with the children and when his request was refused because of the family violence and the children's fear of him, he made an application to the Federal Circuit Court for orders that the children spend regular time with him. The mother also joined as a party to the Federal Circuit Court proceedings seeking time with the children. Child Protection Services did not intervene.

The maternal grandmother sought our assistance. She had been rejected for Legal Aid. She does not receive child support from either parent for the children, and as she is not under the Child Protection system she does not receive any foster parent payments either. She is in her sixties, and had not expected to be raising young children at this stage of her life. She has worked hard to provide the children with a stable home, routine and after-school activities, things the children have never had. She has had to have the children vaccinated and address other health needs that had been ignored. The children see a psychologist regularly and are only just beginning to feel settled and enjoy their childhood.

A further complication is that the mother has recently had a baby. The baby has been removed by Child Protection Services due to family violence, drugs, mental illness and neglect. She is frequently homeless. The mother is therefore involved in Federal Circuit Court and Children's Court proceedings, and often does not fulfil her obligations under the Federal Circuit Court orders as the proceedings regarding her baby are her priority.

Because of the court proceedings the grandmother has had to attend court and legal appointments, (and find childcare for the youngest child), take the children to multiple appointments, and pay for associated costs out of her own pocket. She is stressed and anxious and feels that being a party to the proceedings is undermining her role as the children's primary carer and protector. She says that she should be "left alone to do what I have to do".

In this situation, a specialised case coordinator for each party could ensure that the father undertakes the parenting and family violence courses he needs to, that the mother is linked in with drug and mental health services, housing services and counselling for family violence, and that the grandmother has the necessary support as the primary carer of three young children.

Because of the number and complexity of issues facing such families, issues can go unnoticed, when they may in fact be the underlying cause for other issues appearing on the surface. Parents do not often have the capacity to prioritise what needs doing most importantly, or to have the emotional capacity to be calling services and attending appointments.

There are often two approaches parents who have become involved with the family law system take.

Some parents will find it all too much and shut down and try and pretend that it is not happening. This means that they do not engage with the process and do not seek the help that they need.

Alternatively, some parents become overactive in the pursuit of information which can lead to information overload. We speak to women who have been in touch with several services, and have received varying information from each service. They also tend to think of everything in terms of the worst-case scenario. Information-overload causes them to be stressed and anxious, and many will not take the practical steps needed.

Specialist case coordinators would benefit families to help plan what needs to be done and when. They can provide appropriate referrals and assistance specific to that family. Through working closely with the family they can identify the gaps in services and information about the family that may not have been previously identified.

When parties are organised, supported and emotionally prepared, courts and service providers are better able to work towards the best outcomes for children.