

FLPAG Report – overview and recommendations

Introduction: the Family Law Pathways initiative

The community is concerned about family breakdown including how the family law system affects separated family members. Often it seems to take too long, be too hard and too expensive to sort things out. This can take its toll on families.

Many Australian children under the age of 18 experience a family break down. The number of children involved means that it is vital for the family law system to serve their best interests. For example, in 1999 nearly one million children lived with one natural parent and had another living elsewhere.

The government believes that families and communities are the basic ingredients to secure Australia's future and are critical influences on the future of children. As a contribution to improving the wellbeing of families coping with separation, the Government set up the Family Law Pathways Advisory Group in May 2000.

The Advisory Group brings together members of the community, service providers, experts in family law, academics, a social commentator and representatives from Government to provide expert guidance and make recommendations to Government. Its focus is on achieving better outcomes for family members, particularly children, following the end of a marriage or relationship. The Advisory Group was asked to suggest ways to make the family law system work better for all the members of the families who need to use it.

What is meant by the family law system

Many services assist families to cope with separation and divorce issues. Settling separation isn't just about going to court to argue about property settlements or parenting arrangements. The family law system includes all the service providers who help families to resolve parenting, financial, legal, and emotional problems. It includes social workers, community workers, mediators and financial counsellors as well as lawyers. The Child Support Agency and Centrelink, the courts and legal aid offices are all part of this system.

Unfortunately, for many people the system is more like a maze than a coordinated and supportive network of services.

The issues

During a separation, people become stressed and this can make it difficult to make good decisions. Often, services are designed to deal with one issue, for example, income support payments or a property settlement. Unless people are made aware of connecting services, they may miss out on important information. The structures and supports provided by the family law system also impact on how well people cope with their stress and grief, and how they make important decisions that can affect their quality of life in the future.

The Government asked the Advisory Group for advice about the best ways to:

- **simplify and signpost pathways to early assistance** so that people get the help they need when they face relationship breakdown;
- help families to **minimise conflict**, manage change more successfully, and meet new obligations and commitments;
- make **information and support** available for families during the transition to, and settling of, new arrangements; and
- provide **coordinated service delivery** between the range of agencies that can assist families during and after separation.

What the Advisory Group found

The Advisory Group consulted widely and in response to what was learnt has made 28 recommendations for change. The Advisory Group was told that:

- Helpful and relevant information and support often isn't easily available and services are hard to find, leading to sometimes ill-informed choices and unexpected outcomes;
- Mothers and fathers often have different concerns;
- Some people are concerned that the system is biased against males, and there is a shortage of services which support men and their aspirations to parent their children. Particular concerns were child support and the enforcement of contact orders;
- Some people manage the separations process with minimal interaction with the family law system;
- Australians from different cultural backgrounds face particular barriers;
- a number of people are frustrated and discontented about how the family law system currently operates;
- some parts of the family law system are working well.

The Advisory Group considers that the current system is not as effective as it could be. There is:

- **not enough:**
 - emphasis on agreement and ongoing parenting, or guidance to make agreement easier;
 - focus on the best interests of the children, or on child-inclusive practices in services;
 - information to make informed choices easier;
 - holistic assessment;
 - early access to appropriate services;
 - collaboration between services;
 - emphasis on the fathering role;
 - follow-up support for agreements or orders; and
 - flexibility in the system to respond to changes in the relationships and circumstances of family members;
- **too much:**
 - unnecessary litigation; and
 - adversarial behaviour; and
- **too high:**
 - public and private costs.

The Advisory Group considers that a family law system should:

- acknowledge the value of family relationships and seek to provide families with a range of support services and information at various points in the family life cycle;
- value and support the ongoing capacity of families to provide nurturing parenting to children of the family, whether it is intact or separated;
- help minimise the damage of separation and conflict to partner relationships and to children, and maximise the capacity to re-partner effectively; and
- provide opportunities and incentives for parents to reach agreement themselves.

Service delivery should be as responsive, flexible, non-intrusive and holistic as possible. It should be integrated in a way that appropriately matches the needs of the particular family, and be free from cultural and gender bias. It should treat all parties with respect and be as inexpensive to families as possible.

What the Advisory Group heard

The Advisory Group heard, in submissions and during consultations, that:

- everyone is emotional and distressed at the time of separation. This may affect parents' ability to put children's interests first, to access and process information, and to make good decisions;
- a number of people are frustrated and discontented about the way the family law system currently operates. Some men, in particular, feel angry and frustrated, and believe that the system is biased against them;
- indigenous Australians face particular barriers;
- some people manage the separation process with minimal interaction with the family law system; and
- some parts of the family law system are working well.

From consumers

People told the Advisory Group that they need information about a wide range of services, including financial counselling, single-parenting support, anger and grief management, relationship counselling, parenting education, men's services and various models of dispute resolution like mediation.

From men

Some men (and some of their mothers and current partners) were angry with the system particularly the law, lawyers, courts and the Child Support Agency. Frustration and hopelessness arose from a lack of recognition of their ability to nurture their children, and the difficulty of influencing or changing decisions. A number talked about their experience of bias, and difficulties such as enforcement of contact orders, false allegations of domestic violence and/or child abuse and the cost of child support and supporting second families. There was also concern about the rate of suicide among separated men. In relation to residence, some suggested that the presumption in law should be that children live with each parent on an equal-time basis.

Increased funding for men's advocacy groups, more support services for men, and compulsory counselling and mediation were also suggested.

From women

Many women were concerned about the way violence was treated throughout the system and the effect this has on the safety of their children and themselves. Some women referred to the lack of legal aid where domestic violence is the issue. Other concerns were the lack of understanding of violence issues among professionals, the limited recognition that violence continues or occurs after separation, the limited appreciation of the effect on children of witnessing domestic violence, inappropriate mediation processes and unsafe contact orders. Solutions offered included training and education for key service providers, more legal aid and post-separation support services.

Issues in relation to contact included lack of contact by the non-resident father (despite an order for contact), and the cost of returning to court to vary orders.

Some women were concerned about the avoidance of child support responsibilities by non-resident parents.

From grandparents

Grandparents are yet another group of people often affected by the family law system. They often feel ignored and are unaware of the way their role in children's lives may be

recognised.¹ Some grandparents may provide the only source of a stable relationship for children in the aftermath of separation.

From indigenous Australians

The current family law system presents particular problems for Aboriginal and Torres Strait Islander people. These problems, which are not experienced by the wider community, affect the ability of indigenous peoples to access and benefit from the family law system. Many indigenous communities experience language and cultural difficulties in understanding the family law process, and many service providers lack an awareness of indigenous culture.

From people of culturally and linguistically diverse backgrounds

The Advisory Group heard there is a lack of cross-cultural awareness among court personnel, government agencies and other service providers. Non-English speakers are disadvantaged by the lack of interpreter services at all levels of their interaction with the system, and the lack of information and materials available in languages other than English.

From people living with disability

The Advisory Group was told that hearing-impaired people find the system extremely daunting. Many parents with an intellectual disability or mental illness need a great deal more support than is presently available to negotiate their way through the system.

About children

Parents are parents forever. Good communication and the capacity to make workable arrangements are important.

Nurturing relationships between children and parents are good for the children's wellbeing. Service providers should focus on helping families to maintain positive relationships which support each parent's and other family members' (for example grandparents') ongoing capacity to nurture their children.

If families separate, the best outcomes usually happen when parents reach agreement between themselves. Research suggests that this agreement is easier to achieve when parents focus on their children's needs rather than on their own conflict.

Where violence or abuse is present, relationships may be harmful to children and should not continue. In most cases, with the right kind of support, there is potential for maintaining parenting relationships, and for agreement between adults.

Parents may need practical help to look after their children's needs, especially as circumstances change, for example, as children grow older, or there is a new partner or a change in employment. Parents may need help to develop the skills to be active parents, particularly when they are not living with their children.

The system should help to reduce the level of personal pain and distress involved in separation, and strengthen positive parenting relationships. A more effective family law system can lead to stronger relationships if partners remarry and to healthy family relationships in both the existing and new families. It can also help to provide positive role models for children in their future relationships. The cycles of conflict, break-up and the resultant damage to children that occur for some families can be broken.

Where was the common ground?

The men and women who responded to submissions and consultations presented different perspectives on issues. There was common ground in favouring a less adversarial system of resolution, with litigation either as a last resort or to manage violence.

Both women and men experience extreme emotional and physical distress (insomnia, weight loss, panic attacks, depression). Consumers feel that the

¹ *Family Law Act 1975*, s. 60B(2)(b) and s. 68F; *Child Support (Assessment) Act 1989*, s. 25.

'system' contributes to their emotional distress, and then, in this state, requires them to make important decisions.²

In addition,

Men and women expressed high levels of frustration, to the extent that they felt 'paralysed' when one partner refused to participate in counselling or mediation ... or would drop out of the process ...³

The system does not deal well with violence

Family violence and allegations of violence affect other parenting issues in addition to residence and contact orders. The division of Commonwealth and State jurisdiction currently complicates the resolution of family law matters where violence is an issue. The way in which the service providers in the family law system handle issues of violence, including untested allegations of violence, and child abuse is viewed by many as one of the system's major failings.

The Advisory Group heard that allegations of violence can have a life of their own and that if an apprehended violence order results from those allegations then that order can prejudice future legal action, even if the allegations have not been tested. The capacity to be an active parent can be affected. The Group also heard from women about allegations not being treated seriously and investigated fully. It was suggested that in the interests of the care and protection of all family members, allegations of violence should always be fully investigated as early as possible.

Lack of ongoing support

Often people make initial decisions about matters such as residence, contact and child support without structured advice and support for their post-separation lives. This may leave them feeling a lack of resolution, or may leave them without the skills or networks to deal with forthcoming issues. Ongoing support is vital for some parents. A small number of people never manage to entirely work through the process for legal⁴ or emotional reasons. They become dependent on external decision-makers such as the courts or government administrators. Considerable resources are absorbed by this group and this can deny timely service to others. Children are very often caught in this cycle. It needs to be acknowledged that this group will always exist, but can be minimised by improving the responsiveness of the system.

Many families manage well

Many people arrange and meet their post-separation responsibilities with minimal assistance and contact with the system. Some reported that the contact they had was useful and positive.

It is possible for families to achieve good post-separation outcomes for their children without system intervention. Low levels of personal conflict between the parents and a very clear aim on the part of both parents to put their children's needs first, combined with easy access to information and the confidence to use that information, seem central to the experience of families who manage the present system well.

Parts of the system are working well

The Advisory Group's attention was drawn to several service providers' initiatives that are improving outcomes for families. These initiatives included better client focus, better collaboration and networking between providers, and programs to meet the needs of particular client groups and provide models for broader improvements to the system.

² NFO Donovan Research, *Report: Family law pathways consultations*, Commonwealth of Australia, Canberra, 2001. Available from the Internet: <http://www.law.gov.au/familylawpathways>.

³ NFO Donovan Research, *Report: Family law pathways consultations*.

⁴ The *Family Law Act* provides for a litigant to be declared vexatious (s. 118), however it is rarely applied as it denies the right of access to the court. The court cannot otherwise control the right of people to file applications.

Designing an integrated system

The Advisory Group has concluded that to address these problems and weaknesses, any change recommended to the Government should:

- increase the focus on children;
- create opportunities and pathway choices for family decision making;
- improve the consistency and availability of information;
- improve coordination nationally and regionally;
- promote safety;
- support fairness in the process; and
- meet family needs as they change.

The system can only be improved if all service providers agree to a vision that puts children and families first. Such a vision reflects the principles outlined earlier.

The vision will need to be supported by commitment to a common ethos which requires **service providers** to:

- understand and accept that they are **gatekeepers to the larger system**;
- have a responsibility to think of the long-term effects on **the family** as a whole and on its members;
- have a responsibility to use a consistent **screening and assessment** methodology;
- have a responsibility to provide **options** for families which are suitable to their situation and take account of other elements of the system;
- provide consistent system-wide **information** and **referral**; and
- provide **specialised service** where appropriate.

Community education and information will ensure that all **parents** interacting with the system know that:

- children's interests are paramount—their safety first and foremost;
- children's needs will change over time—parents need to be flexible;
- all families experience difficulties at some stage and from time to time;
- help-seeking is normal behaviour;
- early assistance may prevent exacerbation of the issues in dispute;
- information about all the parts of the system is readily accessible;
- help is available from a wide range of service providers;
- each service provider will provide options about how to proceed;
- they are able to decide on the best option, with help from a service provider, and will be linked with the most appropriate provider and service type; and

- the courts will be involved where necessary, in particular where there is family violence, child abuse or abduction, or where attempts at resolution through non-adversarial processes have been unsuccessful.

Within this ethos, service delivery must be as responsive, flexible and non-intrusive as possible. It must be integrated in a way that appropriately matches the needs of the particular family, and be free from cultural and gender bias. It must treat all parties with respect and be as inexpensive for families as possible.

Key functions

The Advisory Group considers that a well-designed and coordinated family law system will perform specific key functions. They are:

- 1 provision of **education** for the community, young people and professionals. This education supports the principles and desired outcomes of the system;
- 2 provision of **information** which is accessible, comprehensive, appropriate and targeted;
- 3 **assessment and referral** available at all entry points to the system to enable families to choose the services appropriate to their needs;
- 4 **service and intervention options to help family decision making**. These are timely, wide-ranging, supportive and fair, and include litigation only when required; and
- 5 **ongoing support**, comprising services which are available immediately after separation and following initial decision making.

Overview of the proposed service delivery system

For the system to operate effectively the ethos and the key functions must be integrated into a service delivery model.

As families experiencing separation make contact with the system at a variety of service gateways, the system design will recognise that all service providers within the system will become gatekeepers to the whole system.

The service provider who is the first point of contact will be responsible for an initial assessment of needs, provision of system-wide information and guidance to the most appropriate pathway for the particular family, through an effective referral process.

Pathways that include a mix of service types (or interventions) and maximise the use of non-adversarial processes will help families to resolve the issues arising from separation in a way that promotes ongoing nurturing.

The clearest pathways will be to:

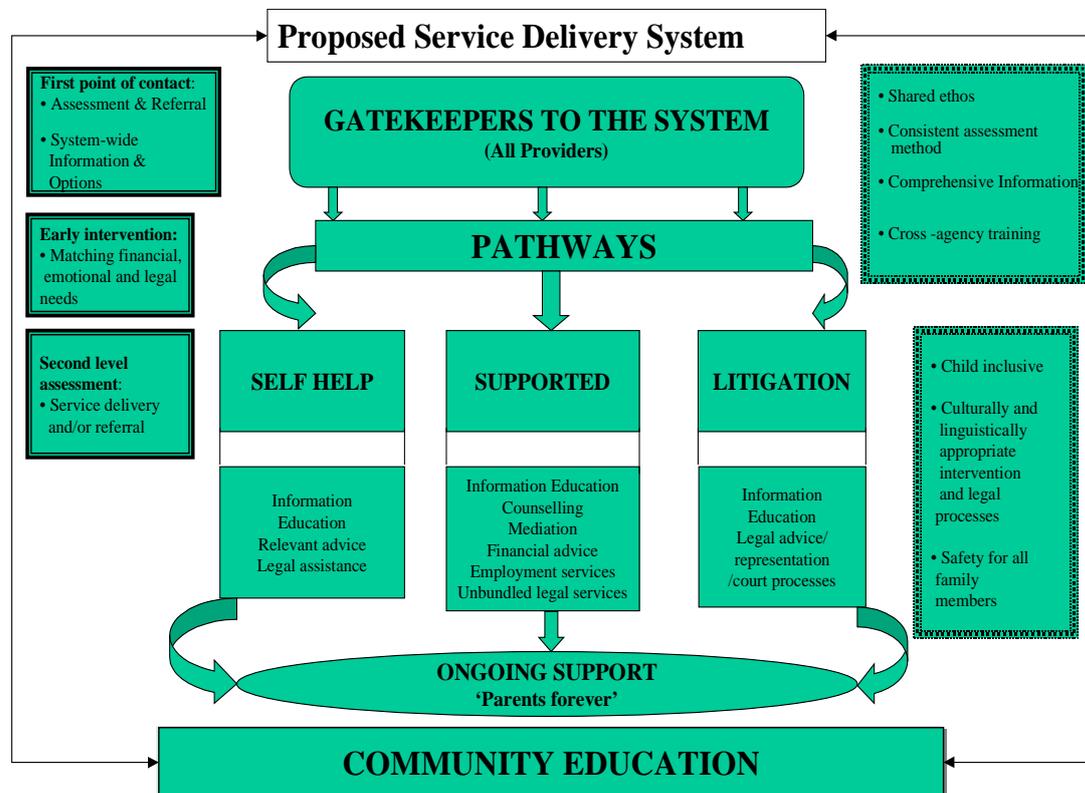
- **self-help**, which will include information, parenting education and legal advice;
- **support**, which will include information, education, services and interventions such as counselling and mediation, financial advice, employment services and targeted legal services; and
- **litigation**, which will include information, education, legal representation and court processes.

Families will not necessarily keep to their initial pathways—there will be some flow from one to another. One family, for example, may start on a litigation pathway then finalise

arrangements with support outside the court system. Another may believe they can manage with minimal help but later find that they need more support. The system will be flexible and transparent enough to accommodate this movement.

As separation is a process, not an event, and family circumstances change, it is crucial that the system includes ongoing support to families so that they can manage parenting responsibilities over time and through the changes in circumstances which will inevitably occur.

Education will underpin all parts of the service delivery system.



Investment in coordination mechanisms and in the development of system-wide strategies, such as the assessment method used at the first point of contact, will be necessary to maintain an integrated service delivery system.

Support for the system

Research

Social expectations and experiences of families are continuously changing. A family law system which can respond to these changes and remain relevant to the families who look to it for assistance must be underpinned by ongoing research and policies based on the knowledge gained.

Legislation and policy

Few people understand the interaction between the Family Law Act, the Child Support Acts, the Social Security Act and taxation legislation. It is not clear to the Advisory Group that the fundamental principles of the family law system are consistently reflected in these Acts. One example is the way that relevant legislation deals differently with the issue of shared care. Future policies should be consistent with the system's fundamental principles and ensure that the impact of proposed legislative amendments in one part of the system on another are fully considered.

Funding the integrated family law system

Funding the family law system in the past has been piecemeal, with the allocation of funds to specific programs and projects, without any analysis of systemic need or coherent perspective on the aims of the system as a whole. Funding in future should support the

integrated framework outlined previously. Ultimately this may lead to shifting resources across the system but in the first instance the framework should set the priorities for new funding.

Improving coordination within the family law system

To achieve an integrated system, a range of developmental actions has been identified. The Advisory Group proposes that in the short term a cross-agency task force should be established to begin the implementation process and set the direction for future ongoing change and coordination of the system, nationally and at the local level.

Commonwealth–State division of responsibility

The division of jurisdiction over families across Commonwealth and State/Territory lines creates many obstacles to the integration of a family law system and to achieving holistic responses to the needs of families. This is primarily an issue when family violence and child abuse are present. Responses to these issues will raise questions around common practice within State and Territory child welfare authorities, legal aid commissions, police and children's' and magistrates courts and common protocols for intervention between the various agencies. The appropriate share of resourcing for these responses between Commonwealth and State and territory governments is a significant issue.

Matters outside the Advisory Group's terms of reference

A number of significant matters which are outside the terms of reference of this inquiry are noted, for referral to appropriate bodies. These matters include suicide of men following separation, the child support formula and male victims of family violence. The Advisory Group wants to ensure that these matters are referred to the appropriate quarter for further consideration.