

Out of the Maze

Pathways to the future for families experiencing separation

Report of the Family Law Pathways Advisory Group

July 2001

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Letter of transmittal



FAMILY LAW PATHWAYS ADVISORY GROUP

Chair

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The Hon Senator Amanda Vanstone
Minister for Family and Community Services
Parliament House
Canberra

The Hon Daryl Williams AM QC MP
Attorney-General
Parliament House
Canberra

Dear Minister and Attorney-General

I now present to you the Report of the Family Law Pathways Advisory Group and commend its 28 recommendations to you for consideration. I see the report as one that puts family law policy in Australia well ahead of that in any other country. Our effort to bring all relevant services together into one system and to create system wide policies and standards is unique.

The Terms of Reference for this inquiry raised complex and diverse issues relating both to the family law system in all its parts and the experiences of families dealing with separation. The Advisory Group undertook various activities to gather the information on which it has based its recommendations. These activities included invited submissions, submissions from the public, consultations with consumers and service providers in locations in every State and Territory, targeted consultations with interest groups, a literature review and commissioned research, the details of which are set out in the Report. A vast array of sometimes conflicting material was brought to light by these steps and needed to be taken into account. The Group met in Canberra on six occasions.

I am grateful for the extension of time that was granted to the Advisory Group to allow the gathered material to be fully considered.

The members of the Advisory Group have brought to the inquiry a diverse range of experience and expertise and have held very different views on many aspects of the work. The Report aims to present a balance, reflecting the diversity of views on many of the issues addressed.

I present the Report and commend it for the early consideration of the Government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Des Semple'.

Des Semple
Chair
20 July 2001

Terms of reference

Vision: An integrated family law system that is flexible and builds individual and community capacity to achieve the best possible outcomes for families.

Purpose: To provide high-level advice to the Government on how to achieve a family law system which:

- provides effective support systems for families;
- coordinates client-focused information and services; and
- provides pathways that are effective and appropriate.

Strategies

1. The Family Law Pathways Advisory Group will formulate a set of recommendations on how to:
 - a provide stronger and clearer pathways to early assistance that ensure people facing relationship breakdown are directed to services most suitable to their needs;
 - b help families to minimise conflict, manage change more successfully, and meet new obligations and commitments;
 - c improve the targeting, coordination and accessibility of information and support for families during transition to and settling of new arrangements; and
 - d better coordinate service delivery between the range of agencies (both public and private) involved in assisting families interacting with the system.
2. The Family Law Pathways Advisory Group will consult appropriately and take account of:
 - a the range and nature of difficulties facing family members;
 - b existing barriers (including cultural and linguistic) to access to services and support;
 - c customer service issues; and
 - d best practice.
3. The Family Law Pathways Advisory Group will report to the Government within six months of its first meeting with recommendations for action, including mechanisms for taking those recommendations forward.

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Executive summary

Introduction: the Family Law Pathways initiative

It is always difficult when families split up. Parents, children and other family members have to grapple with complex practical, legal and emotional issues; everyone has to adjust to change and loss. Helpful and relevant information and support often aren't easily available and services are hard to find, sometimes leading to ill-informed choices and unexpected outcomes. Stress and grief can make it hard to reach sensible decisions and some families experience a lot of conflict. The children of families in conflict suffer the most.

The community is concerned about aspects of the current family law system, which affects the lives of so many Australians. Often it seems to take too long, be too hard and be too expensive to sort things out. This can take its toll on families.

The Family Law Pathways Advisory Group is a joint initiative of the Attorney-General and the Minister for Family and Community Services. Its focus is on achieving better outcomes for family members, particularly children, following the end of a marriage or relationship. The Advisory Group has been asked to suggest ways to make the system work better for all the members of the families who need to use it.

What is meant by the family law system

The family law system is much broader than the courts. It also embraces the many service providers and individuals who help families to resolve legal, financial and emotional problems, and is centred around the family members themselves.

A vision for an integrated system

The Advisory Group envisages an integrated family law system in which family members experiencing separation can easily and quickly identify and access help when needed.

The system's primary focus would be to support family decision making and family nurturing. Such a system would be responsive and coordinated. It would provide appropriate assistance to family members as early as possible. It would treat all comers fairly.

All those in the system would, above all, promote the interests of children and attempt to meet the needs of children. In turn, the effectiveness of the system would be improved through families' increased ability to make informed decisions, leading to less reliance on the courts and decreased costs.

By reducing the levels of personal pain and distress involved in ending partner relationships, and by strengthening parenting relationships, a more effective family law system can encourage stronger personal relationships and healthier family relationships in both existing and new, blended families. It can also help to provide positive role models for children in their relationships.

Key functions

An integrated family law system would have five key functions:

- education for the community and professionals;
- accessible information;
- appropriate assessment and referral at all entry points to the system;
- service and intervention options to help family decision making; and
- ongoing support.

Pathways through an integrated system

These functions would sustain three types of pathways:

- self-help pathways;
- supported pathways; and
- litigation pathways.

Families would move along a chosen pathway. They might switch pathways as their needs or circumstances change.

Parental responsibility during and after separation

The concept of 'parental responsibility' is relevant to the ways in which parents access the legal system. Part VII of the *Family Law Act 1975* emphasises parental responsibility and encourages parents and the courts to actively consider the best interests of the children in making decisions about their care and welfare. Parents act responsibly for the welfare of their children by accessing the system in good faith, by reaching agreement wherever possible (unless the welfare of the children or their primary carer is at risk from violence or abuse) and by accepting the outcomes produced by the system for as long as they remain appropriate.

Maintaining nurturing relationships between children and parents, even after separation, is known to be good for the children's wellbeing. Policies, services and support networks for families undergoing separation need to support and enhance these relationships, when they are beneficial to the welfare of the children. Children need to be protected from the harm that is caused by violent and abusive relationships. In most cases, with the right kind of support, there is potential for maintaining parenting relationships, and for agreement between adults.

The stress and conflict around separation frequently puts children and family members at risk, and the family's capacity to care for children with their best interests in mind is often lost.

Supporting family nurturing and decision making

It follows from this that all the service providers in the family law system should focus (both within their organisations and in their relationships with other members of the system) on the potential for their client families to maintain positive relationships that support each parent's and other family members' (such as grandparents') ongoing capacity to nurture their children.

The Advisory Group believes that family decision making is the key to this process. Sustainable arrangements are more likely when there is agreement between adult family members, and children are involved in reaching that agreement. It is critical that guidance and intervention supporting this approach be consistent with each family's

particular circumstances. When violence or abuse is present, different approaches may be needed, and the safety of the family members and the speed of response must be the main priorities.

For example, if there are allegations of violence or abuse a full assessment of all the facts of the situation affecting the family members must happen without delay. Sorting out matters such as these early would help to ensure that family members are not disadvantaged and their capacity to maintain ongoing parenting relationships is strengthened.

Principles for an integrated family law system

The Advisory Group considers that a family law system should be one that:

- acknowledges the value of family relationships and seeks to provide families with a range of support services and information at various points in the family life cycle;
- values and supports the ongoing capacity in families, whether intact or separated, to provide nurturing parenting to their children;
- helps to minimise the damage of separation and conflict to partner relationships and to children, and maximises the capacity to re-partner effectively; and
- provides opportunities and incentives for families to reach agreement themselves.

This builds on four fundamental principles laid out in existing legislation, which also underpin the recommended system. These are, in brief:

- the best interests of the children always come first;
- non-adversarial dispute resolution is a priority;
- the safety of family members from violence must be assured; and
- parents are responsible for financially supporting their children.

Recommendation 1

The Advisory Group recommends that the family law system, in whole and in all its parts, be designed to maximise the potential for families to function cooperatively in the interests of children after separation. In doing so, it would ensure fair and equitable treatment for all, with particular attention to the ongoing parenting roles and support needs of both parents. The system would provide services for those family members who may face particular difficulties in adjusting to post-separation changes.

Wherever possible, family decision making would be encouraged, with parents making their own decisions about their complementary roles, with appropriate support from the family law system.

The current family law system

The family law system affects many Australians

The family law system affects the lives of many Australians. More than 52,000 divorces were granted in 1999–2000. About 53% of divorces each year involve

children under 18, with the average number of children per family being 1.9. To the number of divorces must be added the substantial number of de facto relationships which break down each year. Many of these also involve children.

In 1999, nearly one million children lived with one natural parent and had another living elsewhere. Most of these children live with their mothers.

For families with children, contact with the family law system is frequently ongoing. For instance, of those parents who are or have been court clients, many may return to vary parenting orders or arrangements as their circumstances and the children's needs change. The number is potentially large: over one million people with children under 18 years of age are now registered with the Child Support Agency, and payment of child support can continue until all the children in a family reach 18 years of age.

Contact with the family law system is not limited to contact with the courts. Many families are helped and supported by service providers and individuals with expertise in many different areas: law, financial management, counselling and mediation, to name a few. They can also help families access relevant information.

Focus on outcomes for children

Given the large number of children caught up in their families' separation, the Advisory Group decided to focus primarily on improving the outcomes for children. It therefore gave priority to parenting rather than property and financial matters. It is acknowledged, however, that for many families parenting and financial matters are linked.

What the Advisory Group heard about the system

The Advisory Group's research, consultations and submissions received highlighted a number of issues with the current family law system. The Advisory Group heard that:

- everyone is emotional and distressed at the time of separation, and this affects their ability to put children's interests first, their ability to access and process information, and their ability to make good decisions;
- a number of people are frustrated and discontented about how the family law system currently operates. 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.

On the basis of its research, consultations and discussions, the Advisory Group has determined that the current arrangements are unbalanced. 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.

Equity of access to the family law system

It has become apparent to the Advisory Group through its inquiry that, in the current social environment in Australia, there are differing needs for men and women during and after separation. All of them need attention.

The Advisory Group received a large number of submissions from men who highlighted issues that they felt affected not only their capacity to be effective parents after separation but also family law outcomes for the whole family. In particular, men were concerned about difficulties in having child contact orders enforced (particularly when compared with the enforcement processes of child support), the lack of legal aid, the lack of appropriate support services for men, the effect of untested allegations of family violence, and stereotyped assumptions about men's ability to function effectively as parents and manage their parenting responsibilities after separation. These issues are major contributors to many men's perceptions that the family law system is biased against them.

The Advisory Group has made the following recommendations on these issues: Recommendations 1 and 7 (fair and equitable treatment), 8 (services for men), 9 (increased legal aid funding, particularly for enforcement and family violence), 15 (personal counselling services and improved contact processes) and 18 (improved processes and services for people responding to applications for violence orders).

Women, too, need access to services that meet their needs. Women may be vulnerable because of their cultural backgrounds and lack of access to financial resources, as well as stereotypical roles and power imbalances or violence within relationships. Recommendations responding to the needs of women are Recommendations 1 (fair and equitable treatment), 8 (services for women), 9 (increased legal aid funding, particularly for early intervention and family violence), 15 (personal counselling services) and 18 (improved resolution processes for family violence cases).

The Advisory Group has made recommendations that respond to the specific needs of indigenous people, people with culturally and linguistically diverse backgrounds, and

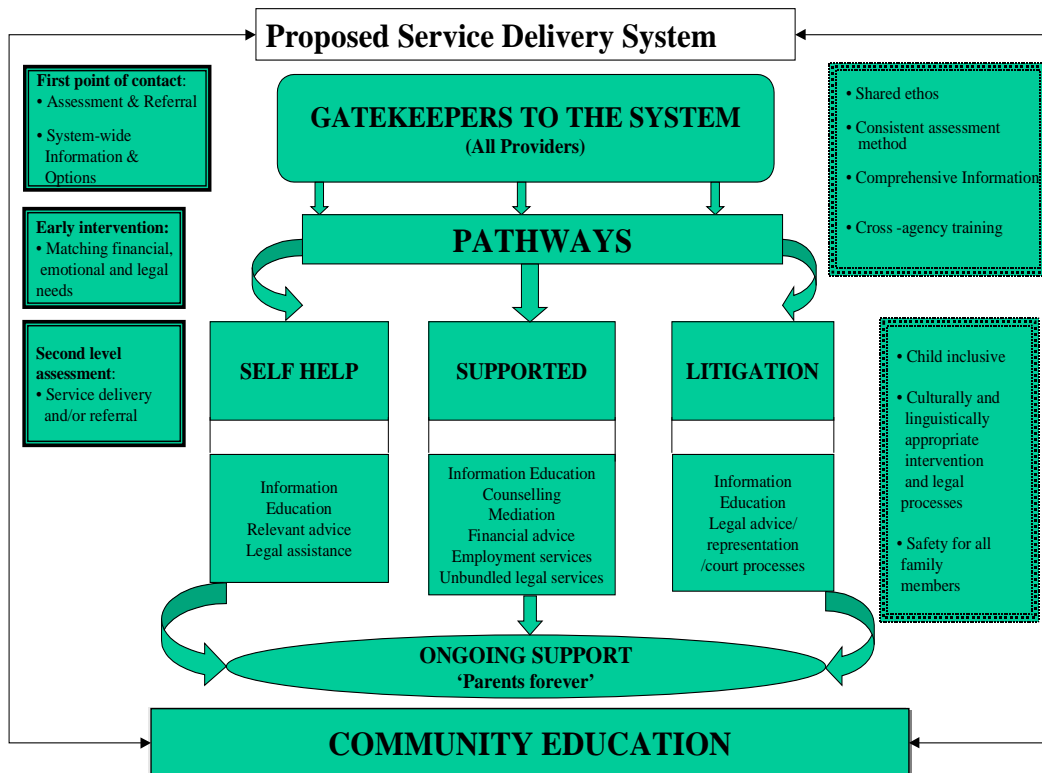
high-need groups. Recommendations for improving the system's responsiveness to these high-need groups include Recommendation 8 (improved access to services), Recommendation 12 (innovative services), and Recommendations 22 and 23 (on indigenous family law issues).

Service delivery model

In developing strategies to achieve an integrated system the Advisory Group has focused on improving the experiences of people entering the system for the first time. The aim is that service delivery be coordinated, and that it deals with families' needs in a holistic way.

The Advisory Group proposes the following service delivery model for an integrated family law system, to address the needs of families more effectively. The model incorporates the five key functions of an effective family law system (education, information, assessment and referral, service options, and ongoing support) and supports three kinds of pathways for families progressing through the system (self-help, supported and litigation). Effective coordination, both local and national, would hold the model together to make a cohesive system.

The Advisory Group's vision of an integrated system follows:



Functions of an integrated family law system

Education

Education of the Australian community, young people and professionals involved in service delivery is needed to ensure that people understand the principles underpinning the family law system, have accurate expectations about their rights and responsibilities, and understand how the best interests of children can be promoted and protected. 'Parenting responsibilities' and 'shared parenting' are frequently turned into arguments about parental rights, and confused with children's rights. Education would help to clarify these errors.

A community education campaign would target families who are considering separation, in the process of separating or separated, and others directly affected by separation including children, grandparents, extended family and new partners. As friends and family are an important source of support and information, particularly during the early stages of separation when decisions are being made against a highly emotional background, it is vital that everyone in the community hears the same messages. The wide range of organisations that assist, influence and provide information to different parts of the Australian community should also be targeted.

A comprehensive long-term community education campaign is essential for there to be real change in community expectations and post-separation behaviours.

Recommendation 2

That a long-term community education campaign, with clear core messages and promoting the principles that underpin the family law system, be developed. The campaign would:

- a** focus on the interests and needs of children;
- b** reinforce post-separation parenting responsibilities (including flexible parenting models that work); and
- c** provide information about where to get help.

The key messages of such a campaign would also specifically:

- acknowledge the emotional impact of separation on all family members; and
- emphasise the importance of good parenting, particularly parenting by fathers.

Education for young people should be part of any long-term education strategy. In this way, schools can play a role in their students' forming healthy relationships and realistic expectations about the future.

Recommendation 3

That a national education package for schools, consistent with national education goals, be designed, to develop individuals' capacities for healthy relationships, provide information about positive parenting models and demonstrate that it is 'OK' to look for help when difficulties arise.

Professional education and development

Many professionals work with parents and children following separation: lawyers, psychologists, social workers, psychiatrists and mediators as well as teachers, childcare workers, police, medical practitioners, clergy and others. However, the relevant skills and knowledge of these professionals may vary widely. Ideally, all professionals working in the family law system should understand the principles of the law, the needs of children, the services available to promote the best possible outcome for a particular family, strategies for reducing family conflict, the possible effects of family violence, and ways of reducing costs.

Multidisciplinary training that focuses on family breakdown and parental separation issues is needed. Strategies to enhance the skills of specific key professional groups and to encourage collaboration between professionals need to be developed in the interests of families. Integration of professional practices is the key to achieving an integrated system.

Given the predominance of legal services, counselling, mediation and litigation in the family law system, strategies aimed at lawyers, psychologists, social workers, mediators, judges and magistrates offer the greatest opportunity to enhance outcomes for families.

Recommendation 4

That all professionals and key staff working in the family law system adopt a multidisciplinary approach to resolving issues for families, and that priority be given to the following strategies to support such a holistic approach:

- a** development of a national code of conduct for lawyers practising in family law to reflect the principles outlined in this report and to include a commitment to actively promote non-adversarial dispute resolution and other good practices. Lawyers who subscribe to and observe the code should be readily identifiable to clients and service providers;
- b** replacement of accreditation schemes for family lawyers that currently exist in some States by a national scheme, which links with the national code and the identification mechanism above;
- c** requirement for regular continuing legal education for lawyers who wish to be known as supporters of the national code;
- d** maintenance of multidisciplinary education for family law judges and magistrates, and the development of opportunities for State magistrates dealing with family law matters for access to multidisciplinary education (*see also* Recommendation 17);
- e** promotion to tertiary education institutions of the principles underpinning the family law system and the need for specific intervention knowledge and skills, a multidisciplinary perspective on separation and family conflict in undergraduate and postgraduate courses in psychology, social work, law, medicine, psychiatry, police studies, education, child care and mediation;
- f** development and enhancement of competency-based training for non-legal professionals and client contact staff who provide services to families experiencing separation;

- g** development of a quality accreditation mechanism for all family and child mediators and counsellors; and
- h** adoption of a multicultural perspective by all professionals and key staff working with members of culturally and linguistically diverse communities, and indigenous communities.

See *also* Recommendation 6.4.

Information

People need comprehensive, consistent and accurate information about the family law system as a whole. The community education campaign must be backed up by specific information that people can access when they need it. This information can help couples experiencing separation to understand what ‘the best interests of the child’ means in practice, the emotional and legal costs of ‘fighting’ about children and property, and how to manage and get help with emotional and practical issues.

Existing information is not integrated or targeted to meet the needs of either families experiencing separation or service providers.

Information must be presented in a way that people can readily understand. The information products must be available in selected languages for people of non-English-speaking backgrounds and indigenous Australians.

The information must be readily accessible, where people need it. The concepts of a ‘one-stop shop’ and ‘one book’ were mentioned in consultations and submissions. A common Internet entry point, a virtual one-stop shop to which other sites could readily be linked, would allow easy access to consistent and up-to-date information, but would need to be complemented by information available from other distribution points, such as outlets in the general community as well as within the family law system.

Recommendation 5

5.1 That a coordinated set of national, system-wide information products for families experiencing separation and service providers, which describe the family law system and available services, and which contain key messages and information about pathways, be developed and maintained.

5.2 That appropriate information products and delivery mechanisms be developed and available in identified and selected languages for people of non-English-speaking backgrounds and indigenous Australians.

Assessment and referral

The Advisory Group heard during the consultations and research that sometimes a family’s first point of contact was their most appropriate point for entry into the system, but sometimes their entry point was simply the only place they thought could help. The variety of available entry points—lawyers, courts, social workers and community workers among them—attests to the difficulty that families have in finding their appropriate way into the system.

Many people were unaware of alternative pathways or options. Information alone may not be enough; some people will need help to choose their own most appropriate course of action.

The Advisory Group proposes assessment and referral practices at the first point of contact to guide families in choosing the pathway that best meets their needs. Generic information products and an assessment tool, plus appropriate training for professionals and client contact staff, would support all service providers in their assessment and referral activities.

A second, detailed assessment would determine the appropriate intervention for the client, and for engaging the other partner in the intervention. The detailed assessment would be made either by the service agency to which the family was referred or by the first service provider, if they can meet the family's needs as initially assessed.

Service providers have an important role to play in early intervention and prevention of violence. The assessment process would provide the opportunity for screening for violence at the first point of contact and with the first provision of service for the family.

In the long term, the tool could be used by all potential entry points to the system, including government and non-government agencies as well as lawyers and other community and private service providers.

Recommendation 6

6.1 That key agencies, professionals and other service providers working with members of separating or separated families commit to a system-wide approach to assessment to assist family members newly entering the family law system, and to review the assistance required by those re-entering the family law system.

6.2 That an appropriate template for first point of contact assessment be developed and implemented nationally to match the family with the most appropriate set of services to resolve difficult or outstanding issues. The template should have certain core features, be simple and easy for service providers and clients to use, allow customisation for local applicability, and be based on agreed indicators and demographic information, including screening for violence and possible need for child protection.

6.3 That this approach be trialled in a variety of environments with a view to informing future processes that improve assessment, responses and referral for all separated families. Initial trials should be held:

- a** in a small number of localities with all interested service providers; and
- b** in or between key agencies at a national or regional level, to allow early identification of particularly troubled family members, and to reduce conflict or confusion, double handling and partial or inadequate information provisions.

6.4 That training modules which cover information, assessment, pathways and referrals be developed for non-legal professionals and client contact staff. (See Recommendation 4.)

Service and intervention options to help families make decisions

The family law system offers a wide range of service types to help families experiencing separation. When a family turns to a service agency for assistance, guidance or intervention, the agency accessed should achieve the jointly agreed outcomes wherever possible.

The emphasis of services and interventions would be to help families choose non-adversarial service options, tailored to their needs. Options would range from information, and legal and other advice, through counselling, group parenting education and mediation, to fully litigated court proceedings with legal representation. Litigation should not be used as a matter of course; it should be used as a last resort, or in cases of emergency, in particular those involving violence, abuse or other risk.

Focus on children

The Advisory Group has found that the system's current focus on children is limited, and concluded that children need to be heard and have their needs included at all levels of their families' involvement in the family law system. Children should have access to therapeutic support, and should have a voice in non-adversarial decision making processes and litigation about their welfare. Family decision making which includes the children helps to ensure that the best interests of the children are met.

Equitable access to services

The family law system should be equally accessible to all. Among the many barriers to effective access are shortages of some service types and services that are culturally inappropriate.

The Advisory Group heard that the system failed to provide the help needed by families because of shortages of services and the difficulty of accessing services early in the separation. There are not enough specific services to help particular high-need groups find their way through the system.

Recommendation 7

That access to services for high-need groups be expanded, including:

- a** services specifically to support children in separating families;
- b** services for men, specifically services that help them to effectively coparent their children after separation;
- c** services which support the capacity of vulnerable and disadvantaged people to access non-adversarial approaches.
- d** services for families experiencing family violence;
- e** services to support people with mental health problems;
- f** services which meet the needs of indigenous Australians;
- g** services for people with culturally and linguistically diverse backgrounds, particularly the provision of interpreters; and
- h** services for families in rural and remote Australia.

Designing services for fathers

Much comment has been made on the shortages of services that support men and their aspirations to parent their children. While the Advisory Group commends recent government initiatives that have increased the availability of family relationship services targeted to men, it considers that more can be done to support an environment that promotes positive family roles for men after separation.

Recommendation 8

8.1 That the integrated family law system ensure fair and equitable treatment for all, and particularly pay attention to the emerging needs of men and fathers.

8.2 That practitioners and policy makers in the family law system ensure that they have an understanding of the needs of men during and following separation, and take a balanced approach to providing services and developing policy and programs for separated families.

Access to legal services

Lawyers remain important gatekeepers to the system. They play an important part in guiding clients to appropriate outcomes, particularly by supporting them through primary dispute resolution. Their services can be made available in ways that support the system's emphasis on family decision making and reliance on non-adversarial solutions. These ways include 'unbundled' legal assistance (which is legal assistance provided in 'blocks' of specific information, advice or actions, rather than whole-of-case advice and representation).

Adequate access to legal services through legal aid is a fundamental part of the system, to help ensure that all groups in the community have equal access to all parts of the family law system according to their needs.

Recommendation 9

9.1 That legal aid services be encouraged to:

- a** continuously improve primary dispute resolution services, including family law conferencing; and
- b** explore innovative approaches to service delivery, for example unbundled legal services.

9.2 That increased legal aid funding be provided to legal aid commissions and community legal centres to improve equity of access in high-need areas, that is:

- a** early intervention;
- b** domestic violence proceedings;
- c** family law disputes in which there are allegations of child abuse; and
- d** enforcement of contact orders.

Improving awareness of non-adversarial options

The community broadly perceives the current system as adversarial. There is often a lack of understanding about the other options available: what they are, where they can

be accessed, and what they can do for the family experiencing separation. The various service providers are often unaware of what other services can offer (and unaware of the relative costs). This can lead to families pursuing less appropriate but more expensive options.

Families are often unaware of the likely costs of litigation. This can result in unexpected costs and the dissipation of many of their assets. If families do not know the relative costs of the alternatives, their capacity to make decisions about their options based on the best outcome for their financial circumstances is greatly reduced.

Education, information and financial incentives to encourage the use of non-adversarial options need to be explored. The Advisory Group prefers incentives to obligatory participation in particular services or courses of action. Opportunities to develop and promote a range of incentives exist in a number of different places within the system. These need to be explored and developed with the collaborative participation of the courts, the legal profession and the relevant community-based organisations.

Primary dispute resolution—the processes aimed at resolving matters outside formal court determination—can take many forms. Community-based organisations are increasingly being expected by government to deliver these services, and courts are being encouraged to focus more on their essential work. Many community-based organisations are finding themselves underfunded as a consequence. The Advisory Group supports the further development of dispute resolution services in the community as they can, if adequately resourced, lower the costs to families as well as reduce the overall costs of the family law system.

Recommendation 10

10.1 That Government:

- a** explore through research the potential of social, financial and information-based incentives to encourage the use of non-adversarial decision making wherever appropriate; and
- b** undertake a thorough cost–benefit analysis of various financial and information-based incentives toward non-adversarial decision making.

10.2 That all government and non-government service providers and professionals in the family law system review their current practices with a view to creating new opportunities and encouraging people to pursue non-adversarial options.

10.3 That the related strategies on accessing community-based dispute resolution services presently being put in place by the Family Court of Australia and the Federal Magistrates Service be coordinated and modelled as a shared service to achieve a common purpose, common standards and common outcomes.

10.4 That strategies be developed, in consultation with the Law Council of Australia and its constituent bodies, family courts and community-based service providers, to encourage lawyers to make more referrals to community-based counselling and mediation, and that any such strategies be incorporated into a family law code of practice (see Recommendation 4).

10.5 That the additional demand on community-based organisations flowing from increased referrals be recognised and appropriately resourced.

10.6 That definitions of primary dispute resolution methods be developed, adopted across the family law system and published in language which accurately and clearly describes what is available.

Service mix

Services need to be available in the community in a 'service mix' that supports decision-making by families in that community. This includes services suited to groups that are currently disadvantaged in the family law system.

Services that offer a range of options need to be free to 'mix and match' services according to the needs of the presenting family. Past restrictive funding practices have been identified as a barrier to achieving this.

Recommendation 11

That funding frameworks for community-based service delivery organisations allow agencies sufficient flexibility to meet the demand for particular service types (or interventions), or mixes of service types, to meet the needs of families in that community, such as by using funding contracts which focus on outcomes rather than inputs or throughputs.

Innovative services

The Advisory Group believes that a number of innovative approaches, outlined in the body of the report, which appear to be delivering positive results, particularly in improving outcomes for children, should be supported and expanded.

Recommendation 12

That innovative practices and service delivery models be further developed where necessary and made available nationally, including:

- a** child-inclusive practices in family relationship services;
- b** flexible models for community-based mediation/conciliation/counselling services;
- c** children's contact services;
- d** mediation–arbitration models;
- e** the service provided by the Victorian Court Information and Welfare Network;
- f** multiservice assistance to self-represented litigants at all courts exercising family law jurisdiction, modelled on the Family Law Assistance Program in Dandenong; and
- g** indigenous family conferencing models.

Building collaboration between agencies in the family law system

For information, assessment and referral to be effective, collaboration between agencies is crucial. Finding ways for organisations to work together to simplify the processes is important in helping families deal with conflict and gain agreement.

A number of such options are being evaluated around the country, and more need to be systematically planned, trialled and assessed, to provide better and more cost-effective models for collaboration.

Recommendation 13

That collaborative models of service delivery, designed to meet the multiple needs of parents following separation, be further developed and tested.

These should build on collaborative models currently being explored between Centrelink, the Child Support Agency and the Family Court of Australia and be extended to improve linkages between these organisations and community services providers.

They may include:

- a** a number of different professionals working together; and
- b** co-location of services to provide better information and support for clients.

Adversarial services

Although the emphasis of an integrated family law system is on family decision making, there remains a vital role for litigation, when all reasonable attempts at resolution have been exhausted and when there is an urgent need. In these cases litigation needs to be streamlined, accessible and timely. As far as possible, cases needing litigation should be identified early, and managed accordingly. Delays can exacerbate conflict or can be manipulated. Self-represented litigants need to receive specific information and support.

Recommendation 14

That courts exercising family law jurisdiction continue to actively review their case management practices to minimise delay and facilitate the early resolution of cases.

Ongoing support—parents, if not partners, forever

It is crucial that the system provides ongoing support to families so that they can manage parenting responsibilities over time and through the changes in circumstances that will inevitably occur. These supports should include a range of flexible community-based services available at key decision points as families move on with their lives.

Lack of enforcement of court orders in the past has been raised by many in submissions and consultations, and calls for non-court-based means of ensuring compliance are strong. Regardless of whether parenting orders are made by consent or after a hearing, support is often needed to help ensure that the orders operate effectively. More effective support for parents as they make decisions about post-separation parenting is also required, to ensure that agreements and orders are

appropriate in the first place. Flexibility to take account of changes in circumstances, including relocation, needs to be built into any compliance regime, while reinforcing the sharing of parental responsibilities.

Children's contact services help maintain the relationships between children and their non-resident parent by reducing the potential for conflict between the parents at times of changeover for contact. These services do not at present have the resources to help families move to self-managing their ongoing contact arrangements. Contact also becomes more difficult when parents move away from each other. New approaches need to be developed for these families.

Amendments to the Family Law Act in December 2000 introduced a new three-stage approach to compliance with parenting orders in response to a history of non-compliance. It is too early to tell how effective it will be in addressing the concerns about enforcement that have been raised.

An alternative to going to court is mediation–arbitration, in which independent neutral decision making is added to the mediation process. This service type should be added to those currently available for parents in conflict, to help parents reach a legally binding agreement and to reduce the demand on court resources.

Recommendation 15

15.1 That ongoing support for parents to resolve their family issues be enhanced by the promotion of non-adversarial decision making by service providers when they become aware of new difficulties.

15.2 That flexible community support services be available following the handing down of court decisions about parenting arrangements and to assist with future resolution of difficulties arising from changing family circumstances, acknowledging that some families may need these supports intermittently over an extended period.

15.3 That the role of the non-government sector in the provision of high-quality personal counselling be increased and ensure that counselling support is available at key points in families' contact with the system where emotional distress and the risk of conflict may be greatest.

15.4 That a readily accessible system, which does not require ongoing judicial involvement, be developed to assist parents to meet their responsibilities, particularly following parenting orders.

15.5 That the outcomes of other approaches currently being trialled be examined for their application more broadly, where they are found to be successful. These include the Contact Orders Pilot, the Contact Court project about to commence in the Family Court of Australia and new programs developed to support the clients of the Federal Magistrates Service.

15.6 That support for parents and children to maintain ongoing contact after separation be expanded as follows:

- a** children's contact services to be expanded to be accessible at an early stage of the separation and resourced to assist parents to self-manage contact in the future;
- b** national implementation of the principles and best practices identified in the Contact Orders Pilot evaluation through children's contact services; and

c innovative ways be developed to support contact when parents live some distance from each other.

15.7 That the amendments to the Family Law Act which came into effect at the end of 2000 be closely monitored to measure their effect on compliance with parenting orders.

Pathways

All of the above functions support families making their way through the family law system. Three generic pathways have been identified and the features of each pathway are described below. People entering the system would choose a pathway according to their needs and circumstances, but would be encouraged to take the self-help and supported pathways, in preference to the litigation pathway, whenever possible.

Self-help pathways

The self-help pathway would suit parents who have a relationship that allows them to make decisions about parenting with no or minimal outside help. With access to good information, parents may be able to reach their own agreements and develop parenting plans, but may need to formalise their situation for security or clarity, either by registration or consent orders. The process for doing this should be as simple and cheap as possible.

Recommendation 16

That, to maximise use of the self-help pathway, information and education be readily available to enable parties to choose whether to adopt a parenting plan or court order to govern post-separation parenting arrangements.

Supported pathways

A large number of those families who are facing separation and are likely to experience difficulties during their involvement with the family law system would, with appropriate support, manage their responsibilities and reach their own decisions. Supported pathways are needed to engage both parents, who are often at different stages of the separation process, and enable families to reach their own solutions without resorting to litigation.

The key to the appropriateness of a supported pathway would be that services are effectively connected or packaged to meet all the needs of the particular family. This approach would be particularly valuable to 'at risk' groups.

Recommendation 17

That service providers help families tailor a package of support to meet the needs of the particular family in deciding their own arrangements. Such packages should include access to information and networks of other services when the service provider cannot meet all the needs.

Litigation pathways

Litigation has an appropriate role to play in two main areas: as a last resort and when there is an urgent need to protect a victim of family violence or child abuse.

Using a litigation pathway does not imply that there is no role for self-help or support. Many people would be negotiating in the context of applications to court, or filing applications in the course of negotiation. Starting litigation does not mean that attempts at resolution through mediation or other non-adversarial methods would end; neither does it mean that all people who take a litigation pathway would go all the way to a defended hearing before a judge.

Safety from family violence and child abuse is a key aim of the integrated system. These cases require speedy and inexpensive access to judicial intervention in order to safeguard the victim. However, problems have been identified in this area. These emerge largely from unacceptable delays and inadequate attention to all the needs of families presenting with violence and abuse issues.

Recommendation 18

18.1 That responses to family violence be managed in accordance with the following principles:

- a** the safety of children and adults is paramount;
- b** where there is a dispute about an apprehended violence order, it should be resolved quickly and fairly;
- c** both applicant and respondent should have reasonable and timely access to legal assistance; and
- d** where there are children, parenting issues should generally be dealt with at the same time as the apprehended violence process, and in accordance with Division 11 of Part VII of the Family Law Act.

18.2 That nationally consistent protocols, supported by nationally consistent training about family violence and family breakdown issues, be introduced for practitioners (for example police, lawyers, court support, counsellors). When developing these for the indigenous community, specific cultural perspectives on family and community violence need to be considered, in line with the proposals and framework developed by the Ministerial Council on Aboriginal and Torres Strait Islander Affairs in September 1999.

18.3 That, in cases of family violence and child abuse, where primary dispute resolution is not appropriate, processes be developed to expedite access to a court determination.

18.4 That courts be properly resourced to handle family violence cases in an efficient and timely manner, particularly where family law issues are involved.

18.5 That research be undertaken on the impact of family violence orders and family violence proceedings on a family's pathway through the family law system, with particular reference to:

- a** the role of specialist family violence (domestic violence) courts in various jurisdictions;
- b** inconsistencies in practices between States and Territories; and

c the full circumstances surrounding a sample of applications for apprehended violence orders when there is a family law matter, to determine the responsiveness of the apprehended violence order process, and the appropriateness of its use.

18.6 That all magistrates be offered additional judicial education in family law, parenting issues and the effects on families of family violence.

18.7 That information for both parties in apprehended violence order proceedings be substantially improved and that they be provided with counselling or other support appropriate to their circumstances.

18.8 That perpetrator programs facilitate a holistic assessment of all needs of individual perpetrators at the time they start the program, with emphasis on family law issues.

Child abuse

The Advisory Group has heard about the negative impact that an allegation of child abuse can have on parent–child relationships, particularly contact arrangements. When child abuse is raised as an issue, it is very important that an early assessment is made of all the circumstances.

Cases involving allegations of child abuse require a range of interventions including special judicial attention, to ensure that the risk to the child is minimised.

The Magellan project, which has been piloted in Melbourne and Dandenong, has delivered improvements in the management of a set of difficult cases. Outcomes for children have improved, primarily because the full range of services designed to help, including court personnel, child welfare authorities and legal aid, were brought together.

Recommendation 19

That cases involving allegations of child abuse require specialist judicial attention and close cooperation between federal and State organisations, as well as a range of other interventions, to minimise the risk to the child. In order to achieve this, the principles and practices underlying the Magellan Project should be extended to other locations.

Pathways and the needs of vulnerable people

Each of the pathways described should incorporate good practice in relation to people who are vulnerable during separation, in a way that takes into account their special circumstances. Indigenous families, children, and adults at risk because of emotional distress, violence, unemployment, isolation, disability, mental illness (including depression), low literacy, or diversity in linguistic or cultural background, can suffer disadvantage in a system which fails to address their specific needs.

Disadvantage can involve difficulty in understanding the legal situation, difficulty in accessing appropriate services or difficulty in participating in decision-making on an equal footing. Disadvantage can lead to perceptions that the system is unfair. Pilot programs for at-risk groups and collaborative models of service delivery are required.

Recommendation 20

20.1 That good practice in relation to the special circumstances that affect individuals be actively promoted to all service providers.

20.2 That demonstration projects be designed and evaluated to determine good practice in areas and/or services where the particular needs of at-risk groups have not yet been addressed.

Children's perspective of pathways

Children have a right to be heard and have their views taken into account in decisions that will affect their lives. The Advisory Group strongly recommends the expansion of services to support children experiencing separation.

In many circumstances where families are involved in litigation about parenting, particularly where violence between the parents or child abuse is involved, children need representation. Child representation is a specialist service that requires specialist training and skills, to serve both the legal and social needs of the child in an integrated way. The Australian Law Reform Commission and the Family Law Council have considered these matters and made broad-ranging recommendations.

Recommendation 21

That the development of clearly defined roles for, and responsibilities of, child representatives be given urgent priority, with adequate funding allocated to support implementation.

Indigenous perspectives of pathways

The importance of customary lore, community negotiation and empowerment are fundamental in any interaction between indigenous Australians and the family law system. The Advisory Group recognises the unique position of indigenous Australians in their interaction with the family law system.

Historically, indigenous families have responded to the cultural inappropriateness of Australian family law by avoiding the court and dealing with family disputes informally, or under traditional lore. In an integrated family law system, service providers would be much better informed about customary lore and how family law processes can accommodate relevant aspects, including the child-rearing responsibilities in the wider indigenous family.

However, at present the Family Law Act does not explicitly recognise the child-rearing obligations or parenting responsibilities of family members other than parents. The Advisory Group recommends that the Family Law Act be amended to incorporate indigenous child-rearing practices. Also, the Family Law Act should include a clearer statement of the importance placed on a child's cultural identity. This is imperative when determining the best interests of the child.

Recommendation 22

That the Family Law Act be amended by:

- a** section 61 should acknowledge unique kinship obligations and child-rearing practices of indigenous culture;
- b** section 60B(2) (which relates to principles underlying a child's right to adequate and proper parenting) should include a new paragraph stating that children of indigenous origins have a right, in community with other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language; and
- c** in section 68F(2)(f) the phrase 'any need' should be replaced by 'the need of every indigenous child'.

Ensuring that services are culturally appropriate is central to fully including indigenous Australians in the family law system.

The experience of the Family Court of Australia in developing appropriate services for Aboriginal and Torres Strait Islander communities through consultation provides a model for other service providers in the system.

In an integrated family law system, each of the three pathways would ensure that the specific needs of indigenous Australians are recognised, so that, if an indigenous person looked to the family law system for assistance, they would access services on the same terms as other members of the Australian community.

In the self-help pathway, support for family and community decision making would be improved by the provision of culturally appropriate information.

In the supported pathway, services would be made more culturally appropriate through the employment of indigenous staff, cross-cultural education and wider availability of interpreters. Consideration of new services and interventions tailored specifically for indigenous families (for example narrative therapy and indigenous family law conferencing) needs to be ongoing.

When litigation is appropriate, the community obligations of indigenous people would be fully considered in arriving at residency and contact decisions.

Best practice occurs when programs and initiatives are developed, owned and implemented by indigenous communities themselves.

Recommendation 23

23.1 That culturally appropriate service delivery be expanded through:

- a** all professionals of the Family Court of Australia (including counsellors, registrars and judges) and service providers involved in indigenous parenting issues receiving ongoing bicultural education. This education should include the history and effects of forcible removal of children and indigenous cultural values, particularly those related to child-rearing. Competency standards also need to be developed;

- b** development of an indigenous employment strategy in courts with family law jurisdiction. This would include retention and expansion of the Indigenous Consultant positions in the Family Court of Australia;
- c** provision of interpreters particularly, but not only, in courts; and
- d** sponsoring the establishment of local-level indigenous community networks, where local expertise and knowledge can be shared with non-indigenous service providers.

23.2 That new service types be developed and tested, in partnership with indigenous communities. Two interventions tailored specifically for indigenous families—narrative therapy and indigenous family law conferencing—need assessment for their applicability to family dispute resolution and as alternatives to litigation.

23.3 That a database be created to collect information about indigenous family law cases. This would require identification of indigenous cases and would facilitate research into the way customary law is taken into account in determining the best interests of children.

23.4 That national standards for indigenous children be in accordance with the recommendations from the *Bringing Them Home* report.

23.5 That programs and initiatives be developed, owned and implemented by local indigenous communities, to help ensure best practice in working with indigenous people.

Managing the integrated family law system

Research

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

There is an overwhelming need for Australian-based research with particular emphasis on Australian families and individuals from culturally and linguistically diverse backgrounds, those with disabilities and indigenous communities.

This report confronts a number of complex social issues that other countries have so far avoided. Research in Australia is needed to underpin the policy developments that this report is promoting. Such research has to take account of the particular features that are peculiar to Australia, including the culturally diverse population, the geographic dispersal of the population and the federal constitutional framework in which the issues need to be addressed.

There are also a number of specific areas in this report that will require research before the new and challenging approaches it recommends can be fully implemented.

Recommendation 24

That a comprehensive research strategy be developed recognising the unique characteristics of Australia's social, geographic and constitutional environment to:

- a** monitor and evaluate the future system;
- b** develop a coherent national research agenda in family law and separation issues; and
- c** target specific high-priority issues.

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.

Recommendation 25

That a review of all current legislation which relates to the family law system, including the Family Law Act, the Child Support Acts and the Social Security Act, be undertaken to identify amendments required to achieve consistency in their operation.

Funding the integrated 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.

Recommendation 26

That funding decisions for the family law system be based on the framework outlined in this report. In particular, new funding should be directed towards education, information, early assessment, and referral and intervention services that support family decision-making.

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.

Recommendation 27

That a short-term, cross-agency taskforce be established to:

- a** ensure action is taken on the high-priority recommendations of this report, including mechanisms to implement them;

- b** lead the building of effective linkages across all aspects of the family law system so that it works to help separated families resolve their difficulties; and
- c** ensure that practical and sustainable approaches are put in place for the medium and longer term, and recommendations are made to Ministers to:
 - drive coordination and cooperation at the regional, State and national levels;
 - monitor achievements; and
 - identify and act on emerging issues and promote an ongoing partnership approach to problem solving in the family law system.

This taskforce should be underpinned by appropriately integrated working arrangements within and between the portfolios responsible for the family law system, including the areas of program management and funding practices.

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.

Recommendation 28

That the Council of Australian Governments, as a matter of urgency, consider ways to improve coordination between levels of government in order that:

- a** family law, violence and child abuse matters can be dealt with in the same place at the same time;
- b** processes for handling these cases are streamlined;
- c** assessment and resolution of such cases is expedited; and
- d** cooperation is improved and promoted between professionals and services working with at-risk families who are involved with the family law system.

Matters outside the Advisory Group’s terms of reference

A number of significant matters that 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.

Parts of the report

Part One An overview

Part One of this report:

- introduces the Advisory Group;
- sets out the principles and objectives underpinning the family law system;
- describes the scope of the review;
- acknowledges what is being said by consumers and service providers;
- analyses systemic problems; and
- introduces the conceptual shape of an integrated family law system.

Part Two Key functions of an integrated family law system

Part Two describes in more detail the functions of an integrated family law system that delivers coordinated services appropriate to families' needs, and makes recommendations about the requirements for achieving its objectives.

Part Three Pathways

Part Three addresses the needs of families undergoing separation for stronger and clearer pathways through the family law system. It sets out pathways for self-help, support and litigation, and makes recommendations to streamline the use of each pathway.

Part Four Perspectives

Part Four recognises the needs of people who are particularly vulnerable and makes recommendations to improve access and services.

Part Five Managing the integrated family law system

Part Five describes the proposed mechanisms for implementing the recommended changes and for sustaining an integrated and responsive system.

Part One An overview

1.1 Families

Families and communities provide vital support to people dealing with the demands of modern life. They are also critical influences on the future of children.

In recent years, government policies have emphasised that families and communities are the basic ingredients to secure Australia's future. As a contribution to the Government's support for the wellbeing of families, the Attorney-General and the then Minister for Family and Community Services jointly initiated the Family Law Pathways Advisory Group.

The focus of the Advisory Group is on better outcomes for family members, particularly children, following the end of a marriage or relationship.

There are substantial concerns in the community about the current family law system and the Advisory Group has been asked to suggest ways to make the system work better for all the members of the families who need to use it.

It is always difficult when families split up. Parents, children and other family members have to grapple with complex practical, legal, financial and emotional issues; everyone involved has to adjust to change and loss. Stress and grief can make it hard to reach sensible decisions and some families experience a lot of conflict. The children of families in conflict suffer the most.

For many the experience is emotionally stressful and they believe that they have not been given a 'fair go'. There is often real tension between parents over arrangements for children, division of property (and debts), child support and ongoing needs (financial, emotional, lifestyle and new relationships).

Helpful and relevant information and support often aren't easily available and services are hard to find, leading to sometimes ill-informed choices and unexpected outcomes.

Nevertheless, some people arrange and meet their post-separation responsibilities with minimal assistance.

Children

Maintaining nurturing relationships between children and parents, even after separation, is known to be good for the children's wellbeing. Policies, services and support networks for families experiencing separation need to support and enhance these relationships when they are beneficial to the welfare of the children. However, the stress and conflict around separation frequently puts children and family members at risk, and the capacity within the family to care for children in their best interests is often lost.

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

It follows from this that all the service providers in the family law system should focus (both within their organisations and in their relationships with other members of the

system) on the potential for their client families to maintain positive relationships which support each parent's and other family members' (for example grandparents') ongoing capacity to nurture their children. The service providers should aim to achieve this through agreement between adult family members and the involvement of their children in reaching that agreement. It is critical that guidance and intervention supporting this approach need to be consistent with the circumstances of the particular case.

The best outcomes are usually achieved when parents reach agreement between themselves. Research suggests that this agreement is most achievable when parents can focus on the best interests of their children rather than on their own conflict.

The concept of 'parental responsibility' is relevant to the way in which parents access the legal system. Parents act responsibly for the welfare of their children by accessing the system in good faith, by reaching agreement wherever possible (unless the welfare of the child or its primary carer is at risk from violence or abuse), and by accepting the outcomes produced by the system for as long as they remain appropriate.

This report describes how to support those with parental responsibilities to meet these obligations.

Parents may need practical help to achieve and maintain this focus, 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.

By reducing the level of personal pain and distress involved in ending a partner relationship, and strengthening 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 the 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.

1.2 The Family Law Pathways initiative

The Advisory Group was established in May 2000 under the chairmanship of Mr Des Semple. It brings together experts in family law, members of the community, academics, a social commentator and representatives from Government to provide expert guidance and make recommendations to Government.¹

Through the Advisory Group's terms of reference, the Government is seeking to achieve four main objectives. These are:

- establishing stronger and clearer **pathways to early assistance** that ensure that people facing relationship breakdown are directed to the services most suitable to their needs;
- helping families to **minimise conflict**, manage change more successfully, and meet new obligations and commitments;

1 See page v for the terms of reference and page vi for the list of members.

- improving the targeting, coordination and accessibility of **information and support** for families during the transition to, and settling of, new arrangements; and
- providing better **coordinated service delivery** between the range of agencies involved in assisting families who interact with the system.

The Government believes that all elements of the family law system need to come together to achieve an integrated family law system. It envisages a system in which family members experiencing separation can easily and quickly identify and access help with decision making and problem solving. Such a system would be responsive and coordinated, and provide appropriate assistance to family members as early as possible. It would treat all comers fairly. All those in the system would, above all, promote the interests of children and attempt to meet the needs of children.

Recommendation 1

The Advisory Group recommends that the family law system, in whole and in all its parts, be designed to maximise the potential for families to function cooperatively in the interests of children after separation. In doing so, it would ensure fair and equitable treatment for all, with particular attention to the ongoing parenting roles and support needs of both parents. The system would provide services for those family members who may face particular difficulties in adjusting to post-separation changes.

Wherever possible, family decision making would be encouraged, with parents making their own decisions about their complementary roles, with appropriate support from the family law system.

1.3 The scope of the family law system

The Advisory Group has defined the family law system very broadly. It includes the many service providers and individuals who help families experiencing separation to resolve legal, financial and emotional problems, and is centred around the family members themselves.

The family law system is much more than the courts. It encompasses services that are provided by a wide range of agencies. As well as the Family Courts of Australia and Western Australia, the Federal Magistrates Service and State Magistrates courts, they include Centrelink, the Child Support Agency and other government agencies at national, State and local levels, community-based organisations, private practitioners, advocacy groups and volunteers. Many offer specialised services to meet the emotional, safety, legal or financial needs of individuals.

Service providers within the system meet people at many different stages in the separation process. Some people seek help with relationship difficulties early in the process, in some cases before separation is considered. Some people seek help when they have made the decision to separate. Others seek help after separation, sometimes for assistance with basic needs, and others become involved through processes initiated by the other party.

Focus on parenting

The family law system affects the lives of many Australians. More than 52,000 divorces were granted in 1999–2000. About 53% of divorces each year involve children under 18, with the average number of children per family in those cases being 1.9.² To these must be added the substantial number of de facto relationships which break down each year, many of which also involve children.

In 1999, nearly one million children lived with one natural parent and had another living elsewhere.³ The large majority of these children live with their mothers.⁴

In many cases, people who separate will be faced with a range of issues, related to both financial and parenting arrangements, to manage and resolve. These issues are, in many ways, linked to each other and may be extremely difficult for people to separate.

The economic cost of separation is a reality for all people who separate. However, those with children have the added burden of trying to resolve both financial and parenting matters. The major difference for partners without children is that they have the option to completely separate from one another following the resolution of issues related to property and finances. Parents, however, are parents forever. Effective communication between them is extremely desirable, and ongoing communication about their children's needs is usually unavoidable.

For those with children, contact with the family law system is frequently ongoing. For instance, of those parents who are or have been court clients, many may return to vary parenting orders or arrangements as their circumstances and the children's needs change. The number is potentially large: over one million people with children under 18 years of age are now registered with the Child Support Agency⁵ and payment of child support can continue until all the children in a family reach 18 years of age.⁶

The Advisory Group therefore decided to focus on parenting rather than on property and financial matters. It is not the intention of the Advisory Group to minimise in any way the importance of providing separated people whose issues are confined to property and financial matters with accessible and appropriate services.

1.4 The principles underpinning the family law system

The terms of reference for the Advisory Group do not require the Group to revisit the principles that underpin the family law system. The basic philosophy embedded in

2 Family Court of Australia, submission no. 260.

3 Australian Bureau of Statistics, *Children of Australia: A social report 1999*, ABS, Canberra, 1999.

4 Australian Bureau of Statistics, *Family characteristics*, Cat. no. 4442.0, ABS, Canberra, 1997.

5 Department of Family and Community Services, Child Support Agency & Attorney-General's Department, *Child Support Scheme: Facts and figures 1999–2000*, Commonwealth of Australia, Canberra, 2000.

6 Application can be made for the payment of child support for children older than 18 to complete the school year or because of the mental or physical disability of the child.

current legislation⁷ is not questioned. The legislation contains four fundamental principles that have guided the thinking of the Advisory Group.

The first principle is the overriding importance given to the best interests of the child.

Part VII of the *Family Law Act 1975* emphasises parental responsibility and encourages parents and the courts to actively consider the best interests of the children in making decisions about their care and welfare.

While the principle of ‘the best interests of the child’ is not questioned, there are tensions in its practical application (in both litigation and other dispute resolution processes) where parties may claim to be serving the best interests of the child by conflicting courses of action.

Except where it would be contrary to the best interests of the child:⁸

- children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together;
- children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development;
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.

Reforms to the family law system should start from this foundation and attempt to build processes and services that would reinforce these rights and support parents in achieving the best outcomes for their children.

The second principle is priority for the use of non-judicial processes to resolve issues of family conflict and transition.

The object of Part III of the Family Law Act is to encourage people to use primary dispute resolution mechanisms to resolve matters which a court might otherwise resolve. The aims of a family law system that emphasises non-judicial processes are:

- 1 to assist family members in identifying and approaching the service provider(s) best suited to their needs and the needs of their families; and
- 2 to assist family members in reaching just, speedy and inexpensive resolution of their family difficulties and disputes, wherever possible without resort to the courts.

The third principle is the need to ensure safety from family violence.

This principle, mentioned in section 43 of the Family Law Act, means that all participants in the system need to facilitate speedy, consistent and inexpensive protection to people vulnerable to family violence.

The fourth principle is the responsibility of parents to provide financial support for their children.

⁷ *Family Law Act 1975; Child Support (Registration and Collection) Act 1988; and Child Support (Assessment) Act 1989.*

⁸ *Family Law Act 1975, s. 60B(2).*

As is required by the *Child Support (Assessment) Act 1989*, the Child Support Scheme aims, among other things, to ensure that parents share the cost of supporting their children according to their capacity.⁹

Building on these principles, the Advisory Group considers that a family law system should also be one that:

- acknowledges the value of family relationships and seeks to provide families with a range of support services and information at various points in the family life cycle;
- values and supports the ongoing capacity in families to provide nurturing parenting to children of the family, whether it is intact or separated;
- helps to minimise the damage of separation and conflict to partner relationships and to children, and maximises the capacity to re-partner effectively; and
- provides 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.

1.5 Review process

In order to fully address the terms of reference, the Advisory Group examined current experiences of the family law system through consultations, research and submissions.

The Advisory Group held six meetings during the course of the inquiry to consider the emerging issues and to develop recommendations. In addition, smaller working groups were established to more closely consider key elements of the inquiry.

Public submissions

Submissions from service providers, academic institutions and professionals were invited by letter and a request for submissions from the public was advertised in the national press on 3 June 2000. The Advisory Group received 284 submissions as well as 307 individually signed identical form letters (see Appendix 1 List of submissions). The contents of the submissions were analysed and summarised (see Appendix 2).

Consultation program

Consultations with consumers, service providers, indigenous leaders and legal professionals were conducted between 27 September and 18 October 2000, in all States and Territories. The purpose of the consultations was to hear directly from people who have experienced the family law system, so that the Advisory Group could document the pathways to and through the family law system. (Appendix 3 lists the people and organisations consulted.)

9 *Family Law Act 1975*, s. 66B(1).

Case study research

The Australian Institute of Family Studies was commissioned to undertake semi-structured interviews with a small sample of 20 individuals (men, women and a child from 16 families) on a wide range of issues related to the family law pathways and processes they had experienced (see Appendix 4).

Literature review

A review of relevant documented research and published papers was conducted. Where appropriate, unpublished papers were also accessed. Databases were searched and the websites of academic, government and non-government organisations visited. A bibliography was compiled (see page 132).

1.6 What the Advisory Group heard about the system

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

- everyone is emotional and distressed at the time of separation. This affects their ability to put children's interests first, their ability to access and process information, and their ability 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.

What the Advisory Group heard from consumers

What men said

Men, and men's advocacy groups, dominated both the written submissions and attendance at consumer forums.

It was evident that many men felt angry, frustrated and hopeless. Their anger was directed at both the system (particularly the law, lawyers, courts and the Child Support Agency) and ex-partners (who, they felt, deserved their anger for a range of reasons including leaving the relationship, denying contact or making false allegations). Frustration and hopelessness arose from a lack of recognition of their ability to nurture their children, and the difficulty of influencing or changing decision-making in the system. As a result, they felt that the system was unfair and biased against men. Some men believed that this was due to the feminist views of staff in key service agencies (specifically legal aid commissions, the Family Court of Australia and the Child Support Agency).

Particular concerns included court decisions about where children reside, enforcement of contact, false allegations of domestic violence and/or child abuse, child support and the rate of suicide among separated men. In relation to residence, many men expressed the view that the presumption in law should be that children live with each

parent on an equal-time basis (often expressed as '50:50'). The existing legislation¹⁰ is not regarded as sufficient to ensure that fathers have an equal opportunity to parent their children.

Issues about enforcement of contact orders were the next most frequently raised concern. Many men called for the Family Court of Australia to apply sanctions for breaches of contact orders. The suggested sanctions or penalties included: residence to change to contact parent, make up contact time and extra contact, payment of contact fees and costs, compulsory counselling, arrest, detention, community service, ceasing child support payments and intervention by children's protective services. Other men were keen to establish alternative means, such as a tribunal, of enforcing contact orders.¹¹

Several men accused their ex-partners of making vexatious reports to children's protective services, making false affidavits or taking out domestic violence orders to prevent contact. They felt frustrated that they did not have the opportunity to prove that these allegations were untrue. A closely related issue was the lack of recognition of men as victims of violence and their need for appropriate support.

The child support formula and the change of assessment (or review) process were heavily criticised by men. Many suggestions involved changes that would reduce the amount of child support payable (for example, using after-tax income, reducing the current percentages), would increase the accountability of how payments are spent, or would benefit second families.

In addition to these main areas of concern, some men made a number of recommendations including repeal of 'no fault' divorce, improved accountability in the Family Court of Australia through the repeal of section 121 of the *Family Law Act* which limits publicity, increased funding for men's advocacy groups, more support services for men, and compulsory counselling and mediation.

Some women, particularly current partners and mothers of separated men, agreed with these views.

In the case study research, five of the eight men interviewed felt that the formal family law system favoured women.¹²

While it is clear that some men are angry and bitter at the time of separation and that this may remain unresolved,¹³ it is also clear from submissions and case studies that some men have found parts of the system helpful and have been able to move on in their lives.

10 *Family Law Act 1975*, s. 60B(2).

11 Creation of a tribunal would raise serious constitutional issues. Generally, enforcement orders under federal law must be made by a federal court. Chapter 3 of the Constitution prevents conferral of judicial functions on administrative tribunals (*Brandy v. HREOC* (1995) 183 CLR 245).

12 Australian Institute of Family Studies, *Family law pathways and processes: Case studies report*, 2001, p. 20.

13 Peter Jordan, *The effects of marital separation on men: Ten years on*, Family Court of Australia Research Report no.14, Family Court of Australia, Canberra, November 1996.

The Court counselling service I felt was good. The divorce from memory itself was a simple process.¹⁴

What women said

The number of submissions from women and women's advocacy groups was smaller than that from men and men's advocacy groups.

It was evident that 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, additional resourcing of legal aid and more 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. The use of financial incentives (for example, the Family Tax Benefit or lower child support liabilities) to increase contact levels between children and non-resident fathers was not seen, by some resident mothers and advocacy groups, as being in the best interests of children.

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

Common ground

The men and women who responded to submissions and consultations presented different perspectives on issues. There was, however, some common ground in that separated partners, generally, acknowledged that separation is a time of high emotion and that they favour 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 'system' contributes to their emotional distress, and then, in this state, requires them to make important decisions.¹⁵

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 ...¹⁶

14 Australian Institute of Family Studies, *Case studies*, 04a, Mark, p. 21.

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

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

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.

Indigenous peoples face historical issues such as the effect of policies of previous governments that still adversely affect communities and individuals. It is therefore not surprising that indigenous Australians have not felt sufficiently confident to utilise the services offered by courts and other service providers that deal with the residence of and contact with children, as well as other family law matters.

In addition, many indigenous communities experience language and cultural difficulties in understanding the family law process, and many service providers lack an awareness of indigenous culture.

Some people manage well

Although the Advisory Group heard about the problems that people have with the current family law system, it is evident that many people manage after separation with minimal reliance on it. The Advisory Group does not aim to bring these people into the system.

That some people arrange and meet their post-separation responsibilities with minimal assistance was shown in the case study research undertaken for the Advisory Group. Several people interviewed had successfully arranged their post-separation parenting and financial arrangements with minimal contact with the system. Moreover, they felt 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.

Client focus

Internal processes in key parts of the family law system have been modified or streamlined recently to improve client focus and make the processes more 'user-friendly'. For example, the initiatives of the Family Court of Australia's Future Directions Committee will achieve better outcomes for court clients when fully implemented.¹⁷ Similarly, the focus on the needs of families through the establishment of the Family Assistance Office by the Government and the creation of the 'New Client

17 Family Court of Australia, *Future Directions Committee Report*, Family Court of Australia, Sydney, July 2000.

Stream' in the Child Support Agency are based on research into what clients want from those services.

In the New Client Stream, the Child Support Agency has adopted a new approach to service delivery for new clients. People approaching the agency for the first time (usually within three months of separation) are assigned a case manager for the first nine months. The case manager works with both parents to establish a sustainable child support arrangement and to guide them to relevant community organisations for further assistance with financial, legal and emotional issues.

When the initiatives of the Future Directions Committee are implemented in the Family Court of Australia, designated court staff will, wherever possible, be identified as consistent contact points for clients and self-represented litigants, particularly after the case has moved onto the path to hearing because attempts at settlement have not reached a resolution. This means that clients will not have to constantly re-tell their story to a succession of staff and will have a reference point to help guide them through the court processes.

Collaboration and networking

The Child Support Agency's Community Information Sessions bring together relevant community service providers and agency staff in metropolitan and regional centres to meet clients and discuss their full range of needs, emotional and legal as well as financial.

Project Magellan is another cooperative project which has been mentioned in submissions, consultations and case studies as a positive approach to dealing with the difficult issue of child abuse. This project was developed to improve ways for the Family Court of Australia to manage residence and contact disputes involving child abuse allegations. The close cooperation between and involvement of the Family Court of Australia, Commonwealth Attorney-General's Department, the Victorian Department of Human Services, Victorian Police, Monash University's Family Violence and Family Court of Australia Research Program, and Victoria Legal Aid is critical to the success of the project.

Project Magellan uses a multidisciplinary team of a judge, a registrar and a counsellor to cover all cases. Victoria Legal Aid funds all child representatives, with legal aid going to eligible parents according to normal guidelines but with the cap waived where necessary. Ongoing evaluation indicates that cases are being resolved earlier.

Another example of collaboration and networking is the trial Family Law Assistance Program at the Dandenong registry of the Family Court of Australia. This approach brings service providers together for one day each week on the court premises to provide easy access for clients when their cases are listed. A legal aid duty lawyer and clinical legal education students from Monash University provide advice to non-represented parties. A community mediation service is available to provide mediation in suitable cases either at the time or later, and the Court Network provides personal support to parties at the court.

The Victorian Court Information and Welfare Network (Court Network) is a volunteer program identified by clients as one which works.¹⁸ The Court Network provides information, support and referrals to people who are looking to resolve their separation

18 The Court Network, to date, has only been able to secure funding on an annual basis.

through the court. The Court Network's philosophy recognises that 'families need their practical and emotional issues to be met almost in tandem'.¹⁹ The Court Network provides impartial and confidential support, practical information and referral as early as possible in the court process. It also aims to bridge the gap between the legal system and those agencies in the community that assist families after court, so that families can readily access ongoing support after the court processes are over.

Innovation

Pilot projects to address the needs of men, to support contact between children and parents, and to manage cases which involve allegations of domestic violence and child abuse are examples of recent innovations.

Men's services

Services funded by the Department of Family and Community Services are providing support to help men maintain healthy, functional relationships with partners, ex-partners, children and step-children, and appropriately manage relationship breakdown and separation. Several of these services are specifically for Aboriginal men, and men from culturally and linguistically diverse backgrounds. The Department is also developing a Men's Telephone Counselling Service that is due to begin operation later this year.

Supporting contact

The Contact Orders Pilot,²⁰ funded by the Attorney-General's Department, is testing a process which uses a mix of education, counselling, mediation and children's contact services²¹ with families having difficulty with child contact orders or arrangements. The pilot aims to gain information about the ways in which the family law system can respond more effectively and flexibly to the needs and concerns of families, ensure compliance with contact orders, and deliver services which enable children to enjoy a relationship with both parents.

Resolving family law cases involving violence

The Columbus Project, initiated by the Family Court of Western Australia, will introduce a direct track for domestic violence cases, with or without any allegation of child abuse. It will incorporate a set of risk assessment tools to identify domestic violence (that is, partner-to-partner violence) and will include it, particularly the witnessing of domestic violence by children, as a category of child abuse. It will use early case conferencing by a counsellor and a registrar as part of the individual case management process. These case conferences are seen as critical to the project's aim of reducing litigation while at the same time achieving better outcomes for children

19 Victorian Court Information and Welfare Network, submission no. 132.

20 Three pilot sites—Hobart (Relationships Australia), Perth (Anglicare) and Parramatta (Unifam)—were chosen because of the proven ability of service providers in these areas to deliver interlinked services, and the demonstrated effectiveness of these service providers in creating links with important networks such as the legal profession, family courts, welfare agencies and other relevant groups. The relationship between family court registries and service providers in each of the three locations is intrinsic to the success of the pilot.

21 See Glossary for definition.

and parents. Columbus will have a more counselling-oriented (therapeutic) approach than the Project Magellan model, making use of non-government counselling services for clinical assessments and treatment, in particular where domestic violence is the primary issue.²² The Columbus pilot was due to begin in June 2001 and will involve approximately 100 cases over 12 to 18 months. It will be externally evaluated at its conclusion.

1.7 Analysis of the current system

From all the information available, the Advisory Group identified a number of systemic factors which may make it difficult for separating, separated and re-partnered families to manage change and to develop workable arrangements for the future. These systemic factors may exacerbate the difficulties many people experience when trying to settle into viable post-separation financial, living and parenting arrangements. The following systemic factors are addressed in this report.

The family law system was not designed as a system

The family law system was not designed as a system and does not always operate coherently. It is a loosely constituted group of institutions and services including legal services and lawyers, counselling services, mediation services, Centrelink, courts, the Child Support Agency, children's contact services, health services, financial counsellors and more. Many do not see themselves as part of a system and therefore do not link effectively with other parts.

During our consultations, and in submissions, the Advisory Group heard about gaps between the services provided by different levels of government, for example, significant weaknesses in the links between Commonwealth family law functions and State child protection responsibilities that can leave vulnerable children unprotected.

Multiple problems are not being addressed by linked solutions

While families link income support, child support, property and residence decisions, services are focused on only one decision-making area. They do not focus on the total experience of the family or the impact of this experience in the longer term. This may contribute to unintended or undesirable outcomes.

The Advisory Group also heard about the confusion caused by the family law system when decisions involve two jurisdictions, in two different courts or under two different legislative regimes. The division of legislative and other responsibilities between the Commonwealth and State or Territory Governments in cases of child abuse and child protection, and family violence, both alleged and actual, can have a profound effect on families experiencing separation. There is also the potential for such divisions to result in gaps, lack of coordination and inefficiencies in the provision of services.

22 Office of the Status of Women, Research into good practice models to facilitate access to the civil and criminal justice system for people experiencing domestic and family violence, prepared by Urbis Keys Young, in press; and David Monaghan, Domestic violence and child abuse allegations in the Family Court: A new proposal for the Family Court of Western Australia, Paper presented at the National Forum on Men and Relationships: Partnerships in Progress, Sydney, November 2000, unpub.

Mixed messages within existing policies

The key messages, the fundamental principles, are not necessarily reinforced in the policy development process or in the way policy is implemented across government agencies. Families who interact with the income support, taxation, child support and family law agencies find inconsistencies in the way their situation is treated. One example is that shared care is treated differently for income support and child support purposes. The principle of cooperative parenting, however, is one that the whole system should consistently seek to promote.

Limited child focus

Existing mechanisms for dealing with the effects of separation and divorce on children are limited.²³ Services designed to specifically address their needs (for example, for counselling) are limited. Similarly, their involvement in service interventions (such as mediation) that will result in decisions about their lives is limited. Court processes include opportunities for a child's wishes to be made known but rarely is the child able to express these views directly. The result is that children often feel powerless in a system that purports to put their interests first.

Amendments to the *Family Law Act* in 1996 took into account Australia's ratification of the United Nations Convention on the Rights of the Child. Articles 3 and 12 are particularly relevant. Article 3 is given effect through the clear statement in Part VII of the *Family Law Act* that the best interests of the child are paramount. Article 12 relates to a child's right to express their views and have them given due weight, and to the child having an opportunity to be heard.²⁴

Since the 1996 amendments, Commonwealth-funded counselling and mediation programs have been developing and practising models of service that are more child-inclusive. These developments are a good start, but it is apparent that there is more scope for developing services which are either directly aimed at children experiencing the separation of their parents, or which are aimed at parents and are designed to include children.

Entry points to the system can be random and the 'first-to-know' agency can have a disproportionate influence on the path taken

The entry point, that is, the service and the stage of the process at which a person or family enters the system, largely determines the pathways they then follow.

Sometimes two or more services may be involved with members of the same family, and may give contradictory advice or direction. Different requirements in different agencies may support one member of the family and not another, without consideration of the effects on the family or over time. For example, the maintenance

23 See Richard Chisholm, Children's participation in Family Court litigation, Paper delivered at the International Society of Family Law 10th World Conference, Brisbane, July 2000.

24 Article 12 says that (1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child, and (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

action test for the Family Tax Benefit may increase the friction between separated parents unless it is handled sensitively. Similarly, the result of acting on the advice of a lawyer focused on getting the best financial outcomes for his or her client may come at the cost of longer term relationships, by setting up an adversarial approach to determining future arrangements.

Lack of accessible and timely information

When the Advisory Group consulted people who had experienced family breakdown, it was told that it is very important to get helpful information early. Many people who said this had not received the appropriate information early on. Some said that the advice they, or their ex-partner, had received took them down an expensive and adversarial pathway. Some were overwhelmed by their powerlessness, while trying to cope with their circumstances and get on with their lives.

The types of information that may have been helpful to people when they first made contact with the family law system are discussed below.

Information about what ‘the best interests of the child’ means in practice

It was clear from our consultations with consumers that parents agree with the principle of doing what is best for their children, but it is not always easy to agree on what that ‘best’ may be, particularly as it may mean that one parent gives up their involvement in the daily care of the child.

In most situations, parents are in the best position to make decisions about their children’s welfare. However, balancing the needs and desires of children, parents and other family members may not be easy. The changed nature of the parents’ relationship after separation may affect their ability to make decisions in the best interests of their children. Each parent’s capacity to make decisions will be different, sometimes because they are at different stages in the separation process. Sometimes one parent has not accepted the fact of separation and this inhibits their attitude to resolving parenting issues.

The parents’ capacity to put aside their own feelings and wants to make decisions in the interests of the children unfolds over time. The system needs to recognise this unfolding capacity and respond to it with flexibility rather than trying to deliver a ‘once and for all’ solution.

Parents need information about the impact of their actions on their children, including adolescents. They also need to understand how their actions might affect their ex-partners and new partners.

Information about the costs of family law litigation

It was also clear from our consultations that the financial costs involved in family law cases are higher than many people expected, and many told us that they may have chosen a less adversarial pathway had they known how much money, time and emotional energy would be expended in the process. The cost of accessing legal and family support services may limit these options for low-income and disadvantaged groups, although some will have access to legal aid.

Information about how to manage and get help with emotional and practical issues

Separation and re-partnering occurs in a complex environment and every individual involved has a different set of experiences, and a different perception of what is right and what is wrong. It can be difficult for individuals to understand how others are feeling or being affected.

There are also important practical issues that affect some people more than others. A lack of information at the right time, unrealistic expectations or the shock of an unpalatable decision makes settling future arrangements difficult. Sometimes parents' lack of cooperation or animosity can fuel conflict. Sometimes there is a history of violence or abuse.

Many people need help to resolve their problems and get on with their lives. Being able to access information early in the separation process can encourage people to seek the services they need, before negative behaviours become entrenched.

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.

When the system doesn't seem fair

Recent research²⁵ points out that the perception that the system is not fair is not surprising when parenting disputes are normally constructed as a contest between a mother and a father to determine who will 'win' residence of the children. The 'loser' in this contest may well feel the judge was biased against them. Given that the best interests of the child must be given priority, the outcome of parenting disputes may often seem unfair to one parent.

Many people feel that they are unfairly treated by the family law system. The confusion and anger experienced by some during their contact with the family law system can be made worse if they feel they haven't been heard or believed, or that the outcomes of their case have been affected by stereotypical views of gender and family roles. Often this is because their expectations of what the system could do for them have not been met.

A number of submissions raised concerns about bias on children's matters in favour of mothers. Concerns raised, most frequently by fathers, relate to residence decisions, failure to enforce contact and the child support formula. Many men were concerned about the immediate and long-term effects that untested allegations of family violence can have on family law outcomes for the whole family.

Stereotyped assumptions about gender roles can affect outcomes for both parents following separation. Men feel that assumptions about their ability to be effective parents and manage their parenting responsibilities after separation contribute to bias in the system. Women feel that they will be judged harshly if they do anything 'wrong' or outside the stereotype of what a good mother should be.

25 Lawrie Moloney, Do fathers 'win' or do mothers 'lose'? A preliminary analysis of random sample of parenting judgements in the Family Court of Australia, Paper accepted for publication in the *International Journal of Law, Policy and the Family*, p. 3.

Many women are concerned that there is a power imbalance (often due to fears about violence and reprisals) throughout the system that discriminates against them, particularly with regard to financial outcomes.²⁶

People of culturally and linguistically diverse backgrounds and indigenous people perceive the present system as unfair to them in the ways just outlined. In addition, they see unfairness in the lack of cross-cultural awareness among court personnel, government agencies and other service providers. They also feel 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.

Although the Advisory Group did not hear directly from many people living with disability, the Group is aware of the difficulties they face. 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.

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.²⁷ Some grandparents may provide the only source of a stable relationship for children in the aftermath of separation.

The system does not deal well with violence

The Advisory Group has heard conflicting views about the way that the family law system deals with family violence.²⁸ The Group emphasises that it does not doubt that violence within families, especially separating families, is a reality. Research by the Australian Institute of Family Studies²⁹ and others confirms this. Debate continues about the incidence of violence versus alleged violence, and about the varying degrees of seriousness of violence.

Clearly, service providers at all levels of the system need to be sensitive to the effects that violence and the threat of ongoing post-separation violence will have on the victims, the perpetrators and, particularly, their children. 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 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.

26 Australian Institute of Family Studies Australian Divorce Transitions Project.

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

28 Analysis of submissions, pp. 6, 34.

29 Australian Institute of Family Studies Australian Divorce Transitions Project.

Family violence and allegations of violence affect other parenting issues in addition to residence and contact orders. Violence is not always as simple as one person victimising their spouse. It has commonly been claimed that allegations of violence are made in an attempt to gain a tactical advantage in family law cases. Sometimes those who are violent to their spouse are also violent to their children. In families where there is adult-to-adult violence there is more likelihood of children witnessing violence,³⁰ becoming violent towards adults and other siblings, and in later life exhibiting violent behaviour in their own relationships.³¹

Some family members are also violent to court staff and to other professionals whom they see as related to their family breakdown.

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. Circumstances inevitably change in the years following separation and children need their parents to be able to continue making decisions in their best interests long after initial arrangements are made. Ongoing support is vital for some parents.

A small number of people never manage to entirely work through the process for legal³² or emotional reasons. They become dependent on external decision-makers such as the courts or government administrators, and return again and again, either with quite trivial issues or with serious issues that they are incapable of resolving. 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.

1.8 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;

30 David Indermaur, *Young Australians and domestic violence*, Trends and issues in crime and criminal justice no. 195, Australian Institute of Criminology, Canberra, 2001.

31 Strategic Partners Pty Ltd, in collaboration with the Research Centre for Gender Studies, University of South Australia, *Current perspectives on domestic violence, A review of national and international literature: Meta evaluation for Partnerships against Domestic Violence*, May 1999.

32 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.

- promote safety;
- support fairness; 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.

Ethos

The vision will need to be supported by commitment to a common ethos that 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 that 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 would 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 would 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** that 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 that are available immediately after separation and following initial decision making.

These functions are more fully detailed in Part Two of this report.

Proposed service delivery system

For the system to operate effectively the ethos and the key functions must be integrated into a service delivery model. An overview of the proposed model follows.

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

The service provider who is the first point of contact would 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 would help families to resolve the issues arising from separation in a way that promotes ongoing nurturing.

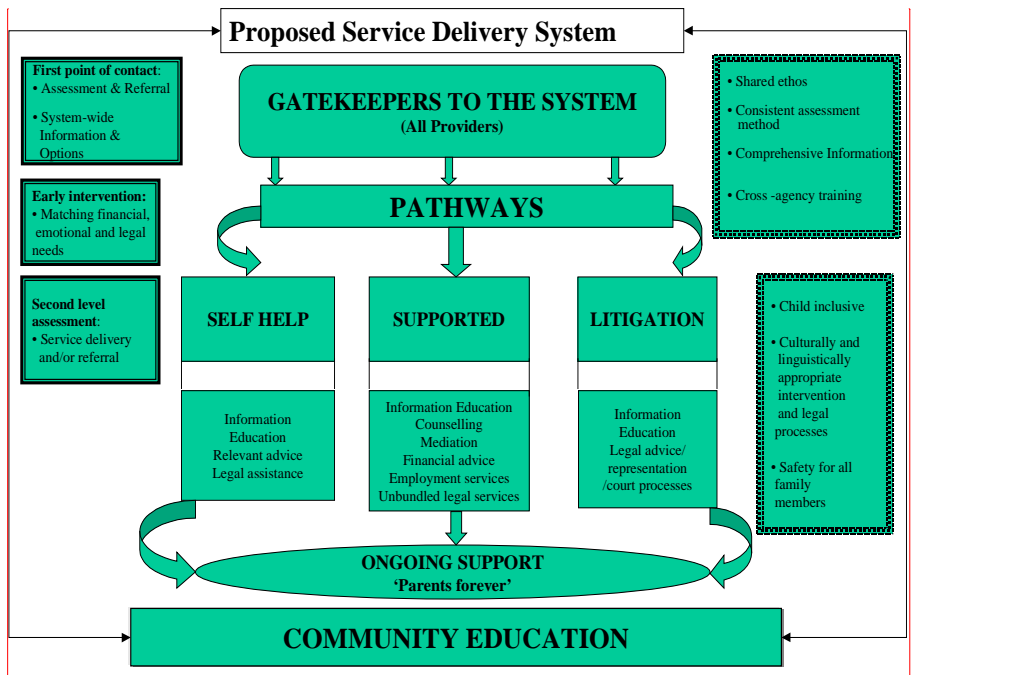
The clearest pathways would be to:

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

Families would not necessarily keep to their initial pathways—there would 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 would 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 would underpin all parts of the service delivery system.



Comment [A1]: Need to add description

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

Part Two Key functions of an integrated family law system

As discussed in Part One, the Advisory Group has concluded that there are **five** key functions that a well-designed and coordinated family law system should have. In brief, they are:

education

information

assessment and referral

service intervention options

ongoing support.

These functions help people along the pathways that are most suited to their needs and circumstances, and lead to the best possible outcomes for each family.

Part Three of the report describes the pathways in more detail and Part Four discusses the pathways from certain perspectives. How the functions described in this part would be coordinated in an integrated family system is described in Part Five.

2.1 Education

Education, which reinforces the key principles underpinning the family law system, is a vital function of an effective system. Education of the Australian community at large, young people and professionals involved in service delivery is needed to ensure that people have accurate expectations about their rights and responsibilities, and how to protect the best interests of children.

Community education

Current situation

The clear message from consultations, submissions and recent research³³ is that many parents misunderstand the intent of the family law legislation, particularly in relation to sharing parenting responsibilities after separation, and in relation to the child's right to have contact with both their parents and other people significant to their care arrangements.

In 1996, Part VII of the Family Law Act created the new concept of parental responsibility, which replaced custody and guardianship. Part VII states that parents continue to share parental responsibility even after separation, although the exercise of parental responsibility is subject to a range of parenting orders including residence and contact orders. A stated objective of the changes is that 'children have a right of contact, on a regular basis, with both their parents and other people significant to their care, welfare and development', subject to the contact being in their best interests.³⁴ Parenting responsibilities—to share duties and responsibilities concerning the care,

33 Helen Rhoades, Reg Graycar & Margaret Harrison, *The Family Law Reform Act 1995: The first three years*, University of Sydney & Family Court of Australia, Sydney, 2000; and John Dewar & Stephen Parker, 'Parenting, planning and partnership: The impact of the new Part VII of the Family Law Act 1975', *Australian Journal of Family Law*, 13(2), September 1999.

34 *Family Law Act 1975*, s. 60B(2)(b)3.

welfare and development of their children—and agreement about the future parenting of their children are frequently subsumed by arguments about parental rights, and confused with children’s rights. The messages contained in Part VII are not effectively communicated to and understood by those involved in the family law system, especially families.

In many cases parents resort to litigation as a means of deciding the best interests of their child. Several submissions called for better community education on separation and divorce, such as the financial and emotional drain that litigation places on individuals and the community, and the places that help parents work out their plans for the future.³⁵

What is needed?

A better community-wide understanding of the principles that underpin the family law system is needed so that, over time, community expectations of post-separation behaviour are that:

- parents put their children’s interests before their own;
- parents take a cooperative approach to deciding parenting responsibilities; and
- parents seek help, if required, early in the process of separation.

A community education campaign would support families who are considering separation, in the process of separating or separated, and others directly affected by separation including children, grandparents, extended family and new partners. Family and friends are an important source of support and information, particularly during the early stages of separation when decisions are being made in a highly emotional atmosphere. It is therefore vital that everyone in the community hears the same messages.

A secondary target group for the education campaign would comprise the wide range of networks that help, influence and provide information to family members. Although the education campaign would need to be targeted at these groups, it should, in the long term, be directed at achieving attitudinal change through the messages it promotes.

Recommendation 2

That a long-term community education campaign, with clear core messages and promoting the principles that underpin the family law system, be developed. The campaign would:

- a** focus on the interests and needs of children;
- b** reinforce post-separation parenting responsibilities (including flexible parenting models that work); and
- c** provide information about where to get help.

35 Analysis of submissions, p. 12.

Education for young people

A significant number of submissions³⁶ argued that schools could provide more support for young people by providing skills and information on conflict resolution, building and maintaining healthy relationships and positive parenting, and by normalising help seeking. Such an investment would have the potential to build healthy future family relationships.

Such an approach would meet some immediate needs and would help young people form healthy and realistic expectations. Developments that focus on the areas mentioned would most appropriately be integrated into existing educational strategies such as mental health and living skills curricula.

Recommendation 3

That a national education package for schools, consistent with national education goals, be designed, to develop individuals' capacities for healthy relationships, provide information about positive parenting models and demonstrate that it is 'OK' to look for help when difficulties arise.

Professional education and development

Many professionals work with parents and children following separation: lawyers, psychologists, social workers, psychiatrists and mediators, as well as teachers, childcare workers, police, medical practitioners, clergy and others. The number of professionals dealing with these clients is growing as the rate of divorce and separation in Australia continues to rise, and the types of professions dealing with the problems that arise from family separation increases. However, the relevant skills and knowledge of these professionals may vary widely. Indeed, the system is now so large and with so many clients that knowledge about it should not be seen as required for only a few in any professional group.

There is a need for multidisciplinary training that focuses on parental separation, divorce and domestic violence issues, both as they affect parents and other adult family members and as they affect children. Ideally, all professionals working in the family law system should understand the principles underpinning the family law system; the specific needs of children, men and women following family breakdown; the services available to promote the best possible outcome for a particular family; strategies for reducing family conflict; the possible effects of family violence; and ways of reducing costs. Cross-cultural and gender-sensitivity training is also necessary for all professional groups.

More effective collaboration among professionals makes support for clients more productive and efficient. At present, collaboration is largely restricted to special projects or to local communities where practitioners have been able to build personal relationships and mutual understanding of their roles. Strategies to improve the skills of specific key professional groups and to encourage collaboration between professionals need to be combined in ways that would lead to better outcomes for families.

36 Analysis of submissions, p. 10.

Given the importance of legal services, counselling, mediation and litigation in the family law system, strategies aimed at lawyers, psychologists, social workers, mediators, judges and magistrates offer the greatest opportunity to enhance outcomes for families.

Similarly, requirements for continuing education should not be limited to lawyers as counsellors, psychologists, mediators and others need to regularly update their understanding of the family law system, including the opportunities and restrictions it creates.

Legal profession

Legal practitioners are one of the largest groups of professionals in the family law system who provide information and advice to separating couples on their entitlements, obligations and expectations.³⁷ Many lawyers support and actively promote non-adversarial settlement of disputes both in the way they manage their cases and by referring clients to appropriate community and court-based services. Others have less knowledge of alternative dispute resolution methods and less information about relevant services in the community.

There are three components of legal training: undergraduate courses, practical legal training and continuing legal education.

Undergraduate law courses are offered at 30 Australian universities. Individual universities currently determine the material included in their degree programs, taking into consideration requirements for admission to practice in their particular jurisdiction. As family law is not a requirement for admission, it is therefore elective.

Many universities offer dispute resolution either as a subject or as a component of a number of subjects. At all but a few universities, a component of dispute resolution is required for completion of the degree course.

The Advisory Group encourages an interdisciplinary or sociolegal approach in undergraduate family law studies. The Group has been told that some undergraduate subjects take this approach. Furthermore, most law students undertake combined degrees, some of which are social science-based. Students who are not enrolled in combined degrees now appear to have more flexibility to add social science-based subjects to their law degree.

Several university law schools offer legal clinics, which operate through existing community legal centres and which allow senior law students, under supervision, to gain invaluable experience by assisting real clients who can not afford the services of a private lawyer. The programs give senior law students a critical appreciation of the law and Australia's legal system by dealing with clients who otherwise could not afford legal assistance.

While the programs provide legal advice and information the students do not formally represent any of their clients. They are self-help programs aimed at providing community education within the context of professional educational institutions.

In particular,

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

- the Monash University/Monash-Oakleigh Legal Service, Victoria, specialises in self-help workshops in contested family law matters to help people who would otherwise be unrepresented before the Family Court of Australia; and
- Griffith University and Caxton Community Legal Service, Queensland, operate a new specialist family law clinic which provides advice and support for self-represented litigants and by telecommunications to rural communities via Open Learning network facilities.

Practical legal training occurs after graduation from law school and before admission to practice. It forms an important part of a lawyer's education. As its name suggests, practical legal training teaches students the practical, rather than the theoretical, issues they will face when dealing with clients. Practical legal training varies from State to State³⁸ but must comply with nationally prescribed standards, which at present require a component of family law. It would be appropriate to incorporate material stressing that people in the separation process are in considerable need and require a range of support and services (not just legal services) over a period of time. A unit of practical legal training with a multidisciplinary focus on children, including the psychological and social issues facing children when families separate, child support, and the positive effects for children of using primary dispute resolution mechanisms, would be useful for law graduates planning to work with families.

After a graduate enters legal practice, continuing legal education plays an important part in maintaining high professional standards, and in maintaining public confidence in the competence of the legal profession and the efficacy of the justice system.³⁹ It is a valuable form of ongoing training for lawyers. Targeting professional education at lawyers in their early years of practice, before they have become used to operating primarily in a litigious way, may be of particular benefit. Lawyers who practice in the area of family law, even if this only forms part of their practice, need an understanding of the multidisciplinary approach described above. Continuing legal education is not required for general practice, except in New South Wales; however, it is a requirement for accredited family law specialists.

Family law is increasingly seen as an area for specialist assistance. The Family Law Section supports the notion of a national scheme for accrediting lawyers who specialise in family law. A number of practitioners who have high involvement in the area of family law have undertaken specialist accreditation, provided by almost all State law societies. Part of the assessment for accreditation requires legal practitioners to present to their clients options for reaching resolution. This includes knowing the various types of dispute resolution processes which may be available and appropriate at various stages of a matter, adopting an attitude of openness to paths other than litigation and preparing clients for their part in the settlement process.⁴⁰ However, only 723 lawyers in five States are accredited specialists in family law (113 in Queensland, 257 in New South Wales including the ACT, 167 in Victoria and 35 in Western Australia).⁴¹ Few specialists work in suburban, regional or rural areas.

³⁸ This can be either articles of clerkship or a PLT course.

³⁹ Law Reform Commission of Australia, submission no. 153.

⁴⁰ Law Council of Australia, submission no. 254.

⁴¹ Law Council of Australia, submission no. 254.

The Advisory Group notes that it is not necessary for a lawyer to be accredited as a family law specialist to practise in the field although it may be attractive for a prospective client to select a lawyer with such accreditation. Clients need to be able to easily identify those legal practitioners who are accredited family law specialists.

While accepting the benefits of specialist accreditation, the Advisory Group believes that there should be no move to restrict family law practice to certified specialists or to limit specialists to their own fields. Most generalist practitioners and those in rural and regional centres provide advice on family law matters as part of the service they offer their clients. It is essential that this access to legal advice is not limited.

In the United Kingdom, the Solicitors' Family Law Association was established in 1982 to address widespread concern that solicitors and court procedures were adding to the distress that can arise when families separate. The members believe that clients should be dealt with in a way that encourages them to reach agreement in a sensitive, constructive and cost-effective manner. This view is embodied in the Association's code of practice. In 1992 the Law Institute of Victoria's Family Law Section developed a code of practice modelled closely on the United Kingdom's code.

Drawing on the United Kingdom and Victorian experience, negotiation with law societies and bar associations should begin, with a view to the Law Council's Family Law Section developing a national code of practice for lawyers practising family law, reflecting the fundamental principles which underpin the family law system. Lawyers who sign on to the code should be identifiable by both prospective clients and service providers. It would be advantageous to 'badge' legal practitioners who espouse the fundamental principles of the system and adhere to the national code of practice.

The Advisory Group is of the view that, in developing a code of practice, the Family Law Section of the Law Council of Australia should, in consultation with the law societies and bar associations, further develop programs designed to support that code and discuss with those professional associations the desirability of compulsory continuing legal education for lawyers working in family law.

Psychologists, social workers and counsellors

Psychologists and social workers often deal with the multifaceted problems that arise from family separation. There is a need for multidisciplinary training to form part of tertiary studies in the social science disciplines, in appropriate undergraduate and postgraduate courses for professionals involved in the health sciences, and in training courses for the police, childcare workers and contact centre workers. The more generalist courses of social work, psychology and medicine would benefit from the inclusion of specific units to provide skills and competencies in child development, grief and loss issues, emotional wellbeing, healthy family relationships and dispute resolution. Many professionals work with only limited information or education about the legal context in which their clients are involved. This would be remedied by continuing professional education to increase awareness and understanding of legal issues and the complexities of the family law system.

Separating parents may suffer emotional hurt and psychological trauma, including some form of grief at the loss of the relationship. Until these issues are resolved, people are not likely to be in a position to make the most effective use of the services that are currently available. Even in counselling, the concentration tends to be on the emotional wellbeing of the help-seeking party rather than on the total family unit.

There is an ongoing need for highly skilled people who can deal with the wide range of psychological and social issues, and with people who are at an emotionally low point in their lives where they are often not capable of acting rationally and in their own best interests. Increasingly, there is a demand for service providers to have both specialist skills, specifically intervention knowledge and related skills, and a mix of broad skills to meet the specific needs of clients in a range of settings.

In organisations, professional bodies, community agencies and government agencies that have contact with families facing relationship breakdown, the training and development of newcomers should include components on the emotional effects of separation and divorce on adults and children.

The Community Services Training Package, developed by Community Services and Health Training Australia (an official industry training body), has in place a set of common competencies for those working in the community services industry to assure an appropriately skilled workforce. The package has obvious relevance to professionals in the family law system.

Domestic/family violence competency standards are about to be introduced, and mediation, arbitration and conciliation (family, business and community), counselling (financial, emotional and employment) and marriage celebrants have been identified as specialisations for which new training packages are required.

The Family Court of Australia has recently conducted an external review of its mediation service.⁴² The review recommended that the Court adopt a competency-based approach for the future recruitment of its mediation staff. The Court has set up a working group to implement this recommendation and will be working closely with the relevant training and accreditation bodies.

The Australian National Training Authority requires the Community Services Training Package be reviewed by July 2001. The review includes the identification of gaps in qualifications or units of competency. This is an opportunity to address gaps in the specialised competencies for working in the family law system. Liaison with the Australian National Training Authority and Community Services and Health Training Australia could be undertaken to identify outstanding needs, and to stimulate the development of appropriate training packages which could be used across the family law system or could be tailored to particular agencies.

Mediators

Mediators may come from the ranks of various professional groups, including lawyers, social workers and psychologists. Mediation as a dispute resolution mechanism is a growing field and training for mediators is similarly a developing field. It is currently diverse and of varying duration and quality.

The quality of community-based and private mediation needs to be visibly assured so that legal practitioners and other professionals can trust in the services to which they refer their clients. The mechanism to ensure that organisations and individuals meet the necessary quality standards should be designed to achieve that outcome. The Family Law Act and Regulations provide for approval by the Attorney-General of organisations that deliver either, or both, family and child counselling, and mediation.

42 The Family Court of Australia's mediation service includes all primary dispute resolution activity.

This approval provides a certain status that organisations can use to promote their services to the community.

The Family Law Regulations set out the requirements with which family and child mediators, as defined in the Act, are required to comply. However, they are minimal and, without an associated accreditation or approval mechanism, fail to support consistent and visible quality of mediators. How to establish that a mediator complies with the regulations is unclear.

The Act delivers the privilege of immunity to family and child mediators who comply, and the privilege of confidentiality to their clients. To date there has been no reported case in which compliance with the regulations has been tested against a claim of either privilege.

In addition, professional educational requirements for mediators need to be expanded to widen the potential fields from which they may come. Mediation in family matters is often regarded as requiring special skills. However, this does not mean that those skills can only come from a limited range of tertiary qualifications. Competence, together with qualifications, is widely regarded as the best measure of professional skill in this area. Development of a set of core competencies for all providers of primary dispute resolution services should be supported. A commitment to ongoing professional development, appropriate supervision mechanisms and accountability are other key elements of quality services in this area.

Mediation and other primary dispute resolution services are expanding. Clients at a stressful time in their lives need to be assured of the quality of the service they are given. They expect to access professionals with the skills and qualifications to meet their needs. This kind of assurance is currently lacking.

A quality assurance mechanism that provides consistent treatment of counsellors and mediators under the Act, and is transparent, comprehensive and applicable to a wide range of potential service providers is required. The Advisory Group is aware that some work on this is under way in the Attorney-General's Department and that the National Alternative Dispute Resolution Advisory Council is developing standards for alternative dispute resolution. Proposals for a new quality framework for family law mediation and counselling should be designed on outcomes rather than process. Where there is a need to purchase the delivery of services in the community, only those services that meet the quality requirements should be eligible.

Professional development programs in child-focused family dispute management practices will be developed by the Attorney-General's Department in 2001–2002. The programs are aimed at assisting legal practitioners, mediators and counsellors to increase the child focus in family dispute management practices. These programs are part of a national strategy to promote good dispute management practice among the key practitioners who assist separating or separated parents to resolve their differences.

All of the proposals to raise educational standards, discussed in this and the previous section, could be further supported, particularly in government-funded services, by incorporating standards reflecting the principles set out in this report into funding contracts.

Judges and magistrates

Like all others working with separating families, judges and magistrates need to keep up to date with social issues, and take a multidisciplinary approach to the needs of the families who appear before them. They need to be aware of such issues as child development, the effects of conflict and family violence on children and adults, and the emotional issues most litigants will bring with them. Judges and magistrates also need to be aware that members of the general public may find court processes intimidating and confusing,⁴³ and that the successful implementation of any orders they make will often depend on the support litigants receive from services outside the court.

Judicial education presently exists and induction programs for judges and magistrates address such issues as gender stereotyping. The Advisory Group has heard it said in a number of submissions that judges (and other workers) in the Family Court of Australia are gender-biased. Recent research⁴⁴ suggests that some judges bring a conservative view of parenting to the bench and that when fathers 'win' it is not because they have demonstrated that they are the more appropriate parent for the children to reside with. Rather fathers win because mothers are found to be unable to conform to certain stereotypical views of motherhood.⁴⁵ The continuing education which many judges and magistrates already undertake needs to address issues such as these.

Judges and magistrates also receive education to encourage awareness and understanding of indigenous and cultural differences for people coming to the courts. Yet the Indigenous Pathways Forum highlighted the need for further work in this area, including awareness of indigenous motherhood, family life and heritage.

Ongoing education of judges and magistrates has been taken up by most courts and the Australian Institute of Judicial Administration. The Advisory Group notes that a discussion paper on a proposed Australian judicial college (the Roper report) was commissioned by the Australian Institute of Judicial Administration and published in September 2000.⁴⁶

The Advisory Group acknowledges that, for judicial education to be effective, there would be times when such programs would require the attendance of judges or magistrates who would otherwise be sitting in court. There would need to be a reasonable balance between the potential for resultant delays and the importance of judicial education.

The Australian Law Reform Commission's report entitled *Managing Justice: A Review of the Federal Civil Justice System* contains recommendations on judicial education similar to those in the Roper Report. In particular, the Australian Law Reform Commission recommended that an Australian judicial college be established.⁴⁷ The Advisory Group notes that the Attorney-General has established a high-level working

43 Federal Magistrates Service, submission no. 279.

44 Lawrie Moloney, p. 3.

45 Lawrie Moloney, p. 14.

46 Christopher Roper, Proposed Australian Judicial College, Discussion paper prepared for the Australian Institute of Judicial Administration and the Australian Judicial Conference, unpublished, September 1999.

47 Australian Law Reform Commission, *Managing justice: A review of the federal justice system*, Report No. 89, ALRC, Canberra, 2000, Recommendation 8.

group to consider the Australian Law Reform Commission's recommendations on judicial education.

Recommendation 4

That all professionals and key staff working in the family law system adopt a multidisciplinary approach to resolving issues for families, and that priority be given to the following strategies to support such a holistic approach:

- a** development of a national code of conduct for lawyers practising in family law to reflect the principles outlined in this report and to include a commitment to actively promote non-adversarial dispute resolution and other good practices. Lawyers who subscribe to and observe the code should be readily identifiable to clients and service providers;
- b** replacement of accreditation schemes for family lawyers that currently exist in some States by a national scheme, which links with the national code and the identification mechanism above;
- c** requirement for regular continuing legal education for lawyers who wish to be known as supporters of the national code;
- d** maintenance of multidisciplinary education for family law judges and magistrates, and the development of opportunities for State magistrates dealing with family law matters for access to multidisciplinary education (see also Recommendation 17);
- e** promotion to tertiary education institutions of the principles underpinning the family law system and the need for specific intervention knowledge and skills, a multidisciplinary perspective on separation and family conflict in undergraduate and postgraduate courses in psychology, social work, law, medicine, psychiatry, police studies, education, child care and mediation;
- f** development and enhancement of competency-based training for non-legal professionals and client contact staff who provide services to families experiencing separation;
- g** development of a quality accreditation mechanism for all family and child mediators and counsellors; and
- h** adoption of a multicultural perspective by all professionals and key staff working with members of culturally and linguistically diverse communities, and indigenous communities.

See also Recommendation 6.4.

2.2 Information

Consistent and accurate information about the whole family law system is the second key function of a well-designed and coordinated system. Information would help people understand what 'the best interests of the child' means in practice, the emotional and legal costs of 'fighting' about children and property, and how to manage and get help with emotional and practical issues.

Current situation

The availability of consistent, appropriate and timely information was generally regarded as problematic by consumers.

A number of participants in the case study research conducted by the Australian Institute of Family Studies expressed regret that they had not known of and/or accessed information early on—information which they later appreciated would have been valuable. A participant identified that he needed to ask the right questions too late in the process:

I've just found out, like after 12 months, 18 months of settling down the emotions and realising where you are now, that what you could have done, which didn't happen, and my lawyer basically said, 'You ask the questions, I'll give you the answers'. Well, I didn't have any questions. All I wanted was the answers.⁴⁸

The information needs of particular groups of people (including indigenous families, families from culturally and linguistically diverse backgrounds, children, self-represented litigants, rural families and people with disabilities) were even less likely to be met.

NFO Donovan Research⁴⁹ confirmed that people have multiple information needs early in the process of separation. The highest priority was given by respondents to both information about residency and contact (making and appealing arrangements) and financial information (assistance for day-to-day living expenses and arranging child support payments), followed by information about emotional and physical care for themselves and their children, getting legal advice and property settlements.

Throughout the process of separation, information about options in the family law system was the highest ranked need (41% of respondents).

For a smaller number of respondents (7–11%) information about obtaining or defending an apprehended violence order,⁵⁰ and protecting children from abuse were the highest priority needs.

There is an overabundance of information available, but it is not integrated or presented in ways that meet the needs of either consumers or service providers. Many people will become involved in the family law system at different 'stages' of the separation process and will need a different level or type of information. Service providers are not always in a position to provide this for a number of reasons, one of which might be that they don't see both parents at the same time. In addition, many service providers make detailed information about their agency available to families (for example the Family Court of Australia information sessions, the Child Support Agency handbook) with little reference to other or alternative sources of help, or to the whole service system.

The concepts of a 'one-stop shop' and 'one book' were mentioned in consultations and submissions. People clearly want to be able to get a picture of how the system works and what they can expect, and they want it early in the process of separation.

48 Australian Institute of Family Studies, *Case studies report*, p. 19.

49 NFO Donovan Research, Research related to the information needs, and communications & information issues affecting consumers in the family law system, p. 51, unpublished.

50 See Glossary for definition.

A key gap identified by the consultations was the need for a central or main contact point that could refer and advise people through the system.⁵¹ Many service providers raised the possibility of a 'one-stop shop' to provide families with initial information and, possibly to help providers and families jointly assess the options before referral.⁵² A resource of this kind would also be valuable to service providers, many of whom said they were unaware of how other providers operated or how services interacted with each other.

What is needed?

The priorities are to develop information products that cover the whole system, and to set up distribution networks to ensure that information is readily available where it is needed.

The information products must reinforce the fundamental principles underpinning the system and complement the recommended education strategies. System-wide products can be readily developed from existing information resources. A central coordination point or clearing house would ensure consistency of core messages, language and promotion of appropriate pathways to assistance. Wherever possible, people should be encouraged to access non-adversarial service types, including counselling and mediation.

As with all information products, the use of plain English and attention to the diverse needs of users are essential.

Information needs to be widely available. At the first point of contact with the system, people should be able to obtain information about the whole system, information about their options and pathways, and information about the impact of separation and conflict on children, themselves and other family members.

Information should also be available at numerous points in the community, including medical practitioners, libraries, community centres, childcare services.

Information about particular service types (for example child support or mediation) should also be provided. This should include consistent definitions of service types, and a description of what clients can expect from each service type.

Wide distribution and availability of information may help redress the possibility that some groups may have better access to information than others do. Where possible it would be desirable to give each partner to the relationship the same information at the same time. This would be in addition to any targeted or tailored information that may be required by one partner. Children, too, may need information that is targeted to allay their concerns.

To change people's attitudes, behaviour and promote a new understanding of the family law area, the Family Court of Australia's submission suggested that 'an intensive media and information campaign, both electronic and written, is required.' As part of that campaign, a National Information and Referral Service should be established as a 'joint venture' between government agencies, non-government

51 Jane Jeffreys Consulting, *Report on outcomes of the consumer and provider consultation forums*.

52 Bruce Callaghan & Associates Pty Ltd, *Report on the outcome of Parramatta and Dubbo consultations, 27th October 2000*.

bodies and community groups currently expending resources on separately providing information and referrals.⁵³

In their submission, ACOSS (the Australian Council of Social Service) suggested a model to encourage people to use non-legal services. The model included the production of a separation kit, which would include 'practical information, in accessible language, on child-related matters, divorce, property matters, income security matters and, most important the emotions likely to be experienced over the coming months'.⁵⁴

The National Office of Lone Fathers Association suggested, in their submission to the Advisory Group, that:

A separated family assistance bureau should also be set up to help personal development of both parents, and provide information and educational services, including advice on the handling on money.⁵⁵

Coordination and consistency would be improved by the creation of a common Internet entry point (a virtual one stop shop) which is easily identified and accessed.

Information from all parts of the system (including the Child Support Agency, courts with family law jurisdiction, Centrelink, the Attorney General's Department, State government departments and community and private service providers) could be readily linked.

The Department of Family and Community Services is responsible for the development of a Families Portal, which will allow families to easily access all online government information and services associated with families. This portal will be a website on the Internet that will make it easy to find links to relevant content from other websites, without necessarily knowing which agency to contact. The Families Portal will be available from August 2001.⁵⁶

The Advisory Group is aware that the Attorney-General's Department has now launched a national Family Law Online initiative. This offers both telephone callers and Internet users ready access to legal information about family law, and referrals for legal advice and dispute resolution. It began operation for 12 months from 21 June 2001.

Recommendation 5

5.1 That a coordinated set of national, system-wide information products for families experiencing separation and service providers, which describe the family law system and available services, and which contain key messages and information about pathways, be developed and maintained.

5.2 That appropriate information products and delivery mechanisms be developed and available in identified and selected languages for people of non-English-speaking backgrounds and indigenous Australians.

53 Family Court of Australia, submission no. 260.

54 Australian Council of Social Service, submission no. 202.

55 Lone Fathers Association of Australia, National Office, submission no. 203.

56 The Families Portal is one of a number of customer-focused and subject-based portals being established as part of the Commonwealth Government's Online Strategy.

2.3 Assessment and referral

Assessment and referral practices at the first point of contact with the family law system are essential means to guide families to the pathway that best meets their needs. Generic information products and an assessment tool are needed to support all service providers in exercising this function. Appropriate training for professionals and client contact staff is also necessary.

Current situation

People told us during the consultations and research that sometimes the first point of contact was the most appropriate point for entry into the system; sometimes it was simply the only place they thought could help. Many people were unaware of alternative pathways or options.⁵⁷ Entry points were therefore taken by chance or convenience rather than as a result of informed decisions.

I probably just would have ... sought more legal advice a lot earlier and maybe asked for a bit more help rather than doing it on my own because you tend to do it the hard way and often end up I think ... it just takes a bit longer to find the information on your own.⁵⁸

NFO Donovan Research indicates that most people (38%) use legal services as the 'first port of call' for information and advice (a proportion of these being for property matters only). Counselling services (21%) are the next highest, followed by Centrelink (10%). Some 7% used legal aid services, and only 5% reported that their first contact was with the Family Court of Australia or Western Australia.

The results of this research are consistent with the experience of the Family Court of Australia that the majority of referrals (for pre-filing mediation/voluntary counselling) came from legal practitioners. This also points to the importance of involving legal practitioners in strategies designed to promote more referrals to community-based counselling and mediation.

Within the government sector, Centrelink and the Child Support Agency are both early, if not the first, contact point. Resident parents (primarily women) contact Centrelink for income support for themselves and their children, and are quickly referred to the Child Support Agency to arrange child support. This agency has contact with both the resident and non-resident parent to arrange a sustainable child support payment system. For non-resident parents this may be their first formal contact with the family law system.

It was clear from consultations with both consumers and service providers that some form of non-adversarial pathway was preferred in most circumstances.

It was also clear that both men and women need emotional support, decision-making support and direction or guidance.⁵⁹ However, it is also important to note that people are often at different emotional stages of the post-separation process. Research by

57 NFO Donovan Research, *Report: Family law pathways consultations*, p.17.

58 Australian Institute of Family Studies, *Case studies transcripts*, 02a, Amanda.

59 NFO Donovan Research, *Report: Family law pathway consultations*.

Emery⁶⁰ and Bickerdike⁶¹ points to cycles of love, anger and sadness; the different experience of these cycles by those who initiated the separation⁶² (the 'leavers' compared with the 'left'); and the impact this has on dispute resolution.

In many instances, separating partners choose different first points of contact. This sets them on parallel or alternative pathways, adding to the potential confusion, creating stumbling blocks to achieving a common understanding of children's needs and developing agreed arrangements for them, and adding to the potential for ongoing conflict between partners.

What is needed?

Information alone may not be enough, even for those capable of managing their own situations and their own changes following separation. Many people find it difficult to absorb and analyse the large amount of information they need in order to make decisions about pathways, especially when they are distressed. Often they need help to distil the available information for their particular circumstances, to help them choose their own most appropriate course of action.

Some separated people favoured a 'one-stop shop' for information and guidance through the system. Others described this concept as a 'clear entry point' and a 'first port of call'. There were mixed views on whether it should be a new entity or a function located at current entry points.

The Advisory Group believes that the creation of a uniform, system-wide assessment at the first point of contact, no matter where that contact might be, would best meet the identified needs. This approach would establish where the person is in the separation process and, importantly, their capacity to resolve ongoing issues. It would incorporate consistent core messages (developed as part of the community education and information strategies) and its purpose would be to match, at the earliest contact, the individual's needs to the most appropriate pathway.

A range of indicators would need to be tested and incorporated in the system-wide assessment tool. Indicators which address both the nature of the relationship and relevant individual characteristics include:

- stage of separation;
- contact arrangements;
- level of conflict, during the relationship and since separation;
- family violence and/or child abuse;

60 R E Emery, *Renegotiating family relationships: Divorce, child custody, and mediation*, Guilford Press, New York, 1994.

61 Andrew Bickerdike & Lyn Littlefield, 'Divorce adjustment and mediation: Theoretically grounded process research', *Mediation Quarterly*, 28(1), Winter 2000.

62 Women are more likely to initiate divorce. In the Australian Institute of Family Studies' Australian Divorce Transitions Project, conducted in 1997, 64% of women compared with 21% of men indicated that it was mostly themselves who had made the decision to separate. Reported in: I Wolcott & J Hughes, *Towards understanding the reasons for divorce*, Working Paper no. 20, Australian Institute of Family Studies, 1999. Available from the Internet: <http://www.aifs.org.au/institute/pubs/wolcott6.html>.

- history of mental illness, drug or alcohol problems, or significant intellectual impairment;
- language or culture; and
- literacy.

At the first point of contact the assessment process would guide people by giving them a clear idea about their options (alternative and most useful pathways) and the steps they needed to take. It would let people know where they are in relation to the system and what to expect from it. It would recognise that people have multiple and interrelated issues to resolve.

Outcomes of this process would include the referral of people to other, more appropriate services as a first step (for example, therapeutic counselling or mediation rather than litigation). Where the first point of contact is appropriate to deal with immediate needs the assessment would be extended to an intake assessment for the particular service offered by that agency (for example child support registration or suitability for mediation).

Guidance would allow people to choose the most suitable pathway for their needs. For example, people with workable post-separation relationships and a good capacity to manage their own decisions would be guided towards a 'self-help' pathway. People with reasonable working relationships but conflict about limited issues would be guided towards a 'minimal support' pathway. Those with high conflict may be guided to a 'maximum support' pathway and possibly to 'litigation'. Those for whom violence or child protection is an issue may need to be guided to an urgent and specialised 'litigation' pathway. The ability to identify the existence of these matters would be important to successful assessment and referral. Dealing appropriately with tactical allegations would be as difficult as identifying people at risk when they are reluctant to speak out or are intimidated. Special pathways for these matters are described in Part Three.

There may also be a need to guide people with particular needs to 'specialised' pathways which are designed to deal specifically with those needs, for example pathways for indigenous people.

High-level commitment from key service providers to their role within an integrated system and to the development and implementation of an appropriate first point of contact assessment tool would be essential. Key service providers include lawyers and counsellors as well as client contact staff in government agencies such as Centrelink, Child Support Agency and the courts. Legal aid lawyers may find such an approach valuable and they could lead the way for the private profession. It may be possible to garner commitment from some service providers earlier than others. Developing and leading others into new thinking and new practices over time may be a positive way to proceed.

Appropriate training for professionals and client contact staff would also be necessary for this approach to succeed. These professionals would need to undertake training programs to increase their awareness of the needs of vulnerable individuals and groups.

Development of system-wide practices, assessment tools and training packages, as well as supporting their implementation, is a key function of the coordinating mechanisms foreshadowed in Part Five. These mechanisms would allow for and

support the development of specific responses in local areas that can be supported by local networks, with a long-term aim of all potential gatekeepers of applying consistent practices in this area.

Service agencies need to retain responsibility for a second, more detailed level of assessment (for example, suitability for mediation or eligibility for income support) and for engaging the other partner in the particular intervention they provide. Assessment at this level would include thorough screening for violence and child protection issues. This is discussed further in Part Three.

Recommendation 6

6.1 That key agencies, professionals and other service providers working with members of separating or separated families commit to a system-wide approach to assessment to assist family members newly entering the family law system, and to review the assistance required by those re-entering the family law system.

6.2 That an appropriate template for first point of contact assessment be developed and implemented nationally to match the family with the most appropriate set of services to resolve difficult or outstanding issues. The template should have certain core features, be simple and easy for service providers and clients to use, allow customisation for local applicability, and be based on agreed indicators and demographic information, including screening for violence and possible need for child protection.

6.3 That this approach be trialled in a variety of environments with a view to informing future processes that improve assessment, responses and referral for all separated families. Initial trials should be held:

- a** in a small number of localities with all interested service providers; and
- b** in or between key agencies at a national or regional level, to allow early identification of particularly troubled family members, and to reduce conflict or confusion, double handling and partial or inadequate information provisions.

6.4 That training modules which cover information, assessment, pathways and referrals be developed for non-legal professionals and client contact staff. (See Recommendation 4.)

2.4 Service and intervention options—helping family decision making

Services and interventions available to help families manage their post-separation responsibilities and maximise family decision making comprise the fourth function of an effective family law system. The choice of assistance most suited to a family's needs should be based on a better understanding of the system and better information made possible through the strategies recommended in the previous sections. The ideal is coordinated service delivery that focuses on families' needs in a holistic way.

When a family turns to a service for assistance, guidance or intervention the service approach should be to achieve agreed outcomes through the appropriate service provider. Early access to information and advice, including legal advice, should enable maximum appropriate reliance on self-help. However, litigation should remain

accessible where it is necessary and at the appropriate time. The circumstances in which people should be guided to litigation are discussed later in this section and in Part Four.

Essential components of this approach are legal information and advice in a range of different forms and tailored to particular needs at a particular point.⁶³ Supporting decision making by the whole family, through providing a tailored mix of non-adversarial services and interventions which engage both partners, is clearly preferable to litigation, unless safety is at risk. First point of contact assessment and referral processes, community education and information all underpin this function of the integrated system.

A significant factor for reaching an agreed resolution of a family dispute is the capacity to engage both parents in the process or intervention. The earlier this can happen, the better are the chances of developing a cooperative approach to understanding and managing their ongoing parenting responsibilities.⁶⁴

Well, because we just spoke, we both had an opportunity to say what we wanted to say. I listened to him and he listened to me, and I think that's something we got from the counselling. She basically encouraged both of us to have our say and the other person to listen without interrupting and so that meant that we both learnt to listen. And we accepted each other's position and yeah, so I think if he'd felt, if Steve had felt that what he wanted wasn't acknowledged, he would have been much more difficult.⁶⁵

The need for appropriate intervention at the earliest possible juncture of relationship breakdown was identified as a key influence on outcomes. Help at the onset of relationship problems may prevent or diminish subsequent or ongoing conflict.

Well you can say all the sort of things you can say to your kids about how it's not your fault, and Mum and Dad love you and all that sort of stuff, but it's now only in retrospect I don't think that was made enough. And I think maybe someone with professional advice could have given us not only just the words to say, but maybe some activity or some sort of form of action to back up the words and whatever, I'm just guessing, that maybe that's what they would do, but I suspect, in retrospect, we would have... everyone would have benefited from some early counselling and assistance.⁶⁶

When families need help, the sort of help varies according to the needs of the particular family or family member. It ranges from advice about only one or some aspect of separation, counselling to resolve certain issues getting in the way of negotiation, attending group parenting education, through full mediation of all issues, and ultimately to fully litigated court proceedings with legal representation.

The family law system, through its many service providers, assists families in many ways, including the provision of:

parenting education

63 Unbundled legal assistance is described more fully below.

64 Joan Kelly, 'Current research on children's postdivorce adjustment: No simple answers', *Family and Conciliation Courts Review*, 31(1), January 1993, pp. 29–49.

65 Australian Institute of Family Studies, *Case studies*, 01a.

66 Australian Institute of Family Studies, *Case study report*, p. 28.

- information sessions
- relationship counselling
- family and child counselling
- individual therapeutic counselling
- conciliation counselling
- support programs for men and women
- programs to help families experiencing violence or abuse
- children's services (including appointment of child representatives)
- financial counselling
- child support administration
- children's contact services
- mediation
- legal aid conferencing
- arbitration
- legal advice and representation
- court determination, with or without legal representation
- enforcement of court orders, whether made by consent or after hearing.

Limited focus on children

When there are children, they should be the central focus for all services and interventions in the family law system. There are three areas in which children should be active participants; these reflect the pathways described in Part Three. Children need to have access to services specifically addressing their needs, for example, therapeutic counselling or group therapy to support children experiencing parental separation. Children should also be able to be involved in non-adversarial processes designed to assist their parents reach agreement, such as mediation. Finally, they should have a voice in litigation about their welfare.

As has been noted in Part One, the present system is only partly child-focused. Courts must consider the views of the child in determining their best interests, but the opportunities for them to be directly heard in the three areas outlined are limited and not yet built into common practice. This means that children are frequently left powerless and passive in the family law system. Research undertaken for the Advisory Group has confirmed that there is inadequate emphasis on meeting the needs of children and lack of services designed for or inclusive of children.

Participants often described difficulties in relation to accessing services that would assist children to adjust to their parents' changed relationship. They often commented on the absence of services to assist them as parents in talking to their children about the separation, in particular, conveying to the children what the separation would mean for them. Participants also expressed a need for services to help children directly in coping with the transition from their parents living together to living apart.⁶⁷

67 Australian Institute of Family Studies, *Case study report*, p. 27.

Children need to be heard and to be included. There is a need for new programs, both those specifically designed for children and those encouraging child-inclusive practices in existing services. Helping children come to terms with the changes in their family is important in minimising the negative impact of separation on their long-term welfare. Contact for children at contact centres or in the Contact Orders Pilot program may be more effective if children are included as 'clients'.

Involving children in all relevant family decision making can be a real benefit to them and their parents, to the court and to the ultimate decision. Children's participation may help parents understand their needs, realise the consequences of their actions on the children and also may help parents work out an arrangement they would not have otherwise thought of.⁶⁸

Parents need to know that there is an expectation that they will put the 'best interests' of their children before their own interests and that cooperative decision making has benefits for their children.

At the third level, children involved in litigation need the support of appropriate services and legal representation. This is addressed in more detail in Part Four. The following extract, although based in court-related matters, illustrates the preferred approach for all parts of the system:

In each case the question arises, how are these children to participate in these proceedings? Addressing this question should be a normal part of what parents do when the family breaks down, what lawyers do when they talk to clients, what child representatives do when they prepare their cases, what counsellors and O35A experts do when they prepare their reports; what registrars and judges do when they make procedural and final determinations ... If we address it systematically, so that each case proceeds on the basis of thoughtful decisions about how the children themselves should be involved, we might make a real advance towards a more child-centred family law.⁶⁹

Access to services

Many barriers and impediments to effective access and to reaching sustainable resolutions were identified in submissions, case studies and during consultations with both consumers and service providers.

For many people the family law system is not well understood. The range of community-based services available is variable across the country and what they can offer is not well known. Clients perceive the current system as confusing, costly and unduly centred on litigation and the courts. The system largely treats clients as individuals instead of members of a family.

There appear to be shortages of some service types while other service types are experiencing low demand.⁷⁰ Pre-filing mediation or voluntary counselling is no longer as widely available from the Family Court of Australia as previously. These services

68 Andrew Bickerdike & Lyn Littlefield, 'Divorce adjustment and mediation: Theoretically grounded process research'.

69 Richard Chisholm, Children's participation in Family Court litigation.

70 Within services funded under the Family Relationships Services Program to provide mediation, the take-up rate varies. Some services are fully utilised and others have spare capacity, while they have lengthening waiting lists for counselling.

are now concentrated in regional and rural family court locations. To help meet the demands for these services, the Attorney-General's Department is working with the Court and the Department of Family and Community Services on a strategy to increase the availability of pre-filing mediation or voluntary counselling in the community in the short term, while the Court concentrates on court-ordered services.

Disadvantage can result from location alone. Not all services are available in regional and rural areas, let alone remote areas. There is no family mediation in many large regional centres.

The problem was that there were very few situations [*sic*] located in regional Victoria so everything had to be done in Melbourne. Albury-Wodonga was another possibility for us too, but there wasn't a real lot of difference in that. So from a point view of ... I believe that I had the same access to the services as anybody else but we were two and a half, three hours away from those services.⁷¹

Many existing services may be culturally inappropriate and are therefore unable to assist people who need their help. Given the current lack of access to interpreters,⁷² the first obstacle can often be language.⁷³

Most agencies have a mono-cultural approach to service delivery, rendering their services inappropriate/ineffective in responding to the needs of immigrant and refugee families.⁷⁴

Some women from culturally diverse backgrounds are likely to have difficulty negotiating with their ex-partner even with the assistance of a mediator.⁷⁵ Service providers need to be sensitive to the impact of culture on appropriate assistance for these families.

People with disability, illness and mental health problems face difficulties in accessing services to support them through the family law system.⁷⁶ The vulnerability of these and other groups is addressed more fully in Part Four.

Part One of this report drew attention to variations in men's and women's experiences of the family law system and their perceptions of its capacity to treat them fairly and deliver fair outcomes for them. It also refers to the difficulties faced by many in accessing services that recognise and address these variations. While the family law system should be equally accessible to all and should deliver procedural fairness for all, it may not be possible for it to deliver outcomes that are fair to all. Contested litigation usually delivers a winner and a loser. Putting the best interests of children first may not be fair to a parent. The emotional impact of ending intimate relationships also affects perceptions about the process and the outcome.

Access to appropriate services that are tailored to the needs of different groups should help to overcome perceptions that the system's processes are unfair. A number of other recommendations in this report address many of the issues that were raised by

71 Australian Institute of Family Studies, *Case studies transcripts*, 08a.

72 Analysis of submissions, p. 59.

73 See Part Four.

74 Immigrant Women's Support Service, submission no. 262.

75 Analysis of submissions, p. 61.

76 Analysis of submissions, p. 63.

consumers, and that men in particular saw as having a negative effect on their position.⁷⁷

Relationship breakdown affects all family members: fathers, mothers and children. All family members are potentially vulnerable and the changes in parenting practices and responsibilities that follow separation are potentially difficult to come to terms with for both parents.

Some women are likely to be vulnerable within the family law system when their limited access to financial resources reduces their ability to negotiate fair outcomes. Their ability to negotiate effectively can also be reduced by power imbalances in the relationship itself. Many families still conform to traditional gender stereotypes where men are the decision makers. In these situations, women are likely to find it difficult to speak out and negotiate reasonable outcomes from a separation. Additional support would be needed to ensure that they are able to participate on an equal footing with their former partners in negotiating agreements. The effects of family violence would prevent many people, predominantly women, from being able to negotiate in a meaningful way without significant support. It may be impossible to negotiate at all if the threat of violence is ongoing.

The community expects non-resident parents to meet their parenting obligations to their children. There is a need for pilot programs that attempt to address the barriers that prevent non-resident parents from contributing, both financially and emotionally, to their children's lives. The goal of such programs should be to improve the parents' ability to take on these responsibilities, including the payment of child support and involvement in their lives. Several programs have been trialled in the United States.⁷⁸ In general terms they focus on improving both the level of non-resident parent and child involvement (by stressing the value of emotional and financial support to children's wellbeing), and the employment status of the non-resident parent. In recent years, funding has been made available through the US Department of Labour's Welfare-to-Work program, in association with the Department of Health and Human Services (which incorporates the Office of Child Support Enforcement).⁷⁹

The specific needs of Indigenous Australians are discussed in Part Four.

Recommendation 7

That access to services for high-need groups be expanded, including:

- a** services specifically to support children in separating families;
- b** services for men, specifically services that help them to effectively coparent their children after separation;
- c** services which support the capacity of vulnerable and disadvantaged people to access non-adversarial approaches;
- d** services for families experiencing family violence;

77 This refers in particular to achieving compliance with court orders, access to legal aid and apprehended violence orders. (See sections 2.5, 2.4 and 3.4 respectively.)

78 Dana Reichert, *Broke but not deadbeat: Reconnecting low-income fathers and children*, National Conference of State Legislatures, July 1999.

79 <http://aspe.hhs.gov/fathers>.

- e** services to support people with mental health problems;
- f** services which meet the needs of indigenous Australians;
- g** services for people with culturally and linguistically diverse backgrounds, particularly the provision of interpreters; and
- h** services for families in rural and remote Australia.

Designing services for fathers

Much comment has been made on the shortage of services that recognise and support the aspirations of men to parent their children, or that are of a kind likely to attract men.⁸⁰ Increasingly, there is a change in views about the place for fathers in the early nurturing of children. The Advisory Group recognises that there is a need to actively validate the place and contribution of fathers in families, whether intact or separated, and suggests that there is a need for strategies to address this issue in the community. Such strategies would encourage the involvement and confidence of fathers in parenting from birth through to adolescence. They could include community education about fatherhood and practical courses or workshops for both parents to encourage trust and sharing of parenting responsibilities, as well as focusing on child and adolescent development.

Advisory Group members have drawn attention to the outcomes document of the 1998 Men and Family Relationships Forum, which identified obstacles to, and set out goals for, enhancing the involvement of men with their families. While the Advisory Group commends recent government initiatives that have increased the availability of family relationship services targeted to men, it considers that more can be done to support an environment that promotes positive family roles for men after separation and encourages them to meet their parenting responsibilities.

The Advisory Group heard, in submissions and consultations, many examples of men who have been unable to cope with the compounded negative experiences associated with separation. The actions arising from these experiences can have deep and far-reaching effects on the family. The Advisory Group supports initiatives that promote the resilience and coping skills of separated men, and address their isolation.

Practitioners and policy makers in the family law system should have an understanding:

- of the importance of providing early and appropriate assistance to men experiencing distress, grief or anger due to family breakdown;
- of the importance of fathers to their children and the benefits of taking a positive focus on men in their roles as parents;
- that the ability of a man to maintain an effective relationship with his children (and their mother) can be affected either positively or negatively by his experiences in the family law system;
- of the ways that gender stereotyping can influence attitudes and decisions;

⁸⁰ Services include various peer group support programs, such as the University of Newcastle's 'Engaging Fathers' program and the 'Hey Dad!' program piloted by the Mercy Family Centre, Hornsby, NSW (a presentation kit is obtainable for this program).

- how traditional male values regarding roles and responsibilities can be obstacles to men's participation in parenting;
- that most men are seeking reasonable post-separation solutions and are not violent, aggressive or uncooperative;
- that some violent men want help to change their behaviour; and
- that, if needed after separation, a man can learn and should be supported to learn effective parenting skills, even when he is not the resident parent and even when contact is supervised or restricted.

Greater promotion of family-friendly work practices to employers and men would help support and encourage fathers to be more involved as parents, as well as be a general support to all working families.

More father-inclusive services and development of more support in the community for men and fathers' needs are required, along with more research into the needs of men and fathers, and their perceptions of fathering.

Recommendation 8

8.1 That the integrated family law system ensure fair and equitable treatment for all, and particularly pay attention to the emerging needs of men and fathers.

8.2 That practitioners and policy makers in the family law system ensure that they have an understanding of the needs of men during and following separation, and take a balanced approach to providing services and developing policy and programs for separated families.

Access to legal services

Lawyers are important gatekeepers to the family law system. Legal advice is available from lawyers in private practice, legal aid commissions and community legal centres. Lawyers also give referrals to other agencies in the family law system such as Centrelink, Child Support Agency, and counselling and mediation services.

The Advisory Group believes there is an important role for early access to legal information, advice and support.

The barrier that people face in the initial stages is a lack of knowledge around the relevance of legal advice and the types of assistance that can be offered. When people make the transition from the initial stages of relationship breakdown into the agreement forming process they may face a range of difficulties in accessing adequate legal information and services.⁸¹

Lawyers assist their clients by:

- recommending counselling;
- making them aware of their legal entitlements and obligations;
- encouraging resolution of disputes by agreement;
- identifying legal issues and separating them from personal issues;
- providing information about the family law process;

81 Women's Legal Resource Group Inc. Vic., submission no. 270.

advising on expectations of the likely outcome of the case;
suggesting strategies to resolve any dispute;
redressing power imbalances;
acting as a mediator, arbitrator or conciliator; and
informing and referring to relevant agencies.

The advice of a lawyer is often a prerequisite to a final resolution of a family law dispute.

The Commonwealth Government provides funding through a number of programs for lawyers to perform their role in the family law system. The bulk of funding goes to legal aid commissions to provide a range of family law and other legal assistance:

legal information;
legal advice;
legal representation, including duty lawyers; and
community legal education, for example self-help kits, brochures, etc.

Many legal aid commissions provide primary dispute resolution through a family law conferencing service.

Improving access to any kind of legal assistance can be accomplished in a number of ways. Promotion and support for unbundled legal assistance would help many clients understand and manage the simpler steps, and target the limited legal aid dollars where they are most needed.

'Unbundling' is the process of providing one or more of the kinds of legal assistance listed above, rather than beginning-to-end representation to clients. Unbundled services are provided by legal aid commissions, community legal centres, private law firms and by courts⁸². Unbundling does have a downside, however, in that it may lead to a party receiving some assistance in a vacuum. This may lead to unexpected consequences; for example, an affidavit may be prepared but the better advice may have been that proceedings were ill-conceived, or objectives could be met in other ways. Legal representation can play a key part in managing family law proceedings where often reason can be overshadowed by emotion and power imbalances can mean that a person cannot adequately conduct court proceedings on their own.

Many examples of unbundled legal assistance and support for litigants are already operating in the family law system. These include duty lawyers at courts, early and limited free advice through legal aid commissions, assistance with forms at community legal centres, and programs such as the Family Law Assistance Program at the Dandenong registry of the Family Court of Australia.

The needs of self-represented litigants who could benefit from access to some legal assistance through unbundling must be considered when developing strategies to improve access to the family law system. Self-represented litigants are increasing in number and are placing additional demands on the court system and legal service providers. The Family Law Council has, in its *Litigants in Person* report,⁸³ identified some approaches to address this issue, which should be considered by Government.

82 Courts do not provide legal advice but do offer procedural and other like assistance to their clients who are self-represented.

83 Family Law Council, August 2000.

The recommendations in this report should lead to greater coordination of services and better information on options other than litigation, which should lead to less reliance on litigation and better assist those who require it, even when unrepresented.

Adequate access to legal aid is a fundamental plank of any family law system.

The Commonwealth Government has increased legal aid commission funding by \$63m over four years to help more people to get legal aid in Commonwealth matters. This additional funding started from July 2000; the amount is being stepped up progressively each year. Nevertheless, there were a number of submissions that criticised the adequacy of funding for legal aid and urged increased funding. The lack of funding for court representation, and the difficulty in obtaining approval for legal aid under the guidelines and priorities specified by the Commonwealth Government were singled out. Legal aid is important in a number of areas identified in this report including enforcement of parenting orders, domestic violence and allegations of child abuse.

The unavailability of legal aid has a flow-on consequence for family courts, with an increase in the number of self-represented litigants. Criticism was also made of legal aid funding caps restricting the representation of parties, including child representatives. Also, a perception exists in the community that if one partner accesses legal aid, the other partner is ineligible. A feeling of 'first in, best dressed' results. This report identifies certain areas of the system where there is a need for access to more legal aid than is currently available.

Legal assistance is also available through community legal centres, 126 of which receive funding through the Commonwealth Community Legal Services Program. Services delivered by these centres reflect the needs of the local community. Some offer specialised services that are particularly related to the family law system. The network of specialist women's legal services have developed expertise in legal issues of most concern to women, including domestic violence and family law. Some centres are funded to provide services nationally to non-resident parents as well as resident parents. Community legal centres contribute significantly to the delivery of equitable access to legal services in the community.

Recommendation 9

9.1 That legal aid services be encouraged to:

- a** continuously improve primary dispute resolution services, including family law conferencing; and
- b** explore innovative approaches to service delivery, for example unbundled legal services.

9.2 That increased legal aid funding be provided to legal aid commissions and community legal centres to improve equity of access in high-need areas, that is:

- a** early intervention;
- b** domestic violence proceedings;
- c** family law disputes in which there are allegations of child abuse; and
- d** enforcement of contact orders.

Improving awareness of non-adversarial options

The current system is broadly perceived as adversarial and there is a lack of understanding of what some of the service types within it offer as alternatives to litigation; for example, there is low community awareness of the ways in which mediation may help families resolve issues. Furthermore, different models of services and interventions have evolved in a variety of environments, leading to confusion about service content. 'Counselling' can mean a range of services, from relationship counselling to therapeutic counselling and sometimes even the dispute resolution counselling/mediation that occurs in the Family Court of Australia. Differences among the alternatives to litigation, such as mediation, conciliation, conferencing, primary (or alternative) dispute resolution and arbitration, are not clear.

Many services have significant potential to reduce the negative impact of family breakdown. However, families are often unaware of the options available to them or do not have ready access to the most suitable and timely services.

In my experience, solicitors provide a minimal service, requiring the lay person to ask the right question in order to get all options available.⁸⁴

Lack of knowledge of the available options and resources is still a major issue affecting families in breakdown, especially those families from non-dominant cultures.⁸⁵

Parents also need to know what to expect from a particular service type or a particular service provider.

Definitions need to be developed and made available in language which accurately and clearly describes services so that clients understand what is offered, what the service can do for them and what is most suited to their needs. They need to understand the options available to them and the consequences of their choices, such as the likely pathway to which the option would lead, and cost. This would better enable people to investigate non-adversarial services and interventions at an early stage. The National Alternative Dispute Resolution Advisory Council has developed definitions of alternative dispute resolution which go some way towards this.⁸⁶ These definitions are under review. Given that separation affects so many people in the community, either directly or indirectly, it is important that definitions become widely accepted and understood so that the whole community understands, for example, the difference between mediation and counselling.

Service providers need to know what other services can offer, and how to work collaboratively and flexibly to meet the needs of each family. Without this integrated knowledge of local networks it is unlikely that families would view the future family law system as any less fragmented than at present.

The legal profession is a first point of contact for many people. Encouraging private lawyers to refer people to community-based professionals for counselling and primary dispute resolution services, including mediation, as early as possible is partly

84 Confidential submission from an individual.

85 Women's Legal Centre (ACT and Region) Inc., submission no. 265.

86 National Alternative Dispute Resolution Advisory Council, *Alternative dispute resolution definitions*, Commonwealth of Australia, Canberra, 1997.

dependent on their having clear and reliable information about what such a service can offer. Legal and other professionals would also need to be sure that alternative approaches would lead to good outcomes for their clients, particularly for individuals from vulnerable groups. Mutual respect between legal and other professionals for their respective contributions would facilitate better outcomes.

Legal aid lawyers are also a first point of contact for many people and the lawyer's approach to that contact varies from jurisdiction to jurisdiction. A call-centre approach providing legal information and referral options for callers is common but, because of time constraints, little assessment of callers' needs is undertaken. There is also no consistent approach to the provision of legal advice. Some commissions give higher priority to casework while others place a high priority on the provision of advice and use videoconferencing to provide advice in rural areas. The opportunity exists for legal aid commissions to develop uniform client service standards for the provision of early intervention services, particularly for the provision of family law legal information and advice. This would include the development of mechanisms for better assessing the needs of clients and providing appropriate referrals to meet those needs. Improvements in this area could be taken up in the context of Recommendation 9.

Encouraging use of non-adversarial services

Incentives—through education, information and financial support—are preferred over mandating participation by clients in any kind of service or intervention. All service providers, on the other hand, should be in a position to strongly recommend non-adversarial options, and should have reviewed their practices to ensure that opportunities are created for people to choose such options.

To encourage families to use non-adversarial services, some preconditions or requirements that currently exist in the system might be better placed at other points in the system, where the benefits for the family are more immediate.

For example, the Family Court of Australia requires mediation *after* filing where children are involved, to ensure that all opportunities for parents to resolve their dispute are explored before they move to the determination phase.⁸⁷ This requirement to attempt primary dispute resolution would be better placed *before* filing in any court. However, there should be no inference from this that filing is the end of attempts to achieve a resolution. Furthermore, the requirement must not disadvantage those cases where access to judicial intervention is necessary for reasons of safety or urgency.

A second example: currently an applicant for Family Tax Benefit is required to take action to recover child support from the other parent in order to receive the maximum benefit. This could be waived for a period sufficient to seek help in reaching agreement on all their parenting responsibilities (residence, contact and child support) as well as be referred to services which can meet their emotional, legal and financial needs. In this period people could be provided with important information about the family law system and the impact of separation on their children. They could be given incentives to undertake one or more of a range of activities, such as financial counselling, family counselling or mediation, which aim to help them amicably resolve the issues they face.

87 It should be noted however, that the Court's requirement for attempting primary dispute resolution after filing is waived if the parties have previously done so in a community setting.

Change is needed on a number of levels to achieve early, non-adversarial resolution of issues following separation.

Dispute resolution efforts need to be focused on the ‘front-end’ rather than the ‘rear-end’ of the dispute. At the moment most resources are applied to determining disputes which have already entered a litigation pathway—this is resource-intensive, and is made more difficult by the inherently adversarial nature of litigation. Far too much of the efforts of the family courts and family professionals is directed toward disputes which still settle anyway, or disputes the settlement of which could be rapidly accelerated with minimal external input. Resources need to be applied to the ‘front-end’ i.e. pre-filing.⁸⁸

While this commentary may reflect experience in some parts of the system, there is also evidence that a great deal of effort is already expended on the front end of disputes by lawyers. The fact that a matter has entered a litigation pathway does not mean that it is still not at the ‘front end’. Lawyers use litigation as a way of speeding up negotiation. Litigation and negotiation are not separate and exclusive processes. There is a range of professional approaches, some more litigious than others, with a chief variable being how specialised in family work the lawyer is. It is important to recognise diversity in practices, and seek to encourage good practice.

Family law conferencing is a primary dispute resolution method operating in several legal aid commissions. The Advisory Group is aware that the conferencing process has been criticised in submissions and consultations. The criticisms include:

- non-consistent policy across commissions;
- concerns that screening processes for family violence and cases where there are other power imbalances is ineffective or is not properly applied;
- that the purpose of a conference is simply to reach agreement and does not focus on reaching an outcome which is in the best interests of the children; and
- that agreements may be entered into which are unsafe or unworkable because parties are pressured into agreement by the threat of withdrawal of legal aid.

If these criticisms were addressed, conferencing could be a dispute resolution process which is both cost-effective and achieves the appropriate outcomes for children, by bringing parents together to discuss parenting matters rather than being adversarial.

Another alternative to litigation for families who might have a degree of conflict may be a combination of mediation and arbitration, known as ‘med–arb’. This process enables blockages to be removed when mediation gets stuck by an inability to resolve issues through mediation alone.

Several med–arb models exist.

- In a process that begins as mediation, the mediator can render a decision binding on the parties, if no agreement is reached.
- The mediator, rather than imposing a decision on the parties if a dispute is not settled, can recommend a referral to another dispute resolution body such as a court.

88 Dr Tom Altobelli, submission no. 122.

- The neutral party first acts as a mediator, then as an advisory arbitrator. The mediator is empowered to advise as to the likely outcome if the parties go to arbitration, but not to actually arbitrate the dispute. If no settlement is reached, another person performs the arbitral function.

There have been a number of other changes in the primary dispute resolution services available both before and after filing applications in the Family Court of Australia and the Federal Magistrates Service. The shift from court-based to community-based services is consistent with the thrust of this report but it must be supported by allocating sufficient resources to the community sector to avoid creating unacceptable delays. In the longer term, the success of such a shift would depend on the transfer of necessary skills, sufficient resourcing, and the community's awareness of the available services and what they can deliver. At the same time, the Federal Magistrates Service is contracting out some of its post-filing dispute resolution services to approved community providers and using the Family Court's Counselling Service for other services. This is happening at a time when the approval mechanisms are under review by the Attorney-General's Department (see page xx).

The Advisory Group supports these developments as important to the advancement of the objectives of an integrated family law system. However, all these developments need to be properly resourced and coordinated.

The legal profession has been a major source of referral to non-adversarial services for some time, although this has largely been to services offered by the Family Court of Australia. There needs to be a process in which the courts, the legal profession and the community-based organisations work together to establish new links between legal practitioners and the community-based organisations.

Costs

The costs involved, particularly in litigating disputes, can dissipate much of the assets of the family, sometimes because there is no clear, up-front understanding of the likely costs or the rules governing the costs of legal representation. Problems also arise from the imbalance of power in the adversarial process when one party lacks the resources to obtain representation and misses out on legal aid or mistakenly believes that legal aid is only available to the party who applies first.

Service providers within the family law system have typically been funded to provide specialised services, with limited capacity to view and respond to the overall circumstances and needs of individual clients and their families. This has led to waiting lists for some services, inconsistent pricing and difficulties in matching the clients' needs with the services available.

Better understanding of the relative costs of different ways to resolve disputes may help families make informed decisions about how to proceed. Recommendation 5 addresses the need to develop system-wide information products for families and service providers. Information about the relative costs of options available to families for resolving disputes or managing family decision making would be an important element of these products.

Recommendation 10

10.1 That Government:

- a** explore through research the potential of social, financial and information-based incentives to encourage the use of non-adversarial decision making wherever appropriate; and
- b** undertake a thorough cost–benefit analysis of various financial and information-based incentives toward non-adversarial decision making.

10.2 That all government and non-government service providers and professionals in the family law system review their current practices with a view to creating new opportunities and encouraging people to pursue non-adversarial options.

10.3 That the related strategies on accessing community-based dispute resolution services presently being put in place by the Family Court of Australia and the Federal Magistrates Service be coordinated and modelled as a shared service to achieve a common purpose, common standards and common outcomes.

10.4 That strategies be developed, in consultation with the Law Council of Australia and its constituent bodies, family courts and community-based service providers, to encourage lawyers to make more referrals to community-based counselling and mediation, and that any such strategies be incorporated into a family law code of practice (see Recommendation 4).

10.5 That the additional demand on community-based organisations flowing from increased referrals be recognised and appropriately resourced.

10.6 That definitions of primary dispute resolution methods be developed, adopted across the family law system and published in language which accurately and clearly describes what is available.

Service mix

Services need to be available in the community in a ‘service mix’ that supports decision-making by families in that community. This includes services suited to indigenous people, people from culturally and linguistically diverse backgrounds, people with intellectual disabilities and mental illness, and other groups currently disadvantaged in the family law system. These groups are discussed in Part Four.

The capacity of community-based organisations to meet existing and new demand for services must be enhanced by new funding approaches and positive linkages between services. Services that offer a range of options need to be free to mix and match services according to the needs of the presenting family. This requires a shift in funding practices away from funding agencies for particular activities towards funding them to deliver outcomes, a process which has already begun within the Commonwealth-funded Family Relationships Services Program.

Recommendation 11

That funding frameworks for community-based service delivery organisations allow agencies sufficient flexibility to meet the demand for particular service types (or interventions), or mixes of service types, to meet the needs of families in that community, such as by using funding contracts which focus on outcomes rather than inputs or throughputs.

Innovative services

Part One has pointed to a number of innovative approaches to delivering services that are improving outcomes for families affected by separation. These, and others mentioned below, need to be supported and, if necessary, further developed to ensure they are accessible nationally. Families and communities are constantly changing. Innovation in service delivery should be continually on the system's agenda to ensure its capacity to respond to change.

Child-inclusive practice is a comparatively recent development in services that support family relationships. Changes to the *Family Law Act* in 1996 placed an emphasis on the needs of children during parental separation and divorce, and broadened the parameters for services that work with families in this area, allowing for more child-inclusive work. The ultimate outcome is that children are more effectively helped to deal with the experience of parental conflict, separation and divorce.

The Family Relationships Branch of the Department of Family and Community Services conducted a series of child-inclusive practice forums for family relationships services during August and September 2000, at five locations around Australia. These forums aimed to build on the good practice that had developed in the field since the report *Child Inclusive Practice in Family and Child Counselling and Family and Child Mediation* was released in 1999.

The report on this project, *Through a Child's Eyes*, released in May 2001, summarises the outcomes of the forums and reflects the state of progress in family relationships services involving child-inclusive practice.

The project identified a number of Family Relationships Services Program counselling and mediation services that are in a position to make a significant contribution to the wellbeing of children and their parents at a time of relationship conflict and separation. There were numerous field examples of good practice and one of these was working with a child-inclusive model in family and child mediation. The model draws together findings from literature, the research on child-inclusive practices, good-practice site visits, workshops and trialling the pilot mediation model.

The Contact Orders Pilot within the Family Relationships Services Program, referred to in Part One, is developing and testing a range and mix of interventions with parents in conflict over contact. Its focus is on putting the children first and developing the parents' capacity to cooperate. From comments made in submissions, results so far appear to be very positive. Success in reducing family distress and improving both potential and actual child contact has been achieved. Working together with children's contact services is seen as a valuable contribution to the outcomes. Contact services can allow contact to continue safely while the parents address their issues through the pilot's interventions.

Indigenous communities are developing non-adversarial service models that are culturally appropriate. These involve narrative therapy approaches and indigenous family or community conferencing models developed from models used to successfully resolve criminal matters in indigenous communities.⁸⁹ The service models are discussed further in Part Four.

Other innovative programs in some parts of the family law system are referred to in Part One.⁹⁰ These are benefiting families and should be nationally available, with adjustment as necessary to fit local environments. These include the Family Law Assistance Program at Dandenong, children's contact services and other flexible models in service delivery.

The Advisory Group notes that the Victorian Court Network⁹¹ is currently receiving funding for its work in the Family Court of Australia in Melbourne and Dandenong on a year-to-year basis. The service is highly regarded and ought to be available in all federal and State/Territory family law jurisdictions.

Recommendation 12

That innovative practices and service delivery models be further developed where necessary and made available nationally, including:

- a** child-inclusive practices in family relationship services;
- b** flexible models for community-based mediation/conciliation/counselling services;
- c** children's contact services;
- d** mediation–arbitration models;
- e** the service provided by the Victorian Court Information and Welfare Network;
- f** multiservice assistance to self-represented litigants at all courts exercising family law jurisdiction, modelled on the Family Law Assistance Program in Dandenong; and
- g** indigenous family conferencing models.

Building collaboration between the gatekeepers to the system

Effective information and referral are critical if people affected by separation are to find the best pathways through the family law system. For information, assessment and referral to be effective, substantial cross-agency collaboration would be required.

The effects of the different cultures of the organisations that make up the family law system should not be underestimated. Finding ways that these organisations can work together to simplify the system for clients may not be an easy task.

These boundary issues exist between all organisations, and some agencies are currently considering ways to improve communication between themselves and allied agencies.

89 This is known as 'circle sentencing' in the criminal sphere.

90 See 'Some parts of the system are working well', p. 30.

91 See p. 31.

One example is the interface between Centrelink and the Child Support Agency. A number of activities are already under way to ensure better outcomes for families. These activities highlight opportunities that might help clients deal with conflict and agree on issues of income support and children.

The activities include:

- reducing delays in the system; for example, the Child Support Agency has worked hard to ensure that the minimum possible time elapses between lodgment of forms by one partner with Centrelink and contact with the other partner by the Child Support Agency;
- setting up joint Centrelink–Child Support Agency pilots such as the ‘direct registration by phone’ option currently available in selected sites in Queensland; and
- placing Child Support Agency workers in a number of Centrelink offices to help clients through the intricacies of child support.

These activities can help ensure that both parents are involved in the process as early as possible, and that the resident parent receives improved advice and support. The pilot programs are still being evaluated and other options that may provide better and more cost-effective solutions are yet to be tested.

Other options that could be investigated include:

- designing processes to deal explicitly with both parents as early as possible with the new shared care arrangements administered by Centrelink and the Child Support Agency;
- establishing more effective referral practices and more creative use of review mechanisms in the income support processes; and
- identifying opportunities to treat both parents as relevant decision makers when children are involved.

The objectives of improved information and support are also the goals of experimental activities in other parts of the family law system. For example, co-location of services is being explored by the Family Court of Australia through different models in a number of locations. Family relationships services are taking a more holistic approach to the needs of their clients. The parenting needs of children in separation are increasingly being recognised. Community organisations are being encouraged to form strong partnerships with complementary organisations. Mediation services often form effective bridges between the legal world and community organisations.

These and other options need to be systematically trialled and assessed to help provide clients with pathways that are appropriate to their capacities and needs.

Recommendation 13

That collaborative models of service delivery, designed to meet the multiple needs of parents following separation, be further developed and tested.

These should build on collaborative models currently being explored between Centrelink, the Child Support Agency and the Family Court of Australia and be extended to improve linkages between these organisations and community services providers.

They may include:

- a** a number of different professionals working together; and
- b** co-location of services to provide better information and support for clients.

Adversarial services

Although services and interventions in the future integrated family law system would support family decision making through early intervention and a focus on primary dispute resolution, there remains a vital role for litigation and services related to litigation. Litigation needs to be streamlined, accessible and timely.

However, dissatisfaction with processes, the conduct of hearings, and outcomes was frequently reported.

Consumers feel that family law is a *deliberately* secret system which is geared towards one party 'giving up' first.⁹²

Consultations and submissions highlighted the effects of the adversarial system on family disputes, for example, on the parents' ability to make calm and rational decisions in such a process,⁹³ and manipulation of processes.⁹⁴ People also found the Family Court of Australia intimidating.⁹⁵

There are limited opportunities to bring both parents together to work on issues and develop common ground when an adversarial service type is chosen. For example, parents may each engage a lawyer and work through them; this often sets the parents on different pathways and may lead to conflicting actions and decisions.

Litigation

Litigation is intervention for families who are unable to resolve their own differences and require some form of judicial intervention to help them. As well as those cases that proceed to a final hearing, litigation includes cases where proceedings are commenced in court but are resolved at some point before a judicial decision is made.

Litigation is often begun, particularly when one or both parties is legally represented, with the knowledge that the case will never come to a final hearing.⁹⁶ It is an accepted part of family law practice for filing in a court to be viewed by the lawyers as part of the negotiation process. Filing may also give clients access to services available in the court that can only be used after filing. Cases where at least one person is self-

92 NFO Donovan Research, *Report: Family law pathway consultations*.

93 NFO Donovan Research, *Report: Family law pathway consultations*, p. 9; and Analysis of submissions, p. 66.

94 NFO Donovan Research, Analysis of submissions, p. 42.

95 NFO Donovan Research, Analysis of submissions, p. 43.

96 Described by some researchers as 'litigotiation'.

represented make up an increasing proportion of the cases which go to final hearing. In part, this is because self-represented litigants are unaware of the use of litigation as a negotiation tool in managing the dispute.

There is a range of needs within the litigating client group and the system needs to be able to accommodate them all. Some cases require simple and rapid access to a judicial officer; others are complex and require a range of other interventions, both investigative and supportive, to reach a final resolution.

Sometimes the conflict between separated parents is so entrenched that they are incapable of reaching an agreed solution and litigation may be required as a last resort. There are also cases when urgent judicial intervention is required to protect the parents or children from harm. These cases are often complex and the families involved are high-need families. They require a particular kind of judicial intervention.

Active management of caseloads to reduce the time and cost of reaching decisions continues to be important.⁹⁷

In a traditional adversarial system, court hearings are conducted by the parties or their representatives with the judge maintaining a neutral, purely adjudicative, role. This has been significantly modified in family law proceedings in recognition of the emotions that surround family disputes and the potential for aggression and anger to cause hurt and resentment. However, barristers and, more particularly, self-represented litigants may conduct cross-examinations that are aggressive or intimidating to vulnerable parties, potentially elevating the conflict, (despite section 101 of the Family Law Act).⁹⁸ Such experiences are likely to work against any future capacity in the parents to move on to a functional parenting relationship after the hearing.

The Act enables judicial officers to control the manner in which hearings are conducted to lessen these negative impacts and enhance their capacity to get to the bottom of the issues before them. For example, section 97(3) requires the court to proceed without undue formality and to endeavour to ensure proceedings are not protracted. The court may itself call for evidence.⁹⁹ Managing the conduct of hearings is an ongoing issue for the court's consideration and has been addressed in the Family Court of Australia's *Future Directions Committee Report*. A combination of active trial management and lawyers fulfilling their responsibilities as officers of the court would overcome some of the identified problems. It is important that support for this approach is kept under continual consideration.

Another criticised aspect of litigation is the time it takes to reach a judicial determination. Delays may be caused by workloads in courts or sometimes purposefully by a party for tactical purposes. 'Delay' is a term that should therefore be used carefully. Relevant issues covered in the *Future Directions Committee Report* include a new requirement 'that trial dates will not be allocated until all of the evidence, both lay and expert, has been filed and served, all interlocutory steps (including discovery) have been completed and nothing further needs to be done to prepare the case for trial'. There is also a recommendation that trial plans be introduced; these would specify in advance the probable amount of time required for the trial.

97 Family Court of Australia, *Future Directions Committee Report*, and Diana Bryant, Practice and Procedure of the Federal Magistrates Service, 2000, unpub.

98 Prohibits offensive etc. questions.

99 Family Law Rules. Order 30, rule 5: Court may call evidence.

Self-represented litigants may need specific strategies. The Family Court of Australia is currently considering a range of measures to assist self-represented litigants, including targeted information to help them conduct a hearing. This is part of a major Court project that is investigating a wide range of assistance to self-represented litigants, with an emphasis on providing easily understood and accessible information as well as evaluating the modification of all Court forms and processes.

The Advisory Group considers that information for self-represented litigants should emphasise the potential for heightened conflict between parents in being engaged in a court hearing. It should also alert them to the potential consequences of court hearings on their future capacity to have a functional parenting relationship with the other parent. Self-represented litigants are often unaware of the options for managing their dispute, and thus may be relying on court processes when other support and services would be more helpful.

Recommendation 14

That courts exercising family law jurisdiction continue to actively review their case management practices to minimise delay and facilitate the early resolution of cases.

2.5 Ongoing support—parents, if not partners, forever

Parenting is a long-term endeavour that can often be more complex following separation. Many parents need support to manage the ongoing consequences of their post-separation decisions, manage the changing circumstances arising in their own and their children's lives, and resolve personal issues. This support is a key function of an effective family law system.

For a substantial number of parents, frequent and long-term contact with the system also occurs through the child support scheme and the social security system.

Current situation

Many people told us that they were unhappy with the decisions made at the point of separation, when emotional and, often, financial pressures made it difficult to focus. In many cases, men and women reported extreme emotional and physical distress (insomnia, weight loss, panic attacks, depression).¹⁰⁰

Often the circumstances under which a court order is made have not facilitated a workable solution which has fully considered the best interests of the child, because of pressure applied by one party on the other, lack of time, exhaustion, cost or lack of appropriate help. Improving the original orders by providing parents with appropriate information, education and assistance would improve the parents' ability to comply with the orders.

Many people also told us that they couldn't see how they could improve the situation. Returning to court appeared to be the only option. Continued disputation over residence and, particularly, contact is high¹⁰¹ for a relatively small, but significant, group of people. Even where disputation is not high, maintaining parenting

100 NFO Donovan Research, *Report: Family law pathway consultations*.

101 Family Law Council, *Child contact orders: Enforcement and penalties*, Report to the Attorney-General, Family Law Council, Canberra, 1998.

arrangements over time, whether after agreement or order, often needs extra support. Children are inevitably caught in the middle, particularly if parents do not know where to get help.

The failure of family courts to enforce compliance with their orders has been raised in consultations and submissions. Men perceive an imbalance in the way the system enforces child support and parenting orders and regard this as evidence of a biased system. The concerns they raise do not distinguish between orders made by consent or after a hearing. They focus on the failure of the courts to enforce orders when they are breached, without attention being given to whether the order is, or was, a workable one.

Resident parents, usually mothers, also have concerns with the enforcement of contact orders as they see that children suffer if their non-resident parents do not turn up for contact. In addition, as has been highlighted by recent research,¹⁰² interim contact orders made without any full investigation of the circumstances may often lead to resident parents refusing to allow contact for fear of violence or abuse. Access to children's contact services, which could provide a measure of safety both for the adults and the children in these interim cases, is still very limited.

If the resident parent wants to vary the order in response to the enforcement application, or commence enforcement proceedings themselves, legal aid is rarely available. The Advisory Group also heard from legal practitioners that chronic or vexatious litigants often use the compliance regime in the Family Court of Australia to continue conflict with their ex-partner.

In a family law system which, when parents cannot agree, relies on orders made by a court, many do not believe it should be necessary to return to court and incur further costs each time there is a breach of an ongoing order. They see the situation as 'an order is an order' with the force of law and should be adhered to. Submissions and consultations highlighted the barriers created by the cost of going to court. This is particularly problematic in enforcement cases, where it may have been expensive to get the order in the first place.

Some have suggested that there should be greater emphasis on helping parents to meet their responsibilities under court orders in a way that does not depend on the court itself. Such services should be easily accessible and capable of helping parents adapt to changing circumstances. Access to the courts should be readily available, but only when necessary to enshrine new arrangements in binding orders.

The complexity of family relationships, particularly after separation, means that the answer is not always simple. Circumstances change, people's behaviour changes in times of stress and children's needs change as they grow older. Enforcement of parenting orders has to be worked out in that context.

What is needed?

Parenting arrangements need to change to meet the needs of children as they mature. Many parents manage to negotiate these transitions but some parents need ongoing support. The services and interventions described in the previous section, particularly counselling and mediation, together with accurate information about the

102 Helen Rhoades, Reg Graycar & Margaret Harrison, *The Family Law Reform Act 1995: The first three years*.

developmental needs of children and the negative impact of continued conflict on children's wellbeing, continue to be available to all parents.

In the context of enforcement applications, it is important to know that the original order was appropriate to the circumstances at that time. In the future, parents should be better prepared at the initial decision-making stage and more able to develop a sustainable agreement about how to share parenting responsibilities in the longer term. Voluntary compliance with orders is certainly preferable to enforcement regimes.

Achieving this would depend, in part, on services and interventions being tailored to meet the emotional needs of each parent at separation, and also on achieving a focus on children through such things as widespread implementation of child-inclusive practices.

Each parent will also experience change in their lives that has the potential to affect arrangements. Perhaps most significant of all would be the formation of a new relationship and the creation of a new family. Ways need to be found to encourage people at each life transition to reflect on the ways that the change would affect the children. Resources for service providers, such as the recently released 'Back on Track: Finding a Way through Separation and Repartnering'¹⁰³ package for relationship educators dealing with repartnering, are one means of assistance. Services should guide people to non-adversarial assistance whenever possible, for example Centrelink or the Child Support Agency may be the 'first to know' of further issues about parenting and be in a position to provide advice to parents about alternatives to court.

Amendments to the Family Law Act in 2000 have taken some steps towards a more effective compliance regime for parenting orders. The legislation addresses criticism that the Family Courts of Australia and Western Australia are not enforcing their orders, particularly contact orders. It recognises that parenting orders are different from financial or property orders because they require an ongoing relationship between the parties and are usually highly emotionally charged, especially after a defended hearing.

The legislation comprises a three-stage scheme for enforcement of parenting orders. Stage one is preventative, aimed at supporting parenting arrangements in the period leading up to and including the making of an order, through advice and information about parenting responsibilities and parenting education. If stage one is effective, it may help to address the need for more effort to be put into making workable orders or arrangements. If this is effective, it should lead to less need for enforcement. The legislation also permits a review of the existing order where it was made by consent without representation.

Stage two is remedial, aimed at the first (and subsequent) breach of an order by ordering the parents to attend post-separation parenting programs.

In stage three, where a person blatantly contravenes a parenting order without reasonable excuse, the court will have a range of options from which it must choose, including a fine, bond, community service order, varying the original order or imprisonment. The imperative on judges to apply a sanction in these circumstances is

103 Department of Family and Community Services & Child Support Agency, *Back on track: Finding a way through separation and repartnering*, Commonwealth of Australia, Canberra, 2000.

new and addresses the community's perception that the court failed in the past to enforce its orders.

The Family Law Council's report¹⁰⁴ on which these legislative changes have been based pointed to the unique nature of contact enforcement orders. Breaches can occur on both sides and can be variable in significance. Available remedies are limited. Orders can be unenforceable in their terms or because of the circumstances in which enforcement is sought. There is limited access to services to help parents maintain their contact arrangements, such as child contact centres. Punishing one partner may negatively affect the welfare of children.

The amendments came into operation on 27 December 2000. It is therefore too early to assess their effect. Monitoring and evaluation of the legislative changes will be undertaken.

No matter how effective these specific changes are, they still rely heavily on the capacity of affected parents to take their enforcement application to a court. Ways to divert these matters from the court system need to be found. A number of projects have emerged both inside and outside the courts to address difficult cases. These include the Contact Orders Pilot located at Parramatta, Hobart and Perth, which are administered by the Department of Family and Community Services and described more fully in Part One. The project is currently being evaluated but early results indicate that the program is contributing to the resolution of complex contact disputes and reducing the level of distress in the families involved.

In addition, the Family Court of Australia is in the process of setting up a project in Brisbane to deal with difficult contact cases in an integrated and multidisciplinary way, similar to Magellan. The Federal Magistrates Service is considering setting up a program of group education to be provided soon after making parenting orders.

Children's contact services play a valuable role in helping maintain relationships between children and their non-resident parent.¹⁰⁵ Because they reduce the potential for conflict between parents at times of changeover for contact, the contact arrangements are more likely to be sustained. Until recently there were only 10 of these services funded by the Commonwealth Government across the country. Recently, the Commonwealth program has been increased to deliver a further 25 services. (There are also a number of services not funded by the Commonwealth.) These services do not have the resources to assist families to move to self-management of their ongoing contact arrangements, where appropriate, through any kind of therapeutic or case management intervention. Children's contact services should be adequately funded to provide this kind of help to their clients.

A breakdown of existing contact arrangements is often triggered by the relocation of one parent.¹⁰⁶ Traditional face-to-face contact becomes difficult or expensive to maintain when distances become greater. Developing flexibility around such a significant change of circumstances is not easy when the parents feel their capacity to keep contact with the children is threatened. New models of contact need to be

104 Family Law Council, *Child contact orders: Enforcement and penalties*.

105 Information about children's contact services may be found at the Department of Family and Community Services website (www.facs.gov.au) or the Australian Children's Contact Services Association website (www.accsa.org.au).

106 A number of submissions raised this issue. See analysis of submissions, p. 57.

developed, to move away from perceptions of what is 'normal' to what will work for the family's particular circumstances. Children's contact services could be instrumental in developing other options for these families. Some options might be telephone/video links at public outlets like Centrelink or community centres, and extended contact periods at camps for non-resident parents and their children.

Promoting the use of counselling and mediation in preference to litigation is required at all stages of the separation process and over the longer term. Given the potential for conflict in ongoing separated parenting relationships, there is likely to be value in adding a mediation–arbitration service type to what is now available to deal with unresolved interpersonal conflict over parenting as an alternative to going to court. 'Med–arb', as it is often called, adds independent neutral decision making to the mediation process.¹⁰⁷

An example of this services type exists in the Special Masters Program in California. This program deals with highly conflicted couples with children who keep returning to court. A Special Master is appointed after a final order, by agreement between the parties. The Special Master has a dual function: to assist the parties to an agreed outcome and to make legally binding orders that reflect the agreement. The Special Master is either a lawyer, a psychologist or a mediator specialising in helping parents resolve what is best for their children. The parents have to agree about the matters that the Special Master will deal with, and this is reflected in the court order. Such a program may appear to be resource-intensive but many clients in these programs would otherwise be continuously returning litigants who absorb vast amounts of court resources. This particular program is funded on a user-pays basis. It is worthwhile, however, for Government to consider fully funding such an alternative to litigation for this group of clients.

There are a number of ways to support post-separation parenting arrangements. Providing early information and education, and matching services to the needs of clients would deliver the necessary range of ongoing support services, particularly when arrangements are self-made and when compliance with court orders is problematic.

The issue of enforcing court orders has been prominent in the consultations and submissions received by the Advisory Group. Priority should be given to tackling this difficult area.

The improved education and information strategies outlined at the beginning of this part of this report would provide clear pointers for separating parents about their post-separation parenting responsibilities, both before making an agreement and after an agreement or an order. The strategies would also inform them about where they can go for assistance when problems emerge.

There is also a need to ensure support for emotionally distressed people. In particular, the Advisory Group heard a lot about how difficult it is for some men to handle their emotional distress around separation issues. This is consistent with recent research about the reluctance of men to seek assistance with personal issues such as depression and anxiety.

107 See description of 'med–arb' in Section 2.4 of this report.

While there are a number of recent initiatives in the Family and Community Services, and Health and Aged Care portfolios targeted at encouraging men to access services, the complexity of issues and the isolation experienced by some men following family breakdown means that they are particularly vulnerable to, and at risk of, behaviour destructive to themselves or, sometimes, to other family members.

The Advisory Group considers that it would be of considerable benefit for some parents if personal counselling support were made available following the handing down of decisions about parenting arrangements. Counselling should be provided by appropriately accredited, community-based counsellors. It could be beneficial for some parents if independent personal counselling were available earlier in the court process.

Recommendation 15

15.1 That ongoing support for parents to resolve their family issues be enhanced by the promotion of non-adversarial decision making by service providers when they become aware of new difficulties.

15.2 That flexible community support services be available following the handing down of court decisions about parenting arrangements and to assist with future resolution of difficulties arising from changing family circumstances, acknowledging that some families may need these supports intermittently over an extended period.

15.3 That the role of the non-government sector in the provision of high-quality personal counselling be increased and ensure that counselling support is available at key points in families' contact with the system where emotional distress and the risk of conflict may be greatest.

15.4 That a readily accessible system, which does not require ongoing judicial involvement, be developed to assist parents to meet their responsibilities, particularly following parenting orders.

15.5 That the outcomes of other approaches currently being trialled be examined for their application more broadly, where they are found to be successful. These include the Contact Orders Pilot, the Contact Court project about to commence in the Family Court of Australia and new programs developed to support the clients of the Federal Magistrates Service.

15.6 That support for parents and children to maintain ongoing contact after separation be expanded as follows:

- a** children's contact services to be expanded to be accessible at an early stage of the separation and resourced to assist parents to self-manage contact in the future;
- b** national implementation of the principles and best practices identified in the Contact Orders Pilot evaluation through children's contact services; and
- c** innovative ways be developed to support contact when parents live some distance from each other.

15.7 That the amendments to the Family Law Act which came into effect at the end of 2000 be closely monitored to measure their effect on compliance with parenting orders.

Part Three Pathways

Part Three addresses the needs of families for stronger and clearer pathways through the family law system. A system with the functions outlined in Part Two would empower families through information and education. The assessment and referral functions would equip service providers with tools to help them explain options and guide people to the most appropriate and least adversarial pathway for managing the separation process. Three simplified pathways are described. However, it is important to note that in the real world life is not so straightforward.

3.1 Overview of the pathways

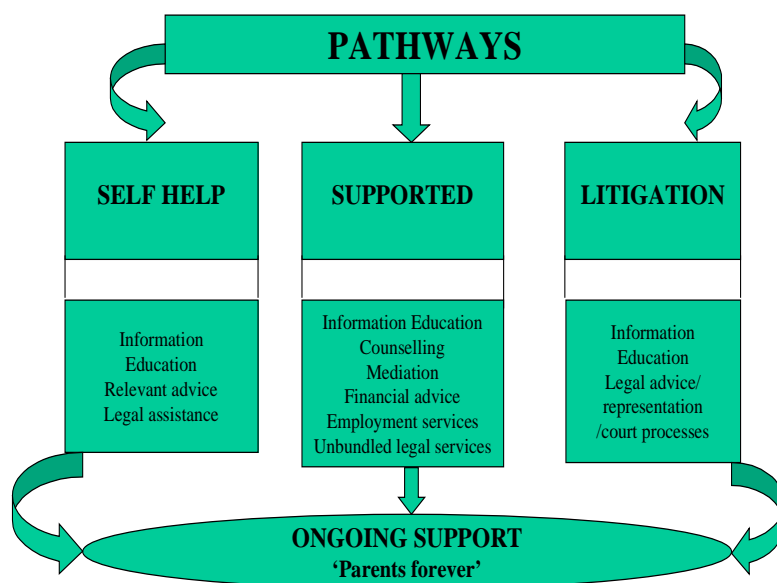
Three generic pathways through the family law system have been identified:

- 1 self-help
- 2 supported
- 3 litigation.

The integrated family law system would operate in a way that encourages and enables people to use the self-help and supported pathways whenever possible, in preference to the litigation pathway.

The self-help pathway would suit parents who have a relationship that allows them to make decisions about parenting with no or minimal outside help. The supported pathway would be needed by parents who are likely to experience difficulties but may, with appropriate support, manage their separation and parenting responsibilities. The litigation pathway may be the appropriate pathway for parents who are not able to reach agreement at all, and for families where a quick resolution on issues of violence, child abuse or abduction is needed. Development of the assessment and referral tools discussed in Part Two would refine our current understanding of the profile of parents who might use each of these pathways.

Comment [A2]: Need to add a description



Each pathway is further described by the types of services and interventions most likely to meet parents' needs.

Parents using the self-help pathway would be supported in their decision making about the best interests of their children by information and timely access to appropriate resources. They would decide whether or not they need legal advice or advice from other professionals.

Parents using the supported pathway would need services and interventions tailored to their particular circumstances. However, it is clear that each partner may be at a different stage of the separation process and may therefore need different sequences of interventions. For example, the partner who has been 'left' may need time and individual counselling before being in a position to participate in a primary dispute resolution process. Until parents with poor relationships (either interpersonal conflict or unresolved grief) have had an opportunity to resolve the relationship issues, they may be unable to exercise their capacity to develop and manage their own solutions.

The objective of both pathways is to provide support towards building the parents' capacity to self-manage their parenting responsibilities in the future.

For the relatively small group of separated parents who experience high-level conflict and have a very low capacity to manage their parenting responsibilities, the litigation pathway may be the most appropriate match. In addition to information, parents on this pathway may need legal advice, access to support services for some issues, legal representation, and support in negotiating legal and, particularly, court-related processes.

A full description of the three identified pathways follows, from the perspective of the client rather than the service provider. The pathways have, for the purposes of this report, been simplified. The exact steps a particular family may take would vary with each individual's needs; some steps may be taken simultaneously. Some families would move between pathways, for example, from the supported pathway to the self-help pathway or from the supported pathway to the litigation pathway, either as new circumstances arise or as they meet stumbling blocks which require specific help.

The integrated family law system would be child-inclusive, would have culturally and linguistically appropriate services and interventions, and would aim to ensure safety for all family members.

3.2 Self-help pathway

Parents with a relationship that allows them to make decisions about parenting with no or minimal outside help are most likely to elect or be guided to the self-help pathway.

With access to the right information and advice, parents would be better informed about how to put their children first, how to share their parenting responsibilities and how to make their own decisions. They would know what they need to find out and would have a high demand for information.

The new information resources described earlier, particularly the product that provides a guide to the whole system and the access to unbundled legal assistance, would be the key requirements for this group of consumers. Knowing how to find this and other relevant sources of information and advice would be important in maximising the use of self-help pathways. The community education function as described in the previous part is crucial in forming the foundations of the information and knowledge needed by these parents.

Consistent, system-wide information, available to each partner at the same time, would be a significant system improvement. Reducing the information gap between partners in this way has the potential to expand the number of families able to manage independently (that is, to expand the self-help group).

The case studies undertaken for the Advisory Group provided examples of families' experiences of self-help pathways in the current system. The following summaries illustrate the positive outcomes that can be achieved when there is access to information and advice.

One family's experience of the self-help pathway

Steve is 32 and was married to Janet for eight years. They have two children, Sally (7) and Peter (5). The children live equally with both parents, though the arrangement is flexible. Steve has had minimal involvement with the family law system. He and Janet have made all of their arrangements privately, and relied on outside sources for information purposes only. Steve contacted a lawyer through the Law Institute and this provided him with sufficient information about his rights and responsibilities to make private arrangements confidently. Steve also attended counselling with Janet at Relationships Australia, which assisted both parties to maintain open lines of communication throughout the separation. The defining feature of Steve's experience of separation is that he and Janet remain on good terms and have emphasised throughout the process that they want to do what is best for their children. Steve was also heavily influenced by his own experiences of the family law system as a child. Steve was satisfied with the services he did access, but felt that a little more legal advice may have assisted during the property settlement.¹⁰⁸

Another family's experience of the self-help pathway

Amanda is 38 years old and was married to Paul for fifteen years. They have three children, Matthew (10), Christopher (7), and Jasmine (5). The children live with their mother for six nights of the week and with their father for one night of the week, though the arrangement is flexible. Interestingly, in Amanda and Paul's separation it is the parents who move between houses, rather than the children. This arrangement was put in place in order to minimise the disruption for the children. Amanda and Paul also continue to share financial resources. Amanda has had minimal involvement with the family law system. She and Paul have made all of their arrangements privately, and relied on outside sources for information purposes only. Amanda has used several counselling services, both alone and with Paul. The defining feature of Amanda's experience of separation is that she and Paul remain on good terms and have emphasised throughout the process that they want to do what is best for their children. One service Amanda would have liked to have accessed but that was not available was counselling specifically directed towards children experiencing the separation and divorce of their parents.¹⁰⁹

While cooperation is a characteristic of families using this pathway, high emotions and some conflict are often evident, sometimes leading to lack of trust or confidence that the agreement will last. To provide a sense of security or clarity on the things that they agreed, some parents may opt to register their agreement as a parenting plan or seek a consent order as a 'safety net'. This step currently requires some form of external assistance or legal advice.

Registering a parenting plan in the court requires both partners to provide evidence either that they have had legal advice or that the plan has been developed with the assistance of an approved counsellor. The forms required to register the plan are long¹¹⁰ and complex for non-lawyers. Registration also has the effect of eliminating

108 Australian Institute of Family Studies, *Case studies transcripts*, 01b.

109 Australian Institute of Family Studies, *Case studies transcripts*, 03a.

110 Form 12A has nine pages.

flexibility because, once registered, a plan cannot be varied¹¹¹—it has to be revoked by a new agreement. Ideally, when people have reached agreement on their own and are simply seeking some added legal certainty for their agreement through this process, it should be easy enough for them to be able to manage the process on their own.

People should be able to get advice on the benefits and disadvantages of registration as well as what choices they have about securing the agreement reached, in addition to advice on the agreement itself, if desired.

The National Alternative Dispute Resolution Advisory Council and the Family Law Council have provided advice to the Attorney-General on parenting plans.¹¹² This advice concludes that parents should be encouraged to develop parenting plans to ensure that they address children's best interests, to minimise future conflict and to encourage them to take responsibility for their parenting arrangements, using the legal system as a last resort. The Advisory Group concurs with these conclusions. The advice recommends the repeal of the registration provisions and replacement with integration of parenting plans and consent orders as a package to be supported by information and education as well as service providers.

A self-help pathway would have the following features:

- 1 access to system-wide information from any service provider or the Internet;
- 2 check detailed information relevant to the particular circumstances with specific service providers or the Internet (for example child support formula, legal entitlements);
- 3 mix and match the families' options as needed (for example counselling for self and/or children);
- 4 develop an agreement (with or without third-party assistance or advice);
- 5 optionally register an agreement (or parts of an agreement) as a consent order or child support agreement.

Recommendation 16

That, to maximise use of the self-help pathway, information and education be readily available to enable parties to choose whether to adopt a parenting plan or court order to govern post-separation parenting arrangements.

3.3 Supported pathway

A large group of families who are likely to experience difficulties during their involvement with the family law system would, with appropriate support, manage their separation and parenting responsibilities. The aim of the supported pathway is to:

- engage both parents, recognising that they may be at different stages of the separation process; and

111 *Family Law Act 1975*, s. 63D.

112 Family Law Council and National Alternative Dispute Resolution Advisory Council, Letter of advice to the Attorney-General on parenting plans, Canberra, March 2000.

- enable as many families as possible to reach their own solutions without resort to litigation.

The characteristics that would indicate the services and interventions (and perhaps their sequencing) needed to support family decision making are the relationship between the parents and their capacity to meet ongoing parenting responsibilities.

Information about the system would be provided at the first point of contact, and would be followed up by information and advice specific to the particular family. For instance, one parent may need financial assistance as a priority and the other may need emotional support. Both would need information and advice about the full range of issues (legal, financial, emotional and parenting) as early as possible.

The first contact with the system would aim to engage both of them in the assessment and referral function described in Part Two, and this would guide them to the most appropriate steps to meet their needs. The way in which support is built to meet specific needs would vary from place to place, depending on local networks. Some services would be available from that provider; for others the family may be referred elsewhere.

The objective—to engage both parents in non-adversarial decision making—may require a series of interventions addressing their relationship (for example grief and loss) and parenting capacity (for example education about children’s needs) *before* parents are able to work together to reach agreement.

In other situations, parents might use specific services (for example parenting education focusing on children’s experience of separation) at the same time as they are participating in a mediation program.

Ongoing contact between children and parents is the issue in separated families which most requires the support of a working relationship and around which changing circumstances would need to be managed. There is therefore a particular need in the community for services that can support parents with ongoing contact responsibilities and help them develop innovative ways to continue contact when circumstances change, such as one parent moving away.¹¹³

One family’s experience of the supported pathway

Sara and Mark were married for nine years. They have two children, Nick (14) and Jessica (11). The children live with Sara and Mark has contact on alternate weekends. This arrangement has changed over time from a flexible system of at-will contact to a contact regime agreed to using the Family Court Counselling Service. These changes were as a result of increased levels of conflict between them, and Sara’s relocation. Mark has had a medium level of involvement with the family law system. Sara and Mark used the Family Court Counselling Service after their relationship became more conflictual and this proved to be a positive resource for Mark. Also, having the backing of the Family Court gave Mark greater certainty about his rights and responsibilities. Mark attended a free information session at a Melbourne law firm but did not employ a solicitor. Mark still feels that he does not have sufficient information about his rights and responsibilities and how the system works, both in relation to his children and child support. One service Mark would have liked to have accessed but that was not available was counselling specifically directed towards children experiencing

113 See Recommendations in Ongoing Support, Part Two.

the separation and divorce of their parents, as well as information for parents about how to talk to their children about separation.¹¹⁴

A supported pathway would have the following features:

- 1 access system-wide information from any service provider or the Internet;
- 2 face-to-face personal advice (legal, financial, parenting, emotional);
- 3 capacity-building interventions that focus on either:
 - a relationships, for example therapeutic counselling concerning loss;
 - b parenting, for example parenting education;
- 4 mediation to develop an agreement;
- 5 legal advice/check point;
- 6 optionally register an agreement (or parts of an agreement) as a consent order or child support agreement.

Moving between pathways

It may be that some families following Step 3 are able to continue on a self-help pathway. Again, for some families, it may become evident that litigation is required (for example, where violence or child abuse becomes known) or when mediation is unsuccessful. It cannot be assumed that any family would move through these steps in order and only once; for example, there may be several references to legal advice during the course of mediation.

Mediation–arbitration is an option that the Advisory Group suggests in Part Two could be developed and tested for its value within the Australian family law system. It lies somewhere between the supported pathway and litigation pathway because it is a mix of assistance to family decision-making and a decision by an independent third party. It may be useful where major decisions can be made but some minor decisions cause ongoing conflict.

Arbitration is another pathway that can be taken, but currently only in property disputes. It is an intervention that sits closer to litigation than support. The amendments to the Family Law Act in 2000 and the associated Regulations have now cleared the way for its greater use.

Some family lawyers manage their client's case through negotiation in the 'shadow' of litigation. This is an example of how a family may use both the supported pathway and the litigation pathway at the one time.

Recommendation 17

That service providers help families tailor a package of support to meet the needs of the particular family in deciding their own arrangements. Such packages should include access to information and networks of other services when the service provider cannot meet all the needs.

114 Australian Institute of Family Studies, *Case studies transcripts*, 04a.

3.4 Litigation pathway

Litigation, as broadly defined in Part Two,¹¹⁵ can be interwoven with the self-help or the supported pathways. The process of negotiation in the 'shadow of the law' can lead, for example, to legal representatives starting proceedings in a family court, in an attempt to bring the other party to the negotiating table or to use the primary dispute resolution services of the court. This use of this litigation step may serve a valuable purpose in bringing about the resolution of disputes.

There are cases where all attempts at resolution fail and, despite all the efforts of early intervention and support, parties are unable to resolve their differences. In these cases, litigation resulting in a court hearing would be a last resort. There are also a number of cases where judicial intervention is required, usually urgently, to ensure the safety of victims of violence, child abuse or child abduction.

There would always be many overlaps between the litigation pathway and the supported pathway. In cases where there is violence and litigation is essential, urgency would be needed to ensure safety. In these cases, clients would necessarily use the services provided on the two pathways simultaneously. Similarly, in those cases where litigation is used as a last resort, the support pathway would be extensively used by clients for services such as counselling and mediation as well as for legal advice.

Families involved in litigation in either of these situations would follow different pathways through the system. Whether litigation is used early or late in the process, it should be as inexpensive, efficient and straightforward for clients as possible. The creation of the Federal Magistrates Service has provided clients with a new option that is intended to be cheaper and faster than the Family Court of Australia in less complex cases.

Information about litigation pathways would be part of the package of information described in Part Two. This would include information on family violence, child abuse and services available to help in these cases. This information would address the needs of children, victims and perpetrators.

Legal practitioners need to provide information to demystify the process for clients. Clients need to understand very early such things as the reasons that court processes are being used, the likelihood of their case going before a judge, the time-frame for their case being finalised and the costs involved in litigious and non-litigious alternatives.

The second fundamental principle of the family law system is the priority for non-judicial processes for family law disputes. The system design set out in Parts One and Two would enable all families to fully explore the alternatives to litigation for parenting and property matters. Lawyers have a particularly important role to play in encouraging their clients to resolve their disputes using the courts as little as possible and to access community-based alternatives to litigation.

115 See Part Two: Service Intervention options.

In a recent study by the Justice Research Centre¹¹⁶ the majority of solicitors surveyed said that going to court was to facilitate settlement, either by accessing formalised negotiation procedures, or to force a reluctant party to move closer to resolution. The Solicitors' Family Law Association's Code of Practice referred to in Part Two states that solicitors should encourage their clients in a conciliatory rather than a litigious approach to resolving the dispute. Indeed, the Family Law Act requires legal practitioners to consider whether to advise clients about primary dispute resolution methods that could be used to resolve disputes.¹¹⁷

Litigation as a last resort

For some families, the conflict is so entrenched that no amount of information or supportive intervention will bring partners to a result agreeable to both.

For these people the litigation pathway should be speedy. Delay in reaching a determination may only heighten the conflict and make more difficult their chances of moving into a manageable, if not cooperative, ongoing parenting relationship after the decision has been handed down. Ongoing support should be available after the final order is made, given that at least one of the parents involved may not support the determination.

This is even more important if they have truly explored primary dispute resolution options without success. There is no value in referring these matters for further alternative interventions—a quick determination of the issues in dispute is needed. The Family Court of Australia has acknowledged that its past case-management practices have not sufficiently allowed for tailoring their services to the needs of individual families. As one of the innovations in the *Future Directions Committee Report*, the Family Court of Australia has introduced a case assessment conference.¹¹⁸ This conference determines, among other options, whether a case would benefit from fast-tracking to a hearing. Alternatively, a case might benefit from further efforts at dispute resolution. Ideally, the conference would screen for such issues as violence and child abuse, and whether a dispute is intractable. Case assessment should also result in cases where litigation is inappropriate being transferred back into the support/primary dispute resolution pathway.

At present self-represented litigants often find themselves in the litigation pathway, either because they want their case to come before a judge, or because they do not have information about alternatives. If their former partner is represented they may, in effect, receive support from that partner's legal representative. On the other hand, a self-represented litigant can make their former partner's case much more difficult or expensive, either purposefully or unwittingly.

Self-represented litigants in the litigation pathway would need support, particularly while preparing for, or actually appearing in, court. This support may effectively help both parties, even if only one is unrepresented, if it helps the unrepresented party to resolve issues more amicably. Unbundled legal services such as help with drafting documents, or information about courtroom procedures such as that provided by the

116 Rosemary Hunter, *Legal services in family law*, Law Foundation of NSW on behalf of the Justice Research Centre, Sydney, December 2000, p. xviii.

117 *Family Law Act 1975*, s. 14G.

118 Family Court of Australia, *Future Directions Committee report*, pp. 31–32.

Victorian Court Network are support services which are invaluable to these clients. Self-represented litigants would need to access various elements of the supported pathway as they move through litigation, and with appropriate support may find they can reach resolution with their former partners without last-resort litigation.

As it seems that self-represented litigants bring most of the contravention applications which are found to be unmeritorious, efforts need to be made to attract repeat litigants to a non-litigious intervention to meet their needs.¹¹⁹ A mediation–arbitration model may give better results for these people and may mean less court time being devoted to them.

The litigation pathway, where it is a last resort, would ideally have these features:

- 1 legal advice is sought;
- 2 litigation would begin only after all avenues to resolve the dispute have been explored, including the use of primary dispute resolution services;
- 3 filing an application in a court with family law jurisdiction. This may have occurred as part of the primary dispute resolution process but when primary dispute resolution has failed there are three options:
 - Family Court of Australia
 - Federal Magistrates Service
 - State Magistrates court.Clients would have a good understanding of which court is most appropriate for their matter;
- 4 final order; and
- 5 ongoing support to help with the implementation of the orders.

Litigation where there is an issue of family violence

Clearly, violence within families is an issue of concern for everyone.¹²⁰

Family violence and child abuse in the family law context are exceedingly complex problems which are emotionally charged for the clients, their families and professional staff. In Part One¹²¹ the Advisory Group noted that the family law system does not deal well with violence, and that the serious issues of family violence can sometimes become confused by the use of false allegations. The Advisory Group is mindful that allegations of violence should always be dealt with quickly, fairly and efficiently.

Service providers in the family law system have an important role to play in early intervention and prevention of violence. The assessment process in the integrated family law system would provide the opportunity for screening for violence at the first point of contact and with the first provision of service for the family. The family would

119 Rhoades, Graycar and Harrison, *The Family Law Reform Act 1995: The first three years*, p. 85.

120 Partnerships Against Domestic Violence Statement of Principles agreed by heads of Government in: *Partnerships Against Domestic Violence: First taskforce report 1998–99*, Commonwealth of Australia, Canberra, 1999. Available on the Internet: <http://www.padv.dpmc.gov.au/partprin.htm>.

121 See discussion at 1.7 Analysis of the system.

then be guided to the most appropriate pathway, which in most instances would be the supported pathway or the litigation pathway.

In the supported pathway, a number of specialised interventions may be needed for victims of family violence, perpetrators and children. For example, victims may need a safe house and counselling, perpetrators may seek counselling for anger management, and children may need counselling and protection during contact with the perpetrator. Some of these interventions may be court-ordered, as part of the litigation pathway.

The litigation pathway may be the first point of contact with the system for a family, for example when an apprehended violence order is sought by one parent. This early contact with the courts could be more effectively used if violence and parenting issues were considered together. This is discussed in more detail in the following section entitled 'Early resolution in State Magistrates' Courts'.

Where violence is an issue, safety for all family members must be the first priority. The perpetrator may be required by the police to leave the home, or the victim may be referred to a refuge. In most States, the police help the victim take legal action for a protection order.

Assessment at the first point of contact would assess the needs of the victim and their children, and refer them to the most appropriate service. In these cases, where violence is the primary issue, this would be part of the role of court staff or police. While their immediate needs relate to safety, many would also have to deal with residence and contact issues, and child support. They would be provided with appropriate information about these issues. Legal advice is necessary. Mediation would never be the automatic first choice intervention.

An application for a protection order, made to a magistrate in a local court, whether initiated urgently with the assistance of the police, or after the victim has sought legal advice, is usually the next step down the litigation pathway for the victim. The alleged perpetrator often finds that their first formal contact with the system is when they are served with either an interim ex parte protection order or an application for an order.

Whether or not this is the first point of contact with the system for the perpetrator, steps need be taken to engage them in the processes for resolving parenting matters. Provided that the safety of the victim can be assured, it is not essential that the balance of the family's needs be dealt with by litigation. With appropriate information and support it may be possible for many cases to be resolved without resort to a full judicial hearing. Some cases may be able to move from the litigation pathway to the support pathway at this stage. At the same time, the Advisory Group recognises that in many cases when there is violence the involvement of a judge would be necessary to protect the vulnerable parent, as well as the best interests of the children involved. Families need a high level of support at this stage and a coordinated multidisciplinary approach to these cases would best serve the needs of both parents and children.

The Advisory Group notes that the Family Court of Western Australia is piloting a program called Columbus, based on the Magellan Program used in child abuse cases but extended to cases involving family violence.¹²²

122 The Columbus Project is described in detail in Part One.

Early resolution in State Magistrates Courts

State magistrates have jurisdiction under the Family Law Act to make orders with respect to contact per se, and when they are making or varying apprehended violence orders.¹²³ It would be ideal, with the appropriate expertise on the part of the magistrate and the right assistance for the parties, if all related needs were dealt with on the one occasion, at least on an interim basis. This could be best managed if the parties are informed enough and capable of managing their own submissions, or have with them legal representatives instructed in both the family violence and family law issues. Experience suggests that, given the chaos and emotional upset of separation, it is not realistic to presume there can be a final resolution of all the issues on the first occasion. The real point is that all related issues can be dealt with together.

Gosford Local Court in NSW has implemented a policy concerning coordination of family law and violence matters. All but 10% of the family law matters for the Gosford region are handled by the Local Court as only the contested or complex matters must go to the Family Court of Australia in Sydney.¹²⁴ Where the same parties are involved in both a family law and an apprehended violence order matter, these are both listed at the Local Court on the same day. Emphasis is placed on coordinating the resolution of both matters by the court since the two are often interrelated. This policy provides greater convenience for all parties, including the victim, and encourages earlier and satisfactory resolution of both types of issues. Initiatives such as this merit consideration.

In Part One the Advisory Group noted that the family law system does not deal well with violence. A number of submissions and consultations raised concerns with the processes for obtaining apprehended violence orders in local courts (often made by consent), and the effects that the apprehended violence orders have on subsequent family law cases. This raises questions about the sufficiency of the process in the local courts, the link between the State and Federal jurisdictions and the level of inquiry in a family court into the best interests of children in cases when apprehended violence orders exist. The Advisory Group considered the concerns and concluded that:

- those who need apprehended violence orders should have ready access to them;
- where there is a dispute about an apprehended violence order, that dispute should be resolved quickly, fairly and efficiently;
- where an order is needed on the evidence, it should be made without delay, and where the application is brought without foundation it should be dismissed without delay;
- both parties should be properly represented, with legal aid if necessary, so they are better able to conduct contested hearings or reach a consent order based on good advice;
- family law orders should dovetail with apprehended violence orders, and people should not be shunted from court to court.

123 *Family Law Act 1975*, Part VII Division 11.

124 Described in more detail in: Office of the Status of Women, Research into good practice models to facilitate access to the civil and criminal justice system for people experiencing domestic and family violence.

There should never be a long delay between an initial interim order and the opportunity for people to be heard in court, and for the issues to be properly tested. If there is a long delay, the person against whom the order has been made has every reason to feel aggrieved. It is important that, when required, there is a hearing on the merits.

Many orders are made by consent. This is often appropriate and it may then be possible for parties to consider resolving their conflict by non-litigious means. Once the safety of the family members has been assured, it is important that opportunities be offered to reduce the conflict between them so that future cooperation can be made possible. These families should be able to access self-help and support for these purposes.

Sometimes it is not appropriate for orders to be made by consent. The alleged perpetrator may agree to orders because they cannot afford legal representation to explain the ramifications or dispute the allegations in a contested hearing. Victims sometimes agree to 'mutual restraining orders' for the same reasons, or because they are frightened of reprisals if they proceed. One or both parties may subsequently feel aggrieved that the case has not been heard on its merits, and may be concerned that the agreed orders could create a false impression.

The Advisory Group has heard how practices relating to apprehended violence orders vary from State to State, in particular the way in which the need for urgency is dealt through orders made ex parte. In some jurisdictions this order remains in place for some time and may result in a denial of contact for a considerable period, without the alleged perpetrator having had the opportunity to put their case. It is important in this sensitive area that all people involved have access to fair and equitable due process.

A number of models for handling apprehended violence orders are being piloted under the 'Partnerships Against Domestic Violence' initiatives.¹²⁵ The essence of these models involves establishing specialist teams and/or devoting specialist court time to domestic violence cases. Some of the models depend on close community networks and may not work as well in metropolitan areas; some depend on a locality having sufficient services to enable them to work in an integrated way, so may not be applicable to very small rural communities. Extending others of these models would require considerable injection of resources at State and Territory level to ensure that a coordinated team approach could function. Most would also considerably increase the workload of State magistrates' courts.

An example of a specialist court model is the Joondalup Family Violence Court, a two-year pilot based in Perth.¹²⁶ It is trialling a case management approach to family violence using a court that focuses exclusively on family violence issues, a fully integrated interagency approach, the provision of support services for victims of family violence, and programs for offenders. It is based on a criminal justice model of intervention in which the emphasis is on mandated attendance at education or treatment programs for offenders and safety for victims. The integrated model is considered to enhance the project's ability to deal with family violence in a holistic way. The specialised, designated staff is considered to be another critical component

125 Office of the Status of Women, p. 144 ff.

126 Office of the Status of Women, p. 73.

of the Joondalup model. The project is still in its early stages, with the critical case management element having begun in December 2000.

As previously mentioned, another issue raised with the Advisory Group is the use by State magistrates of the powers they have under Division 11 of Part VII of the Family Law Act to deal with violence, in the form of an application for an apprehended violence order and contact orders at the same time. Very few magistrates use these powers for a number of reasons including lack of knowledge about the powers, constraints on court time, and clients not having legal representation at the apprehended violence order hearing or not providing instructions to their lawyers on both the apprehended violence order and their family law issues.

The granting of apprehended violence orders and the use of Division 11 of Part VII of the Family Law Act are both areas where more effective use of the State courts could help create litigation pathways which do not compound the problems of family violence.

Access to legal advice and representation can be fundamental to solving some of the potential for grievance in the family violence area. Access to legal advice enables people who have experienced violence to more confidently present their case to a court. If a lawyer is acting for a person early it is more likely that the family law issues would be resolved at the same time as apprehended violence order issues. Both men and women are better served by being legally represented in apprehended violence order proceedings so that they only consent to orders which are appropriate, and are able to defend proceedings which should be defended.

The pathway where family violence is an issue would have the following features:

- 1 an allegation is made, usually to the police;
- 2 urgent orders are made for the safety of the victim and children if necessary;
- 3 legal advice is sought while the allegation is investigated;
- 4 resolution of the violence matters and related contact matters in a State magistrate's court if possible;
- 5 where appropriate, attempt resolution of other family law matters through primary dispute resolution; or
- 6 final resolution of the family's other issues in a federal court.

The timing of these steps would vary in different jurisdictions as mandatory time periods in State and Territory apprehended violence order proceedings differ.

Support would be needed for both parents at all stages, with a particular view to resolving matters independently of a court decision whenever this is appropriate. It may be possible to move entirely to the supported pathway in some cases, providing safety is assured. Given what is known about the impact of violence on children, it is important for the pathway to provide support for the children in the family.

Work with perpetrators of family violence is relatively new. Knowledge about program design, the needs of perpetrators, and appropriate responses is currently being gathered. Some programs are attempting to develop more integrated approaches that are responsive to the criminal legal system; however, there are fewer programs that are currently designed to work closely with the family law system. One program which

is attempting to address both criminal and family law issues is the Indigenous Men's Psychological Health project, being run by Yorgum Aboriginal Corporation in Perth and the South Western Region of Western Australia.

Many perpetrator programs in Australia are located in relationship and counselling services. Some implications of this approach have been criticised; however, it offers an opportunity to develop effective links between responses to perpetrators and family law issues. The non-confrontational environment is also more likely to result in voluntary take-up of a supported pathways approach, where appropriate to the victim's need.

As violence may not end with separation of the couple, it is vital that service providers offer appropriate support at later contact points (that is, after the first contact with the system) when they become aware of violence. It is also necessary that service providers remain alert to the way their ongoing interaction with families may increase or alleviate conflict and the risk of violence.

Recommendation 18

18.1 That responses to family violence be managed in accordance with the following principles:

- a** the safety of children and adults is paramount;
- b** where there is a dispute about an apprehended violence order, it should be resolved quickly and fairly;
- c** both applicant and respondent should have reasonable and timely access to legal assistance; and
- d** where there are children, parenting issues should generally be dealt with at the same time as the apprehended violence process, and in accordance with Division 11 of Part VII of the Family Law Act.

18.2 That nationally consistent protocols, supported by nationally consistent training about family violence and family breakdown issues, be introduced for practitioners (for example police, lawyers, court support, counsellors). When developing these for the indigenous community, specific cultural perspectives on family and community violence need to be considered, in line with the proposals and framework developed by the Ministerial Council on Aboriginal and Torres Strait Islander Affairs in September 1999.

18.3 That, in cases of family violence and child abuse, where primary dispute resolution is not appropriate, processes be developed to expedite access to a court determination.

18.4 That courts be properly resourced to handle family violence cases in an efficient and timely manner, particularly where family law issues are involved.

18.5 That research be undertaken on the impact of family violence orders and family violence proceedings on a family's pathway through the family law system, with particular reference to:

- a** the role of specialist family violence (domestic violence) courts in various jurisdictions;

- b** inconsistencies in practices between States and Territories; and
- c** the full circumstances surrounding a sample of applications for apprehended violence orders when there is a family law matter, to determine the responsiveness of the apprehended violence order process, and the appropriateness of its use.

18.6 That all magistrates be offered additional judicial education in family law, parenting issues and the effects on families of family violence.

18.7 That information for both parties in apprehended violence order proceedings be substantially improved and that they be provided with counselling or other support appropriate to their circumstances.

18.8 That perpetrator programs facilitate a holistic assessment of all needs of individual perpetrators at the time they start the program, with emphasis on family law issues.

Litigation where there are allegations of child abuse

When child abuse is alleged, there are presently few clear pathways for families trying to protect their children from further abuse. The family law system should respond appropriately and quickly to protect the vulnerable, particularly children. Access to counselling services and early intervention programs for parents and children, especially those who have been sexually abused, is essential to minimise the trauma to the children and increase support to the parents.

Most services for children at risk are at the State and Territory level. The Advisory Group has heard that in some jurisdictions, when proceedings are begun in a federal court with family law jurisdiction, the State child protection agencies frequently withdraw from investigating and pursuing allegations under State and Territory law.¹²⁷ The child protection authorities appear to take the view that the child's safety would be assured by one parent pursuing private action for parenting orders in the Family Court of Australia. Recent research suggests that cases involving child abuse allegations have become part of the Family Court of Australia's core business in children's matters. The court therefore needs to address the problem,¹²⁸ although if the alleged practice is common it raises questions about the appropriate forum for these cases, as well as resources. Child protection is the responsibility of State and Territory child welfare authorities that are funded to investigate allegations of child abuse. Federal family courts are not funded to manage this responsibility.¹²⁹

A serious impediment for families facing both child abuse and family law issues is the division of jurisdiction between the Commonwealth and States. Child protection is constitutionally a matter for the States and Territories, while parenting orders are typically sought in federal courts. The outcomes for children involved in matters before the Family Court of Australia where child abuse is alleged have in the past been very

127 New South Wales, Victoria and the Northern Territory; Patrick Parkinson, submission no. 35.

128 Thea Brown, Focusing on the child, paper presented at Third National Family Court Conference, Melbourne, 1998.

129 Family Law Council, *The best interests of the child? The interaction of public and private law in Australia*, Discussion paper no. 2, October 2000.

poor.¹³⁰ To ensure that the children who are involved do not suffer further abuse from divided responsibility, it is vital that the systems cooperate in the best interests of the children affected. Though family courts do not have the jurisdiction to make child protection orders, they do make parenting orders. The best interests of the children involved in these cases may be better served by the State authorities being able to more actively assist family courts in framing appropriate parenting orders in child protection cases.

Problems arising from this mismatch are very serious, in terms of continued exposure of children to risk, emotional distress and costs. Part of the solution is to develop a shared understanding of where each part of the system (that is, child protection and family courts) can best contribute, and a shared perspective of what constitutes a good outcome for children.

The Advisory Group notes that the Family Law Council is undertaking a detailed examination of this issue.¹³¹

Some progress has been made through the Magellan Project to manage cases in the family court when there are allegations of abuse in family law proceedings.¹³² This project has shown that early and specialised assistance to families where there is an allegation of child abuse against a parent alleviates many of the stresses currently experienced and that better pathways can be created for these cases by providing a specialised, intensive case management stream. The project also involves the agreement by the State child protection services to the immediate investigation of the abuse allegation in all cases notified in this way, and to the reporting back to the parents and the court within a fixed time period.

The Magellan procedure provides for cases to be handled by a multidisciplinary team of a judge, a registrar and a counsellor. The same professionals handle the case from start to end. Legal aid is provided for both parents, given the complex and difficult forensic issues and far-reaching consequences of serious allegations. At the first court day, a child protection report is made, which notifies the relevant State authority and triggers an early investigation, and a child representative is appointed with legal aid. At the second date, if the matter is not resolved, a full family report is ordered. During the course of the Magellan project it was found that, by using a multidisciplinary approach, the settlement rate of these cases was dramatically improved and those which needed judicial decisions were finalised much faster than previously.

Based on the Magellan project, the pathway for child abuse cases would have these features:

- 1 an allegation is made in the context of separation to a service provider or in the course of court proceedings;
- 2 a report is made to the child welfare authorities, which agree to an immediate investigation and report within a fixed time;
- 3 a child representative is appointed;

130 Thea Brown, *Focusing on the child*.

131 Family Law Council, *The best interests of the child? The interaction of public and private law in Australia*.

132 The Magellan Project has been piloted in the Melbourne and Dandenong Family Court of Australia registries and is presently being extended to the Brisbane registry.

- 4 to address potential risk to the child, an urgent interim order is sought, in either the State or federal court;
- 5 a case management approach deals with all the separation issues for the family;
- 6 determination of all issues through a final order; and
- 7 the child representative ensures that the family has access to ongoing support.

Recommendation 19

That cases involving allegations of child abuse require specialist judicial attention and close cooperation between federal and State organisations, as well as a range of other interventions, to minimise the risk to the child. In order to achieve this, the principles and practices underlying the Magellan Project should be extended to other locations.

The Advisory Group notes the newly established Columbus Project in the Family Court of Western Australia. It is modelled on Magellan but will also include family violence cases.

Child abduction

There are specific legislative procedures to deal with child abduction cases that do not need to be spelt out here. Abduction of a child by one parent brings the other parent into urgent contact with the system. In most circumstances these parents look for legal assistance. In these cases, it would still be important that the lawyer concerned consider other assistance that the family would need to deal with this very stressful situation. Relevant non-legal service providers should also be well informed about essential child abduction court procedures. Urgency is often vital to prevent a child being removed from the country.

Part Four Pathways and the needs of specific groups

The Advisory Group believes that each of the pathways described in Part Three should incorporate good practice in relation to people who may be particularly vulnerable during the process of separation because their special circumstances are not sufficiently taken into account.

This is not to downplay the emotional distress all family members may experience, but rather to highlight the need for tailoring service delivery to the needs of each family.

Each of the functions outlined in Part Two (education, information, assessment and referral, service intervention options and ongoing support) would need to have the same practice standards for vulnerable people. Recommendation 8 relates to the expansion of service intervention options for identified groups, and Recommendation 12 refers to the development and use of innovative practices and service delivery models nationally.

4.1 Vulnerable people

Children are one group of clients of the family law system that can be classed as particularly vulnerable. A literature review by the Advisory Group revealed that children at risk of adverse outcomes are:

- all children immediately after separation;
- children with a parent with a mental illness, intellectual disability or addiction;
- children who are victims of parental violence or abuse;
- children whose parental separation puts them at risk of violence or other abuse;
- children with disabilities; and
- children with a prior disadvantage, whose needs may not be met by mainstream services.

Similarly, adults most at risk of adverse outcomes following separation are:

- those whose partners have left;
- those who are victims of partner violence;
- those who are unemployed or not in the labour force;
- those living alone with young children;
- those without support from family or friends (for example migrants);
- those with a prior disadvantage such as those isolated by mental illness or disability.

Some people from culturally and linguistically diverse backgrounds, some indigenous families, people with low literacy and some people with disabilities or illnesses may have a prior disadvantage. Disadvantage could involve difficulty in understanding the legal situation, accessing appropriate services or participating in decision-making on an equal footing. Disadvantage can lead to perceptions that the current system is unfair (see Part One).

Access to services has also been canvassed (Part Two, 2.4 Service and Intervention Options) with particular reference to disadvantage resulting from location (for example families living in rural and regional Australia) and to services being culturally or linguistically insensitive.

Sensitivity to cultural and linguistic diversity

Submissions and consultations highlighted the need for appropriate, culturally sensitive services (for example, for Muslim families), wider use of interpreters (including provision of an interpreter for each partner in family law cases that involve violence), and improved access to legal aid and family violence services.

Provision of written information in languages other than English; community education through ethnic radio, press and outreach activities; cross-cultural awareness as part of training for service providers; multilingual telephone help lines (such as Victoria Legal Aid's Multilingual Telephone Information Service or Centrelink's Multilingual Call Centre); and employment of bilingual staff are all suggested as ways of improving access. In addition, particular communities (for example indigenous Australian communities, Muslim communities and Jewish communities) sought better integration of their law with Australian family law. The situation is often made more complex when each parent comes from different cultural or religious groups.

Support for people with a disability or illness

Some people may require more support in order to have their needs heard. Submissions by service providers referred to the increasing number of people with acute mental illness (particularly depression) and intellectual disability being involved in the family law system, often without adequate or any representation. Addiction has also been raised in this context. The submissions referred to clients of psychiatric services being forced into negotiations that are inappropriate for them because of the power imbalance with the other party.¹³³ Solutions offered included additional assistance for people with low literacy skills, specialist legal representation, education for professionals and development of protocols for service providers.

Service providers need to be skilled in recognising the presence and effect of mental illness or intellectual disability, and in delivering support which meets their clients' particular needs. They need to be aware of the often episodic nature of mental illness and be able to develop appropriate solutions in these circumstances. When these people need to be involved in court proceedings, whether as applicant or respondent, they need specialist representation and other support to help them effectively participate and understand the process and the outcomes.

People who suffer hearing impairment are also disadvantaged by their difficulty in obtaining interpreters and by the cost of these services.¹³⁴ All services in the family law system need to be accessible to people with a physical disability, for example services must be equipped with wheelchair access.

133 Analysis of submissions, p. 63.

134 Analysis of submissions, p. 63.

Support for rural and regional Australians

A number of issues specific to Australians living in rural and regional areas were raised, particularly the shortage of non-adversarial services (counselling, mediation and contact services), and the added emotional and financial strain of travelling, sometimes long distances, to access services (including courts). Some saw the pathways as being very limited, often starting with police and magistrates courts as the first contact points because of violence in the family.

Privacy is an added difficulty for people in small communities.

Solutions involved the expansion of non-adversarial dispute resolution services and legal services in the local area. Where court processes were needed, solutions ranged from using local courts to manage family law disputes, through expanding the number of Family Court of Australia or Federal Magistrates Service outlets, to providing financial support for families to attend metropolitan or regional centres.

Pilot programs for at-risk groups and collaborative models of service delivery have been discussed earlier in this report (see Part Two). Innovative service delivery in locations where the population is insufficient to support services for separating families can be effected through local networking and linkages to services in other locations. An example is the Family Law Hotline, currently being trialled for 12 months, which when fully operational will provide a seamless transfer to a general legal advice referral service on a no-cost basis, for people living in rural, regional or remote locations who do not have access to existing telephone legal advice services.

Recommendation 20

20.1 That good practice in relation to the special circumstances that affect individuals be actively promoted to all service providers.

20.2 That demonstration projects be designed and evaluated to determine good practice in areas and/or services where the particular needs of at-risk groups have not yet been addressed.

In order to give due weight to the needs of children and to the needs of indigenous families, the generic pathways are now described from each of these perspectives.

4.2 Children's perspective

Children whose parents come into contact with the family law system through separation and divorce are often overlooked and marginalised. Their status in the legal system is not always clear and varies from one part of the system to another.

It is important to consider the long-term impact of separation on children. Some current research (mostly from overseas) indicates that unresolved conflict between the parents is more damaging to children than the divorce itself. Actions that address this and effectively buffer children against the trauma of adult conflict are essential to children's long-term wellbeing.¹³⁵

135 Attorney-General's Department, *Child inclusive practice in family and child counselling and family and child mediation: Executive summary*, Report by Strategic Partners to Legal Aid and Family Services Branch of the Attorney General's Department, December 1998.

Children have a right to be heard and have their views taken into account regarding decisions that will affect their lives.¹³⁶ Clearly, the best interests of the child can be best considered if the children's voices are heard. This is not always possible, as the children may not wish to express their views or may be too young. Except where it would be contrary to the best interests of the child, children have a right of contact on a regular basis with both parents and with other people significant to their care, welfare and development. In many families, and in many cultures, children will want ongoing contact with their grandparents. In addition, grandparents may be able to provide some stability. Submissions have referred to grandparents' sense of loss following separation.¹³⁷

Providing services for children as if they were clients in all parts of the family law system would significantly improve outcomes for families.

When my parents split up, I thought it was my fault and I needed someone to talk to. The stuff I had inside would have hurt mum and dad—it was good to talk in private.¹³⁸

Some work has already started on child-inclusive practices and services specifically for children. Recommendations have been made elsewhere in this report about expanding these (see Part Two). The ways to involve children would obviously vary with their age and maturity and the circumstances of the family.

In the self-help pathway, children would be included through their parents' actions in providing:

- age-appropriate information;
- opportunities to talk with either parent or other significant family members;
- suggestions about who else might help (for example, Kids Help Line¹³⁹);

and through parents seeking help so they can explain what is happening and respond to children's concerns.

Well, you can say all the sort of things you can say to your kids about how it's not your fault, and Mum and Dad love you and all that sort of stuff, but it's now only in retrospect I don't think that was made enough. And I think maybe someone with professional advice could have given us not only just the words to say, but maybe some activity or some sort of form of action to back up the words and whatever, I'm just guessing, that maybe that's what they would do, but I suspect, in retrospect, we would have ... everyone would have benefited from some early counselling and assistance.¹⁴⁰

In the supported pathway, children would be included as above but may also need specific services tailored to their needs.

136 United Nations Convention on the Rights of the Child, Article 12.

137 Council on the Ageing, submission no. 256.

138 Attorney-General's Department, *Child inclusive practice in family and child counselling and family and child mediation*, Report by Strategic Partners to Legal Aid and Family Services Branch, Attorney-General's Department, Canberra, 1998.

139 Kids Help Line, telephone 1800 55 1800.

140 Australian Institute of Family Studies, *Case studies transcripts*, 04a.

One package might include:

- age-appropriate information provided by parents;
- direct consultation as part of the mediation process, both in the community and in the court; and
- counselling for the children.

Another package might provide:

- age-appropriate information;
- direct support (for example counselling or debriefing) at the contact service; and
- feedback to parents and support for parents to hear the child's viewpoint.

Where parents have difficulties due to disability, illness or addiction it may be appropriate for the children to have an independent person representing their interests. Such a person should be highly skilled in child development, communication, law and family dynamics.

In the litigation pathway, children would be given opportunities at each stage of the process to be heard and to receive explanations about what is happening and when they will be told the outcomes. When cases involve child abuse or family violence, new pathways based on the good-practice findings from the Magellan and Columbus projects would be available for children.

Support might include information, direct services such as counselling, or debriefing about the process and representation.

One of the difficulties in guiding the family law system to become more child-centred is the lack of clarity surrounding the role of the child representative. There have been a number of major reports that have recommended significant changes to the arrangements for child representatives. The most important of these are the Family Law Council's report *Involving and Representing Children in Family Law*¹⁴¹ and the joint report from the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission entitled *Seen and Heard: Priority for Children in the Legal Process*.¹⁴²

Both reports considered the use of child representatives in family law and identified similar issues in relation to the manner in which a court can appoint child representatives. The reports also identified a number of issues concerning the role and activities to be undertaken by child representatives. In particular, the report by the Family Law Council referred specifically to three negative features of the current system:¹⁴³

141 Family Law Council, *Involving and representing children in family law: A report to the Attorney-General*, Family Law Council, Canberra, 1996.

142 Australian Law Reform Commission, *Seen and heard: Priority for children in the legal process*, Report no. 84 of the Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, AGPS, Canberra, 1997.

143 Family Law Council, *Involving and representing children in family law: A report to the Attorney-General*, pp. 31–32.

- It is primarily designed to meet the legal needs of the child. It does not adequately acknowledge, or satisfactorily cater for, the wider social and other needs of the child.
- It can, and often does, disrupt the care and assistance that is being provided to the child and their family by professionals, and agencies whose services are wider than family law.
- In practice the processes of the court are seen as being largely distinct from other processes in which the child and their family is involved and the child's case is seen predominantly from the court's perspective.

Both reports make broad-ranging recommendations for reform in relation to child representatives. The suggested reforms range from the greater involvement of children in court proceedings even when a child's representative has not been appointed, to a fundamental reappraisal of the role of the child's representative.

In these circumstances it is timely that the Government give consideration to the need for legislative change to this important area of the law and to ensure that adequate funding is available to support effective implementation of that change.

Recommendation 21

That the development of clearly defined roles for, and responsibilities of, child representatives be given urgent priority, with adequate funding allocated to support implementation.

4.3 Indigenous families' perspective

In the integrated family law system, service providers would be much better informed about customary lore and how family law processes can accommodate the relevant aspects, including child-rearing responsibilities in the wider indigenous family.

The Advisory Group also recognises the unique position of indigenous Australians when interacting with the family law system. Historically, indigenous families have responded to the cultural inappropriateness of Australian family law by avoiding the court and dealing with family disputes informally, or under traditional lore.

Customary lore, community negotiation/development and empowerment are fundamental in any interaction with indigenous Australians and the family law system. The *Bringing Them Home* report by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families¹⁴⁴ and the Australian Law Reform Commission report on Indigenous Customary Laws¹⁴⁵ has identified such principles in relation to the recognition of traditional child-rearing practices. The Advisory Group has attempted to enshrine in each of the recommendations these cultural principles.

144 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, *Bringing them home*, Human Rights and Equal Opportunity Commission, Sydney, 1997.

145 Australian Law Reform Commission, *The recognition of Aboriginal customary laws*, AGPS, Canberra, 1986.

In working with indigenous people, best practice occurs when programs and initiatives are developed, owned and implemented by local indigenous communities. Indeed, the Council of Australian Governments in its Aboriginal reconciliation communiqué¹⁴⁶ said:

Drawing on the lessons of the mixed success of substantial past efforts to address indigenous disadvantage, the Council committed itself to an approach based on partnerships and shared responsibilities with indigenous communities, program flexibility and coordination between government agencies, with a focus on local communities and outcomes.

It agreed priority actions in three areas:

- investing in community leadership initiatives;
- reviewing and re-engineering programs and services to ensure that they deliver practical measures that support families, children and young people. In particular, Governments agreed to look at measures for tackling family violence, drug and alcohol dependency, and other symptoms of community dysfunction; and
- forging greater links between the business sector and indigenous communities to help promote economic independence.

Key operating principles developed by the New South Wales Indigenous Justice Advisory Council¹⁴⁷ follow:

- that Government accepts that indigenous people know their own problems and issues and that indigenous people are best situated to solve those problems;
- recognising that dysfunctionality in indigenous communities has a set of deep causes, one being the need to redress the impact of colonisation and the destruction of spiritual and cultural identity;
- we develop initiatives within a whole-of-government, whole-of-community, whole-of-family context;
- we recognise the importance of upholding the rights of children and young people and support them in addressing dysfunctionality; and
- we adopt holistic approaches to problems, enabling the implementation of a range of different concurrent activities, and are flexible enough to meet the specific and emerging needs of local communities.

At present the Family Law Act¹⁴⁸ does not explicitly recognise child-rearing obligations or parenting responsibilities of family members other than parents. Meaningful consideration needs to be given to amending the Family Law Act to incorporate indigenous child-rearing practices. The Family Law Act needs to offer guidance as to the importance placed on a child's cultural identity. This is imperative when determining the best interests of indigenous children.

146 Council of Australian Governments Meeting, *Edited communiqué in respect of reconciliation*, Canberra, 3 November 2000.

147 Key principles for consideration for the Premiers Council on Crime Prevention in improving crime prevention outcomes with Aboriginal communities, developed by the New South Wales Justice Advisory Council, November 2000.

148 *Family Law Act 1975*, s. 61C(1).

Recommendation 22

That the Family Law Act be amended so that:

- a** section 61 should acknowledge unique kinship obligations and child-rearing practices of indigenous culture;
- b** section 60B(2) (which relates to principles underlying a child's right to adequate and proper parenting) should include a new paragraph stating that children of indigenous origins have a right, in community with other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language; and
- c** in section 68F(2)(f) the phrase 'any need' should be replaced by 'the need of every indigenous child'.

There is also some concern that while the needs of indigenous people living in rural and remote communities are recognised, indigenous people living in urban communities may incorrectly be assumed to conform to the wider community's interaction with the family law system.

Services which currently employ indigenous staff, such as the Indigenous Consultants in the Family Court of Australia, and services specifically for indigenous families (for example Aboriginal legal centres) are more likely to attract indigenous clients than others. As a result, the capacity of other services to help indigenous clients is limited.

The experience of the Family Court of Australia in developing appropriate services for Aboriginal and Torres Strait Islander communities through consultation provides a model for how other service providers in the system might proceed.

The Family Court over the past six years has put in place a range of programs designed to ensure that the Court's services are accessible to indigenous peoples. The Court conducted an extensive consultative process with indigenous community groups, agencies and individuals, and one of the significant outcomes of the consultation process was the establishment of six indigenous workers, called 'Family Consultants', based in Darwin, Alice Springs and Cairns. As well, each registry of the Family Court has the responsibility to establish local networks with the appropriate indigenous communities and agencies in their area to ensure that their registry is providing services in a manner that is appropriate for indigenous clients. The Court has been explicit in stating that the programs in place are not designed to replace or undermine in any way resolution processes that may reside within the indigenous communities themselves to assist with family breakdown. Rather, the programs are to ensure that, if an indigenous person chooses or is required to attend the Family Court, there are no barriers to their accessing the services on the same terms as other members of the Australian community.

In the self-help pathway, support for family and community decision making would be improved by the provision of culturally appropriate information.

In the supported pathway, services would be made more culturally appropriate through the employment of indigenous staff, cross-cultural education and wider availability of interpreters. Consideration of new services and interventions tailored specifically for indigenous families (for example narrative therapy and indigenous family law conferencing) needs to be ongoing.

When litigation is appropriate, the community obligations of indigenous peoples would be fully considered in arriving at residency and custody decisions.

As an alternative to litigation, a new pathway of indigenous family law conferencing needs to be developed, based on circle sentencing in criminal jurisdiction, the New South Wales.

Recommendation 23

23.1 That culturally appropriate service delivery be expanded through:

- a** all professionals of the Family Court of Australia (including counsellors, registrars and judges) and service providers involved in indigenous parenting issues receiving ongoing bicultural education. This education should include the history and effects of forcible removal of children and indigenous cultural values, particularly those related to child-rearing. Competency standards also need to be developed;
- b** development of an indigenous employment strategy in courts with family law jurisdiction. This would include retention and expansion of the Indigenous Consultant positions in the Family Court of Australia;
- c** provision of interpreters particularly, but not only, in courts; and
- d** sponsoring the establishment of local-level indigenous community networks, where local expertise and knowledge can be shared with non-indigenous service providers.

23.2 That new service types be developed and tested, in partnership with indigenous communities. Two interventions tailored specifically for indigenous families—narrative therapy and indigenous family law conferencing—need assessment for their applicability to family dispute resolution and as alternatives to litigation.

23.3 That a database be created to collect information about indigenous family law cases. This would require identification of indigenous cases and would facilitate research into the way customary lore is taken into account in determining the best interests of children.

23.4 That national standards for indigenous children be in accordance with the recommendations from the *Bringing Them Home* report.

23.5 That programs and initiatives be developed, owned and implemented by local indigenous communities, to help ensure best practice in working with indigenous people.

Part Five Managing the integrated family law system

The establishment of the Family Law Pathways Advisory Group has been an important first step in grappling with the systemic problems facing families experiencing separation. This part of the report examines how the process can be continued, to ensure long-lasting reforms and a fully integrated system that meets the needs of separating families.

5.1 Research

Social expectations and experiences of families are continuously changing. A family law system that can respond to these changes and remain relevant to the families who look to it for assistance must be underpinned by a commitment to ongoing research and evidence-based development of policies.

During the process of developing this report, the Advisory Group has become aware of the difficulties arising from the lack of Australian-based research, and the expectations created in commissioning research.

Australia leads the world in the family law policy area. The nation has confronted sociolegal policy issues that other countries have avoided. Many of the issues faced today are not yet experienced in other countries because they are still grappling with ones dealt with in Australia a long time ago. The adoption of no-fault divorce and establishment of a specialised family court, together with associated service development, and an administrative child support scheme, have moved the process towards a different set of issues which have not yet emerged elsewhere. Research is needed to identify solutions to new problems that others have not yet solved.

In particular, research which takes account of the special peculiarities of Australia's sociolegal climate needs to be undertaken. Australian society is unique because it is made up of an indigenous population, a diverse colonial migrant population, a diverse post-war migrant population, and many new and recent migrant groups. Australia has an extremely dispersed population, some of whom live in very remote locations. This is all the more complex because Australia has a constitutional framework in which power is shared between the States and the Commonwealth, producing particular problems in family law.

If this report is adopted the future could deliver a newly integrated national family law service system that is unique in the world. Thus a specific body of evidence-based research is required to underpin the development of future policies and practices. In the absence of systematic research, anecdotes and overseas cases, which may apply to a very small number of consumers, are often cited as evidence of system-wide experience.

The Advisory Group believes that a comprehensive, system-wide research agenda needs to be developed. Such an agenda should complement the work already completed or planned (such as the Australian Institute of Family Studies Research Plan 1999–2001), and should be developed with input from key players.

A number of new research areas have been identified by the Advisory Group. These areas are diverse and include the needs of parents in the family law system who have never lived together (a small but growing group); the needs of parents with intellectual

disability, mental illness or drug or alcohol dependence; the prevalence of tactical apprehended violence orders; and the monitoring of the impacts of legislative changes, among others. Data collections used in research activity should record ethnic indicators (including indigenous status) in order to include people from culturally and linguistically diverse backgrounds.

To help the development of a comprehensive agenda the Advisory Group would like to nominate the following areas as having priority:

- the effects of divorce and separation on children in Australia; and
- investigation of the circumstances and use of apprehended violence orders (see Recommendation 18 for further detail).

In the longer term, the Advisory Group would like to see the following areas included:

- strategies that support men to be active fathers;
- the relationship between work and separation;
- issues of perceived bias, including bias against males, females, parents from diverse cultural and linguistic backgrounds, and single-sex partners;
- best practice service models for families with a history of violence;
- the needs of parents in the family law system who have never lived together;
- the relationship between family law and Aboriginal customary lore;
- relative legal costs of separation in the different types of disputes;
- differences in outcomes for men, women and children when primary dispute resolution or the courts are used;
- the needs of parents with intellectual disability, mental illness, or drug or alcohol addiction; and
- the effects of extended family networks, including grandparents, on the best interests of children following separation.

National coordination in the development of the brief for meeting these research needs and commissioning research projects should be a priority.

Various recommendations in this report would also require some research activity. For instance, the development of the education and information strategies and the development of the uniform assessment tool.

Recommendation 24

That a comprehensive research strategy be developed recognising the unique characteristics of Australia's social, geographic and constitutional environment to:

- a** monitor and evaluate the future system;
- b** develop a coherent national research agenda in family law and separation issues; and
- c** target specific high-priority issues.

5.2 Legislation and policy

Few 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 that it has set out are consistently reflected by all the relevant Acts. For example, does the Social Security Act effectively encourage shared parental responsibility? Are financial incentives in child support or family payments an appropriate way to address lack of contact with non-resident parents?¹⁴⁹

Part One points to a lack of policy coordination. Amendments to the legislation in one part of the system are often made without a full understanding of the impact on other parts of the system, for example, many have predicted increased litigation from recent changes to the Child Support Scheme. Another example is the way that relevant legislation deals differently with the issue of shared care. It is almost inevitable that lack of collaboration will bring about inconsistencies between various pieces of legislation or unintended consequences in related areas.

For future legislative developments, the Advisory Group considers that the Government should examine the barriers to open and frank consultation that exist within current policy development practices. This would ensure that future policies remain consistent with the system's fundamental principles and carefully consider the effects of any change on individuals and families. Such mechanisms should also ensure that the impact of proposed legislative amendments in one part of the system on another be fully considered.

Recommendation 25

That a review of all current legislation which relates to the family law system, including the Family Law Act, the Child Support Acts and the Social Security Act, be undertaken to identify amendments required to achieve consistency in their operation.

5.3 Funding the integrated family law system

The current family law system, as defined by this report, has neither functioned nor been designed as a system. The way Governments have allocated funding to it has not been based on any comprehensive system-wide framework. Funding is allocated according to identified needs within certain areas of responsibility. Each area makes its own bid for funding accordingly.

Given the existing fragmentation of the system, the overlap of certain family law-related functions with others, and the division of responsibilities across Commonwealth and State lines, it is impossible to build an accurate and well-substantiated picture of the balance of past government outlays on the family law system.

The Commonwealth provides funding to the Family Court of Australia, the Federal Magistrates Service, the Family Court of Western Australia, the Child Support

149 Several submissions made this point, among them submissions from the Australian Council of Social Service, Family Court of Australia and Family Court of Western Australia.

Agency,¹⁵⁰ Centrelink and its family support payments, the Family Relationships Services Program, family law legal aid services and a range of universal services available to all families, such as child care. State and Territory Governments fund a wide range of family and community services, including those in the areas of child protection and responses to family violence. The Commonwealth also funds some family violence responses through the Partnerships Against Domestic Violence initiatives. Legal aid commissions also receive funding from State Governments, which may cover family violence cases. Centrelink's infrastructure supports a range of functions not related to separating families. The jurisdiction of the Federal Magistrates Service is not confined to family law.

However, by focusing on some specific elements of the current system, a picture of the current balance of Commonwealth funding between information and advice, early intervention, primary dispute resolution and litigation is discernible.

The following table sets out some information on Commonwealth government outlays. This was as far as the Advisory Group was able to extend its research in this area, given the time available and the complexity of developing a more comprehensive picture. The figures are primarily extracted from Portfolio Budget Statements for the 2000–01 financial year but, as there are a number of different effects on the actual funding of services, the Portfolio Budget Statement figures have been interpreted where necessary. The numbers are not precise but indicate some relativity. The figures provided do not necessarily relate to directly comparable functions, the footnotes explain the content.

Function	Commonwealth funding
Information and advice ¹⁵¹	\$4 million
Legal assistance (legal aid commissions and community legal services) ¹⁵²	\$106 million
Early intervention (Family Relationships Services Program) ¹⁵³	\$22.6 million
Primary dispute resolution ¹⁵⁴	\$65.4 million ¹⁵⁵
Litigation in the Family Courts and Federal Magistrates Service ¹⁵⁶	\$73.3 million

150 The Child Support Agency received \$198m to provide services to 1.1 million clients, which resulted in the transfer of \$1.4 billion in child support in 1999–2000.

151 Family Court of Australia (\$4m). This figure does not include expenditure of service providers in the system on this function.

152 Legal aid commissions \$93 m (estimated 85% of total Commonwealth funding); community legal services \$13m (estimated 50% of total Commonwealth funding).

153 The Family Relationships Services Program includes counselling about family relationships, education, adolescent mediation and family therapy, family skills training, men's services and financial counselling.

154 Family Court of Australia (\$48.4m), Family Relationships Services Program (\$16m), plus a proportion of legal aid commissions' funding relevant to dispute resolution services.

155 Recent changes to services provided by the Family Court of Australia have not been taken into account.

156 Family Court of Australia and Family Court of Western Australia: \$62m (the figure for the Family Court of Western Australia's funding through the Commonwealth Attorney-General's Department

This report has made recommendations for a new framework for the family law system with a focus on supporting more parents to manage their own post-separation arrangements. This would be partially facilitated by much greater access to information and advice. The framework also requires the system to deliver a wide range of support in a wide range of situations, linked by common assessment and referral practices. This is to ensure that the system would, at every opportunity, help people reach agreement on their separation arrangements without court intervention.

Funding priorities under this new framework would need to focus on the development of comprehensive information packages and delivery mechanisms as recommended, with an emphasis on early assistance, which would help parents reach agreement.

Funding parameters based on the framework outlined in this report should result in the priority for new funding being given to supporting the preferred pathways of self-help and support. This is likely to be achieved most effectively in the areas of education, information, and assessment and referral to early intervention, as well as ongoing support.

The Advisory Group also recommends adequate resourcing for legal aid services and courts handling family violence matters in recognition that there remains an essential role for legal advice and litigation (see Recommendation 9).

Recommendation 26

That funding decisions for the family law system be based on the framework outlined in this report. In particular, new funding should be directed towards education, information, early assessment, and referral and intervention services that support family decision-making.

5.4 Improving coordination within the family law system

In submissions and consultations there have been many calls for coordination of the various elements of the family law system. Many have suggested a one-stop shop.

The Advisory Group recommends an approach that places coordination within the performance of the system's key functions. The different outcomes to be achieved from a coordination framework require a response that combines a range of initiatives. There is no single answer. This approach also requires a mechanism for ensuring coordination across all the service providers and over time.

There are a variety of ways to achieve a coordinated family law system. The options appear to be:

- developing a new coordination structure that would formally reinforce linkages and drive systemic change. The need to provide effective leadership and change management suggests that such a structure should operate on both a national and a local level;
- augmenting existing networks may involve the enhancement of national, State and local consultative forums, which often include a cross-section of service providers. Consultation and community development specifically around family

portfolio. It is not clear how much of this might be for primary dispute resolution); Federal Magistrates Service excludes transfer from Federal Court.

law issues, replicating and building on the collaborative arrangements that have supported the implementation of the Magellan Project, for example, would be valuable;

- providing a catalyst for the formation of networks. Implementing the Report's recommendations might provide opportunities to create new common interests and networks, for example through sector development activities or around the promotion of integrated information products. It would be valuable to focus on areas where there is an absence of existing networks; and
- setting up protocols between agencies and/or contractual 'incentives' to network and refer clients. These could facilitate engagement between service providers, information sharing and change management. Protocols and funding contracts would specify interagency cooperation and interconnection, while addressing referral and case management needs. Interagency protocols are likely to be vital in an integrated system, whatever model of coordination is adopted.

In reality, it is difficult to conceive of thorough and lasting coordination of the family law system without all of these strategies playing a part.

Actions needing national coordination

There is a whole set of developmental actions that could be undertaken or overlooked at a national level to implement the recommendations in this report and facilitate consistency and coordination.

These include the development of:

- community education strategies;
- professional education strategies;
- consistent information products and delivery mechanisms (including development of mechanisms to clear products and maintain currency of information);
- a uniform assessment tool and a strategy to promote the benefits of its use;
- demonstration projects or pilots to be auspiced and evaluated (including a process for recommending wider implementation of successful projects);
- system-wide training modules, for delivery by training institutions and other local mechanisms;
- comprehensive interdisciplinary research strategies and proposals;
- good practice guidance, or fieldwork development. This may include contributing to the development of quality assurance mechanisms;
- functional networks among service providers, both nationally and locally; and
- ways to monitor system performance.

The output from these activities would inform policy makers, legislators, practitioners and families at the centre of the system.

A proposed next step: taskforce

Change will not occur overnight. However, given the need to urgently address shortcomings in the current system, the Advisory Group believes a short-term taskforce should be charged with the responsibility for finding ways to:

- 1 implement the following high-priority recommendations:
 - community education;
 - professional education;
 - information;
 - assessment and referral—a uniform tool, system-wide training materials and strategies for delivery;
 - demonstration projects; and
 - research strategy;
- 2 provide leadership in building effective linkages across the system; and
- 3 ensure that practical and sustainable approaches to the longer term coordination of the system are set up to:
 - drive coordination and cooperation at regional, State and national levels;
 - monitor achievements;
 - identify and act on emerging issues; and
 - promote an ongoing partnership approach to problem solving in the system.

This taskforce should include all relevant government agencies and continue to draw on the expertise of non-government representatives.

The Advisory Group also believes that there is commitment from Members to respond practically to the recommendations in this report, by taking appropriate action in their own agencies and networks.

Coordination in the longer term

The Advisory Group considers that a practical and sustainable approach to longer term coordination of the family law system will require regional and national activity.

Regional coordination

Partnership approaches between local service providers, both government and non-government, to meet the needs of the particular region offer a way forward.

Each local partnership could be sponsored by one agency (which might vary, depending on the local environment), which would then be responsible for leading implementation and evaluation of change locally. Inclusion of all service providers would provide opportunities for each agency to understand others' roles and build collaborative approaches to meeting the needs of local families. Among other agencies with existing regional networks, legal aid commissions are well-placed to play a pivotal role in developing and supporting local partnerships.

The partnership would maintain links with existing networks and be a catalyst for promoting broader cross-agency collaboration.

Tools and supports developed nationally could be tested and refined, and local outcomes could inform further development and dissemination of good practice.

The facility for indigenous communities to develop their own solutions should be part of the approach to forming the regional partnership.

National coordination

At the national level, there would be a need to build national working relationships between key players, monitor system-wide achievements and respond to emerging issues.

These functions could be sponsored and located in an existing Commonwealth government department. Those exercising the coordination function should have a brief to be innovative and entrepreneurial.

State government liaison

This could be confined to key government agency officials meeting perhaps two or three times a year. This would allow State-level policy and coordination interests to be raised in a formal setting and commit members to cross-jurisdictional collaboration and dialogue. It is expected that these mechanisms would from time to time involve State government departments responsible for family services, child welfare, education, police, and State and Territory magistrates. State and Territory offices of the Department of Family and Community Services may be able to support this element.

Recommendation 27

That a short-term, cross-agency taskforce be established to:

- a** ensure action is taken on the high-priority recommendations of this report, including mechanisms to implement them;
- b** lead the building of effective linkages across all aspects of the family law system so that it works to help separated families resolve their difficulties; and
- c** ensure that practical and sustainable approaches are put in place for the medium and longer term, and recommendations are made to Ministers to:
 - drive coordination and cooperation at the regional, State and national levels;
 - monitor achievements; and
 - identify and act on emerging issues and promote an ongoing partnership approach to problem solving in the family law system.

This taskforce should be underpinned by appropriately integrated working arrangements within and between the portfolios responsible for the family law system, including the areas of program management and funding practices.

5.5 Commonwealth–State division of responsibility

While, historically, the States and Territories have had responsibility for child protection and violence, the reality now is that child abuse and family violence are core business of the Family Court of Australia. The Court has appropriately developed

a special approach to dealing with child abuse cases through the Magellan Project in Victoria. However, the Family Court cannot achieve these improvements on its own. The successful implementation of the project in all other jurisdictions will depend on the cooperation of the relevant State and Territory child welfare authorities and legal aid commissions.

Family violence orders (apprehended violence orders) are primarily the responsibility of State and Territory magistrates courts. Family courts have similar jurisdiction to protect victims of violence under section 114 of the Family Law Act but this is rarely used. The Advisory Group has heard much about the potential for this division of jurisdiction to work against the interests of the children and the family as a whole.

Responses to both these issues will raise questions around both common practices within the 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. There are significant issues around the appropriate share of resourcing these responses between Commonwealth and State and Territory Governments.¹⁵⁷

The Western Australian Government has not referred its powers in relation to ex-nuptial children to the Commonwealth Government. Accordingly, any changes made to child support legislation have to be adopted by the Western Australian parliament before the laws apply to ex-nuptial children in Western Australia. Delays result in differential treatment of children across Australia.

The potential solutions will require decisions to be made jointly by Commonwealth and State and Territory Governments.

Recommendation 28

That the Council of Australian Governments, as a matter of urgency, consider ways to improve coordination between levels of government in order that:

- a** family law, violence and child abuse matters can be dealt with in the same place at the same time;
- b** processes for handling these cases are streamlined;
- c** assessment and resolution of such cases is expedited; and
- d** cooperation is improved and promoted between professionals and services working with at-risk families who are involved with the family law system.

5.6 Matters outside the Advisory Group's terms of reference

The Advisory Group wants to ensure that significant matters that are outside its terms of reference are referred to the appropriate quarter for further consideration.

During submissions and consultations considerable concern was expressed about the incidence of suicide among men following separation. This topic has also received quite wide media coverage. The Advisory Group believes that there is a need for further research into the complexity of this association, and for this report to be made available to the National Advisory Council on Suicide Prevention, the Mental Health

157 Federal Magistrates Service, submission no. 279.

Council of Australia, Suicide Prevention Australia,¹⁵⁸ and the Australian Institute for Suicide Research and Prevention at Griffith University, Queensland.

The basis of the child support scheme (that parents share the cost of supporting their children according to their capacity) was also widely criticised, primarily by non-resident parents and male advocacy groups. Policy responsibility for the child support scheme and the formula lies with the Commonwealth Department of Family and Community Services. The Advisory Group wishes to draw the attention of the department to this report and to the views expressed in submissions and consultations.

This report has made a number of recommendations about the way that the family law system should respond to violence. However, one area that continues to cause community angst relates to debate about the incidence of male victims of family violence. The Advisory Group believes that further research into this subject would contribute to a more informed debate and appropriate policy responses.¹⁵⁹

158 Available on the Internet: <http://www.suicidepreventionaust.org>.

159 Commonwealth, State and Territory Heads of Government endorsed Partnerships Against Domestic Violence (PADV) in 1997 as a major commitment to address the problem of domestic violence in Australia.

Part Six Appendixes

Appendix 1 List of submissions

This list excludes the names of individuals and organisations that requested that their submissions be treated in confidence. There was one anonymous submission.

Individuals

Ainsworth, Alan	Brown, Garry Arthur
Allam, Dennis and Susan	Cairns, Greg
Allen, Leon	Calder, Gregory
Altobelli, Dr Tom	Carius, Mark
Alvarez, Gabriela	Cartwright, G M
Anderson, Wayne	Charlesworth, Peter
Apted, Trevor	Christensen, Richard John
Atkinson, John	Clarke, Brian
Atkinson, Mark	Cowley, Kym
Bagg, Phoebe	Crowhurst, Gerry
Bagshaw, Professor Dale	Degren, Robert
Barber, Cherie	Dobies, John
Barnes, Glenn	Dolphin, Andrew
Barns, Trevor	Dougherty, Rowan
Barrett, Judith	Dunbar, John A
Barry, Lorrae	Dunshea, Ruth
Beecher, Sabine	Farr, Anthony
Bence, Ruth	Fennell, Nellie
Bennet, Paul	Fitzsimons, Dominic
Bienstein, Helen	Fleming, Jason
Billson, MP, Bruce	Fletcher, G W
Blayney, Stephen G	Forrest, Daniel
Blowes, Narelle	Forwood, Michael
Bourne, Mark and Rosemary	Gallop, G R
Bourne, Sam	Greenfield, Ted
Briggs, Kenneth	Hadley, Tom
Brown, Elaine F	Hale, Glen

Harrison, Alan
Hartley, Mark Douglas
Harvey, S
Holland, Roger
Holleley, Robert
Houston, Brent
Houston, Rodney
Hunter, Professor Rosemary
Jewell, Debra
Jones, David
Jordan, Peter K
Joyce, Elizabeth
Keenan, Elizabeth
Kelly, Dr Shane (South Australia)
Kelly, Shane (Western Australia)
Kelso, Robert
Kornfeld, Janenne
Landers, Linda Ann
Learmouth, Howard George
Lee, Anthony Phillip
Lewis, Michael
Lock, Arthur
Logue, Robert
Mackie, Rhonda
Marshall, Ronald
Martin, Clara Santana
McElhinney, Rod
McLuskey, Phil
McMillan, Penelope
McRae, Paul
Middleton, Warwick
Milham, Therese
Milianis, Irene
Morton, Peter Michael
Moyle, Ralph
Mullane, Justice G R
Murray, Peter E J
Neave, Professor Marcia
Newell, Tina
Otto, David
Parke, Stuart
Parkes, John
Parkinson, Professor Patrick
Pearson, Malcolm
Pearson, Sarah
Pitt, Michael
Porter, Chris
Pullen, Randolph
Reed, Lorraine
Richardson, J and S
Rixon, Bicky
Robertson, C W
Robertson, Gary
Robertson, Maurice
Ronthal, Brian
Rooney, Greg
Rytir, Alois
Schafferius, Rodney J
Schluter, John
Schulz, T
Searcy, Kerry
Shaw, Graham
Sheridan, Damien
Sheridan, Jeanette
Siacci, Dianne
Smith, Jennifer
Smith, Paul
Smith, R G
Sophie
Stirling, Sue

Strachan, Peter
Sullivan, Serena
Taylor, Kevin
Thomas, Rob
Thompson, Mark
Thompson, Raymond
Turnbull, G Ian
Vandenberg, Trevor
Ventnor, John

Vincent, Patrick
Vishvakarman, D
Vivian, David
Walker, Mary
Watson, Charles Richard
Weltman, Morris
Whitfield, J
Willis, Murray
Woolley, Graham B

Organisations

Anglicare, WA
Australian Association of Social Workers
Australian Council of Social Service (ACOSS)
Australian Law Reform Commission
Blue Mountains Community Legal Centre
Blue Mountains/Lithgow Domestic Violence Court Assistance Scheme
Caroline Lodge (MWH) Collective Incorporated
Catholic Women's League Australia
Centacare Australia Ltd and Australian Catholic Welfare Commission
Centacare Counselling and Therapy Centre
Centacare Marriage and Family Service
Centacare—Men and Relationships Program Area Assistance Scheme Funding
Centacare Sydney—Family and Child Mediation Service
Centacare Sydney—Relationships Family Counselling Team
Central Coast Community Legal Centre
Central West Contact Service
Certified Male magazine: Peter Vogel, editor
Child Support Advocacy Group
Child Support Policy, Department of Social Security, United Kingdom
Coalition Urging Shared Parenting
Co-ordinated Community Response to Domestic Violence, Wynnum Pilot Project
Community Legal Service for Western NSW Inc.
Council on the Ageing
Country Women's Association of NSW

Country Women's Association of Victoria Inc.
Country Women's Association of Western Australia
Department for Women, New South Wales
Department of Human Services, South Australia
Divorce Mediation and Property Branch, Lord Chancellor's Department, United Kingdom
Divorced Women's Support Group, Gold Coast, Queensland
Domestic Violence Advocacy Service
Domestic Violence Resource Centre, South Brisbane
Dubbo/Wellington Women's Domestic Violence Court Assistance Scheme
Family Court of Australia
Family Court of Western Australia
Family Law Practitioners' Association, Queensland
Family Law Reform and Assistance Association Inc.
Family Mediation Sunshine Coast
Family Relationships Institute Inc. (Relatewell)
Family Services Australia Ltd
Far North Coast Family Law Practitioners' Association
Fathers for Family Equity Inc.
Federal Magistrates Service
Family Mediation Centre, Victoria
Growing Relationships and Network Support Inc. (GRANS)
Gunyah Women's Housing
Immigrant Women's Speakout Association of NSW
Immigrant Women's Support Service
Kids 'n' You Family Support Programme
Kidz Connect—Groups for Children from Separated and Divorced Families
KinWay Division, Anglicare WA
Law Council of Australia
Law Society of New South Wales
Legal Aid for Women and Children in Family Law Working Group
Legal Aid Queensland, Women's Legal Aid Section
Legal Aid Western Australia
Legal Information Access Centre (LIAC)
Lone Fathers Association, Newcastle and Hunter Branch

Lone Fathers Association Australia, Western Australia
Lone Fathers Association, NT Inc.
Lone Fathers Association, Dubbo Branch
Lone Fathers Association of Australia, National Office
Lone Fathers Association, SA Branch Inc.
Lone Parent Family Support Service
Mandurah-Rockingham Regional Domestic Violence Committee
Men's Confraternity WA Inc.
Men's Information and Support Association Inc.
Men's Rights Agency
Mental Health Legal Centre Inc.
Ministry of Justice, Western Australia
Muslim Women's National Network of Australia Inc.
National Council for the Single Mother and Her Child
National Council for the Prevention of Child Abuse
National Council of Women of Australia
National Legal Aid
National Network of Women's Legal Services
Newcastle Centre for Family Studies, University of Newcastle, United Kingdom
North Queensland Domestic Violence Service
Norwood Community Legal Centre
Partners of Paying Parents (POPPS)
Project for the Improvement of Child Support Litigation Technology
Queensland Country Women's Association
Relationships Australia, National Office
Resolve/Anglicare Top End
Salvation Army Crossroads Network, Family and Domestic Violence Unit
St Kilda Legal Service Co-Op Ltd
Sole Parents' Union
Sussex Street Community Legal Service
Tasmanian Health and Wellbeing Association
The Salvation Army
The Smith Family
Traces Online Data Base Service
Ulladulla Domestic Violence Committee

Uniting Care Burnside
 Victoria Legal Aid
 Victorian Court Information and Welfare Network
 Wesley Mission, Sydney
 Wirringa Bailya Aboriginal Women's Legal Centre
 Women's Domestic Violence Court Assistance Scheme
 Women's Information and Referral Centre, Cairns
 Women's Justice Network
 Women's Legal Centre (ACT Region) Inc.
 Women's Legal Resource Group Inc., Vic.
 Women's Legal Resources Centre
 Women's Legal Service, Brisbane
 Women's Liberation Halfway House Collective Inc.
 Women's Support and Action Network

Individuals who sent signed identical copies of a form letter

Doug Cousins	David Linnane	Keith Stewart
Darren Hughes	Wayne Anderson	Rosemary A Bourne
Gerry Winters	Shane Van Mosseveld	Silvia Winters
Sam Bourne	Mark Bourne	Domenico Condoluci
Wendy Ah Chin	John Lear	F Pool
B Rake	Peter Willary	C Kohler
P J Boon	Matthew Pickering	Eric Quinnell
Tricia-Ann Fourou-Murray	P Singh	J Nastasi
Bob Richards	Katrina Mamouzellos	Mark Salmon
Ken Gough	Gaylene Schilling	G Farnell
Rick Martin	Denis McMurrich	Christine Lee
Vangi Zikos	Cheryl McInnes	John Gohier
Ruby McKinnon	J O'Neill	Pat McKinnon
Colin Lindsay Cambell	Guy Miller	Darryl Marris
John Zagerianod	Nick Dabourakis	G Heide
Nikola Ivan Babic	Scott Holy	Ian Britton
Garry Ellis	Michael Hotham	B Sommerville
Kristine Langman	J Colwill	Russel Smith
Ian Leslie	Joy Treum	B Deveraux

Glenda Thornton	David Cooper	Dianna Ross
Geoffrey Lee	Julie Holtham	Christine Nathaneal
D Koehn	Jean Lee	J Sandercock
Wayne Pederick	Kerryanne Pederick	Peter Lerner
Danny O'Brien	Bernard Rael	K K W Blincoz
Rodney Arrowsmith	Jodie Blackman	S Hore
A Keighley	A McPhee	M Greatorex
Robert Adams	Peter Blaser	Sue Ahern
Tony Ahern	Shirley O'Connor	Sharon Cook
Pat Crowley	B Griffiths	Rodney Paterson
Dr D Devaneson	Pauline Hicks	Peter Newcombe
Kent Spannon	Peta Jones	Vaclav Step
Belinda Coetze	Joe Kelmer	H Blackman
A Santa Maria	Lesley Riley	Helen Stevens
Belinda Crowe	Frank Goncalves	Moya Buckley
Blair Cheshire	K O'Brien	Sandi Atkins
Gerard Atkins	Vikki Pauli	Sherylea Jones
Joaquim Soaros	Kris Raye	Matt Venn
Paul Smith	David John	Ian Blackman
Christine Irwin	Dawn Hendy	R Blackman
P Van Baxter	Robert Gridale	Simon Copley
Steve Hancock	Chris Ford	Carol Kritkos
Nada Fred	A G Savara	Pantellis Roufas
Sevilas Georgio	Andrew Clark	John Burton
Sean McCarty	P Howard	K Somelcork
Wally Freeman	V Pavlovic	Paul Muckarombs
Wendy Beh	C Burnett	P J Straithearn
Frank Woerle	Val Hine	Paul Nowland
R Kennedy	Stephen Lengham	Ollie Luis
Manuel Luis	Evelyn Ford	Tony Ingham
M Clifford	D Bullivant	Rod Gobell
Belinda Lynne	T C Hall	Adrian Paul Stone
Erich Berghahn	A Kafetzis	Ron Tesch
Andrew Kuss	Barry Van Boxtel	Douglas Lee
W Couer	Peter McInnes	Graeme Everingham

Walter Topp	Rena Tito	Ben Kiwikiwi
J A Noble	Leon A Howard	J Folke
George Gast	Dwayne Thomas	Rodney Stevenson
Adrian Braun	Carmel Leahy	Luke Beilby
Dimitrius Magriplis	Mal Legay	F R Schmid
Steve F Darch	Richard John Lee	David Hewitt
Momo Micic	Darren Howard	Marcus Green
Graham Parker	Ian Dandy	Aleksandr Nicalovski
Warren Buscomb	Douglas Banks	Geoffrey Hewitt
John Ross	J Whitfield	Dianne Penman
Arthur John Smith	Shirley Semple	Linda Wilson
Sheryl Kemp	Tanya Tynan	Donna Baker
Glen Rossiter	Malcolm Short	Anthony Fisher
Michelle Howard	Kim Campbell	Dogu Dormus Ali
Carolyn Gegurke	Michael Howard	Kevin Elkes
D Tredale	M Kenny	William Smith
W F Braam	H Bailey-Green	Des Moylan
Di Underwood	K D Morris	S Camilleri
Russell Brown	W R Ingrey	Richard Mellick
Neil Murray	Daniel Rogers	Wendy Rogers
Michael Butt	Ben Lawrence	R Reynolds
M Orman	Craig Baird	Mick Mollross
Simon Lynch	D Creek	G E Ladgrove
Linton Talbot	Peter Jervis	Peter Deale
Andrew Speck	Gabrielle Irvin-Lukac	Roger Burnett
Trevor Bestt	May Hill	Clayton Hill
George Savutakis	Margaret Williams	Gerry Crowhurst
C O'Loughlin	Brian Highman	R G Tuddenham
Suzanne Kapor	Peter Owens	Gisela Dawes
K L Dawes	D Gregory	Herbert Roth
Ilvans Toms Trankalis	R Brever	Kirk Winters
Chris J Hofmayer	Brian Atkinson	Dr Shane Kelly
Eric Vanderploett	Darren Page	Clinton Rose
Brenton Marschike	Paul McLeod	John May
Terry Griffiths	B Luis	Jenny Hicks

Mark Goller	Steven Raymond	Philip Bates
Terry Dunstan	Roy A Kelly	Hillary Kelly
Steve Burke	Chad Davis	R Sinclair
Craig Bourke	Tim Hardy	Susan Day
Peter Pankiewicz	Robert Cunningham	Paul Muckarouski
Pamela Chapman	Cathy Wilson	Terrie Roberts
Mark Goller	Steven Raymond	Philip Bates
Terry Dunston	Robyn Rowe	Paul Patterson
Ken Gordon	Adrian Collard	Cherelle Tiedeman
Scott Tiedeman		

In addition, 13 copies of the form letter were submitted with illegible names.

Appendix 2 Analysis of submissions

The full text of the analysis of the content of submissions is available on the Internet at <http://www.law.gov.au>. The table of contents is given below.

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Statistical information on submissions

Total

284 submissions were received. 307 individually signed copies of a form letter were also received. The names of individuals sending the form letters are listed at the end of Appendix 1 but are not included in the following statistical breakdown.

Gender of individuals

Males	99 (3 couples included)
Females	34
One did not identify name or gender	

Types of organisations

Academic	7
Advocacy group	36
Advocacy group for men	15
Advocacy group for women	18
Commercial company	1
Community agency	19
Community legal centre	14
Counsellor	1
Court	4
Domestic violence advocacy service	11
Family mediation service	6
Government advisory agency	1
Government department	5
Legal advisory agency	8
Legal aid	5
Professional body	3
Social worker	1

By State

ACT	22
NSW	92
NT	3
Qld	64
SA	22
Tas	3
Vic	49
WA	18
Overseas	11

Appendix 3 Consultations

Consultations with consumers and service providers

Public consultations in all States and Territories were held with consumers and service providers on the following dates:

Darwin, NT	27, 28 September 2000
Hobart, Tas.	3, 4 October 2000
Townsville, Qld	5, 6 October 2000
Melbourne, Vic.	5, 6 October 2000
Whyalla, SA	5 October 2000 (two separate meetings)
Parramatta, NSW	10 October 2000 (two separate meetings)
Dubbo, NSW	11 October 2000 (two separate meetings)
Canberra, ACT	12, 13 October 2000
Perth, WA	16 October 2000 (two separate meetings)
Bunbury, WA	17, 18 October 2000

Attendance

Representatives of the organisations listed attended the following forums and consultations:

Service provider forums (lists provided by consultants)

Darwin 28 September 2000

- Attorney-General's Department
- Centrelink (2)
- Family Court of Australia
- Lone Fathers Association
- Resolve
- Top End Legal Service

Hobart 4 October 2000

- Centrelink (3)
- Child Support Agency
- Community Mediation
- Family Court of Australia
- Legal Aid (2)

Townsville 6 October 2000

- Centacare
- Centrelink (2)

Child Support Agency (2)
Family Court of Australia
Family law solicitor
North Queensland Domestic Violence Service
North Queensland Domestic Violence Service (consumer-nominated)
Office of Child Protection
Relationships Australia
Sarah Women's Shelter

Melbourne 6 October 2000

Australian Council of Social Service (ACOSS)
Australian Greek Welfare Society
Centacare Catholic Family Service
Centrelink (2)
Child Support Agency
Family Court of Australia
Family law barrister
Legal Aid Victoria
Men's Rights Agency
Relationships Australia
Southern Family Life (2)

Whyalla 5 October 2000

Centacare Catholic Family Services
Centrelink (2)
Child Support Agency
Family Court of Australia
Legal Aid
South Australian Housing Trust
Whyalla Multicultural Communities Centre Inc. (2)

Parramatta 10 October 2000

Australian Lebanese Welfare Group (2)
Bonny Women's Refuge
Centacare, Parramatta
Central West Contact Service
Centrelink (4)
Child Support Agency
Community Justice Centre
Dads Australia (2)
Dalmar (2)
Domestic Violence Advocacy Service
Family Court

Family Law Pathways Advisory Group (2)
Family Law Reform Association, Sutherland
Family Services Australia, Canberra
Growing Relationships and Network Support Inc. (GRANS)
Harris Park Community Centre
Immigrant Association of NSW
Legal Aid Commission
Local Court Sydney
Lone Parent Family Support Service, Parramatta
Macquarie Legal Centre
Parramatta Community Health Centre
Parramatta/Holroyd Family Centre (2)
Parramatta/Ryde Domestic Violence Court Assistance Scheme
RE Mediation
Relationships Australia (3)
Ryde/Eastwood Community Aid
St Vincent de Paul
Unifam Counseling and Mediation Service
Women's Legal Centre (2)

Dubbo 11 October 2000

Child Support Agency
Department of Prime Minister and Cabinet
Domestic Violence Court Assistance
Dubbo Base Hospital
Dubbo Department of Services
Dubbo Family Court
Family law solicitor (3)
Legal Aid Commission, Orange
Lone Fathers Dubbo (2)
Macquarie Health (2)
Regional Violence Prevention Specialist
Western Aboriginal Legal Service (2)

Canberra 13 October 2000

Australian Association of Social Workers
Centacare
Child Support Agency (2)
National Project Workers Family Service Australia
Partners of Paying Parents
Relationships Australia
Tuggeranong Community Services

Woden Community Service
Women's Information and Referral Centre
Women's Legal Centre

Perth 16 October 2000

Anglicare
Centacare
Centrelink
Child Support Agency
Family Court of Western Australia
Legal Aid
Lifeline
Nuance
Relationships Australia

Bunbury 18 October 2000

Centrelink
Child Support Agency
Milligan House (self-help group) (2)
Relationships Australia
South West Counselling

Consumer forum participants (numbers provided by consultants)

Darwin	8 males
Hobart	4 males
Townsville	1 female
Melbourne	4 females, 7 males (female input was primarily derived through three individual telephone interviews as it was not possible to coordinate attendance at any one session)
Whyalla	1 female, 1 male
Parramatta	13 females, 13 males
Dubbo	7 females, 1 male
Canberra	6 females, 6 males (2 separate forums held)
Perth	6 females, 3 males (2 separate forums held)
Bunbury	3 males, 1 female

Consultations were facilitated by NFO Donovan Research, Bruce Callaghan & Associates Pty Ltd and Jane Jeffreys Consulting. Each meeting was attended by an Advisory Group member or representative, and a member of the Advisory Group secretariat. The consultants' reports to the Advisory Group are available on the Internet at <http://www.law.gov.au>.

Consultations with the indigenous sector

An Indigenous Pathways Forum was held in Canberra on 23 October 2000. Attendees were:

Advisory Group members	3
Family Court of Australia consultants	4
Specialist practitioners in the area of indigenous services	6
Advisory Group secretariat	2

Consultations with advocates' groups

Consultations at various locations were held with four organisations represented on the Child Support Registrar's Advisory Panel:

National Council for the Single Mother and Child	6 October 2000
Sole Parents' Union	9 October 2000
Dads Against Discrimination	9 October 2000
Lone Fathers Association Australia accompanied by the Men's Accommodation and Crisis Service	12 October 2000

In addition, meetings were held with the following:

Men's Rights Agency	4 October 2000
Michael Green and Geoff Price	9 October 2000
Australian Council of Social Service (ACOSS)	6 October 2000

Consultations with legal practitioners

The Family Practitioners Forum was held in Canberra on 13 October 2000. Representatives from the following legal firms attended:

- Farrar, Gesini & Dunn
- ACT Legal Aid
- National Association of Community Legal Centres
- Women's Legal Centre ACT
- Pamela Coward & Associates
- Anne Marie Proctor & Associates
- Phelps Reid
- Pappas J
- John Nicholl & Co.

Legal sector consultation was held in Brisbane on 4 October 2000. Representatives from the following organisations attended:

- Legal Aid Queensland
- Caxton Legal Service
- Women's Legal Service
- Family Law Practitioners
- Family Law Section, Queensland Law Society
- LEADR (Lawyers Engaged in Alternative Dispute Resolution)

Appendix 4 Case study research

The Australian Institute of Family Studies conducted the case study research between 18 September and 26 October 2000. The aim of the study was to explore individual consumers' views of the family law system.

Sixteen case studies of consumers were undertaken, focusing on the experiences of one party to a relationship that had ended within the last three years. Interviews were also conducted with the ex-partner where possible and a child of the relationship who was aged ten or over at the time of separation. All except one of the adult participants had children.

Twenty interviews were conducted. These comprised interviews with 8 males, 11 females and one child, from 16 families.

The full text of the report to the Advisory Group, together with transcripts of the interviews, is available on the Internet at <http://www.law.gov.au>.

Glossary of terms

Affidavit A voluntary written declaration of facts signed and sworn to or affirmed by a person in front of an officer authorised to administer oaths. It is a formal statement of evidence that is within the knowledge of the person making the affidavit. Affidavits may also be sworn by other people as witnesses in support of someone's case.

Alternative dispute resolution (ADR) See Primary dispute resolution.

Arbitration The determination of disputes by the decision of one or more persons called arbitrators. The decision of an arbitrator is called an award and can be enforced by legal process.

Apprehended violence order (AVO), domestic violence order (DVO) or protection order An apprehended violence order is a court order (including an interim order) issued in a State court prescribed under the law of the State or Territory against a person who has been violent to or threatened violence against the person seeking the order. The order is normally for a specific period of time. It may restrain the person against whom the order has been obtained from approaching, speaking to, telephoning or otherwise contacting the other person or persons. It may also be made for the protection of other people living with the victim, including children.

Case management A method of providing extended and continuing care and assistance to people with chronic or periodic life problems in a community setting.

Child representative (sometimes called a 'separate representative') The title given to the lawyer who represents a child in family law proceedings. Child representation is a particular specialty of family law practice. A court may order that a child be separately represented. These orders are made under s. 68L of the Family Law Act. The child representative attends all hearings and conducts the case in a way that promotes the child's best interests. A child representative does not necessarily act on the instructions or consistently with the wishes of the child.

Child support The financial support of children under the *Child Support Assessment Act 1989*, including financial support under this Act (and amendments) by way of a lump sum payment or by way of transfer or settlement of property.

Child support agreement An agreement between the parents, which may or may not be registered with the Child Support Agency, outlining the arrangements whereby child support is to be made.

Child support formula The means of calculating the amount of child support to be paid applied to the liable parent's taxable income and depending on the number of children to be supported. The explanation of the full child support formula is available on page 8 of the publication *Child Support Scheme Facts and Figures 1999–2000*.

Children's contact services Services that provide a safe environment for children to maintain contact with their non-resident parent by offering a neutral location for contact, changeovers or supervised contact visits. The services are offered in centres that are safe locations for changeovers between resident and non-resident parents, and can provide a secure place for supervised visits by non-resident parents. Contact services aim to ensure the safety and welfare of families, and to help families reach the goal of independently managing contact, when appropriate.

Circle sentencing A practice originating in Canada in early 1992 and adopted in some Aboriginal communities. The process is designed for more serious or repeat offenders and aims to achieve full community involvement in the sentencing process. The aim is to broaden the sentencing phase so that the underlying issues of offending behaviour and needs of the victims of the crime can be fully examined. Circle sentencing is not preoccupied with punishment; however, punishment is incorporated into the sentencing plan. Offenders come to circle courts after they have pleaded guilty or are found guilty by a court. They are required to demonstrate commitment to the circle court process, healing the harm caused by their actions and setting themselves on the path to rehabilitation.

Client assessment The process of arriving at an understanding of the client's needs and problems in order to construct a plan that alleviates the problems by delivering appropriate services. In this report, reference to client assessment is made at different levels, firstly at the first point of contact with the system and secondly to a more thorough assessment at the appropriate agency to deal with the client's needs.

Code of practice A written set of ethical guidelines governing the professional behaviour and practices of specified groups such as lawyers. A code of practice is usually organised in the form of canons, disciplinary rules and ethical considerations.

Columbus Project A pilot project in the Family Court of Western Australia based on the Magellan Project model. The project will pilot an individual case management program dealing with cases that involve allegations of domestic violence and child abuse in the Family Court of Western Australia. The proposed pilot program merges for the first time in a formal manner the skills of counsellors in dispute resolution with those of registrars in conciliation techniques.

Community service providers Organisations based in the community, outside the government sector but may be funded by government, which provide professional and administrative services to clients.

Conciliation A process in which the parties to a dispute, with the assistance of a neutral third party (the conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, make suggestions for terms of settlement, give expert advice on likely settlement terms, and actively encourage the participants to reach agreement. (Statutory conciliation is the same process but it occurs when the dispute has resulted in a complaint under a statute and the agreement needs to accord with the requirements of that statute.)

Conferencing An informal meeting of parties with a view to finding common ground and non-litigious ways of dealing with issues, usually aiming to negotiate a settlement.

Consent order In court proceedings, orders that are made by consent of both parties. These orders are as binding as any other orders made by the court after a defended hearing.

Consultative forums Participation of people and groups with a direct interest, and other interested people in the community, in discussions on particular issues.

Contact order This order is a parenting order that deals with contact between a child and another person or persons.

Contact Orders Pilot This is a program within the Federal Government's Family Relationships Services Program funded by the Attorney-General's Department and which is testing a methodology that uses a range of interventions. Contact services help children of separated parents re-establish and/or maintain a relationship with their non-resident parent. The services are offered in centres that are safe locations for changeovers between resident and non-resident parents, and can provide a secure place for supervised visits by non-resident parents. Contact services aim to ensure the safety and welfare of families, and to help families reach the goal of independently managing contact, when appropriate.

The 10 original Commonwealth-funded contact services around Australia were evaluated in 1998. The evaluation found that contact services were making a positive difference for families by reducing the anxiety that children feel about visiting their non-resident parent, by helping build relationships between children and their non-resident parent, by reducing conflict between parents, and by helping parents gain the confidence and skills to move towards managing their own contact arrangements when appropriate. This program has recently been expanded by the addition of 25 more services.

Counselling The use of a range of therapeutic interventions to help clients change behaviour and develop coping skills to deal with life circumstances.

Customary lore Body of traditions and knowledge on a subject held by a particular group.

Determination The decision made by a judge, magistrate, judicial registrar or SES registrar in a court case. Determinations may be procedural, interim or final.

Directions hearing In the Family Court of Australia, a directions hearing usually occurs before a deputy registrar and deals with procedural and case management matters to direct the case through its litigation path.

Domestic violence order (DVO) See Apprehended violence order.

Ex parte An application in a judicial proceeding made by an interested person who is not a party to the proceedings, or by one party in the absence of the other. The latter is the most relevant to this Report.

Family Tax Benefit This is an allowance to help families raising dependent children. There are two parts to the Family Tax Benefit: Part A is paid for children up to the age of 21 and full-time students aged 21–24 if they do not receive social security payment such as Youth Allowance or an education allowance such as ABSTUDY; Part B is an additional payment to single-income families with one main earner, paid until the youngest child turns 16 (or 18 if he or she is a full-time student and not receiving a Centrelink payment such as Youth Allowance or an education allowance such as ABSTUDY).

Federal Magistrates Service A new federal court established in order to deal with a range of less complex issues currently heard by the Family Court and the Federal Court. The service is governed by the *Federal Magistrates Act 1999* and the *Federal Magistrates (Consequential Amendments) Act 1999*. The service commenced operations in some locations on 23 June 2000.

Filing Lodging a document in a registry of the court and having it stamped with a seal of the court. Filing can be done by post or in person.

Final hearing The final hearing of a matter before a judge, magistrate or judicial registrar. Evidence is heard by the judge who, at the end of the hearing, makes a decision that finalises the matter before the court.

Financial counselling Trained and accredited financial counsellors provide advice and assistance to clients with their financial problems, including credit and debt matters, contract disputes, budgeting problems, social security benefits and taxation matters.

First point of contact with the family law system The first agency, or private professional, that a client approaches before or following separation. The first point of contact varies from person to person. In the proposed integrated family law system, this is where a preliminary assessment of the client's financial, emotional and legal needs would be undertaken.

Gatekeeper For the purposes of this report, a gatekeeper is a person or service provider who deals with clients at the first point of contact (entry point) into the family law system. The gatekeeper's expertise enables them to guide people who are entering the system to the pathway most suited to their needs.

Gateway Entry point into, or first contact with, the family law system.

Hearing A process by which parties have an opportunity to present their case to a judicial officer, through the giving of evidence by affidavit, witnesses and argument.

Inter-agency protocols The official guidelines for procedures involving activities between agencies.

Interim orders Orders that are made while awaiting the final decision in the matter.

Legal aid Free or inexpensive legal services provided for those who cannot afford to pay full price, administered locally by an especially established organisation such as a legal aid commission.

Legal aid conferencing Fulfilment of the requirement that legal aid commissions use processes other than litigation in family law matters and resolve them through primary dispute resolution. Legal aid commissions throughout Australia place differing interpretations on the requirements but the primary dispute resolution processes contain counselling, mediation, conferencing, arbitration or other means of conciliation or reconciliation.

Litigant A person engaged in a lawsuit.

Litigation The process of carrying on a lawsuit, or in this report, any contested proceedings in any court exercising family law jurisdiction.

Magellan Project A pilot project in Victoria, developed to improve ways for the Family Court to manage residence and contact disputes involving child abuse allegations. The project uses a multidisciplinary team of a judge, a registrar and a counsellor to cover all cases, and requires cooperation between, and involvement of, the Family Court, Family Law Section of the Law Council, Commonwealth Attorney General's Department, Victorian Department of Human Services, Victorian Police, Monash University's Family Violence and Family Court Research Program, and Victoria Legal Aid. Victoria Legal Aid funds all child representatives with legal aid going to eligible parents, according to normal guidelines, but with the cap waived

where necessary. The project is an example of a cooperative approach that improves outcomes for certain children and their families.

Maintenance action test Most people who can receive maintenance (child support) for a child have to take action to get it, otherwise they cannot be paid more than a minimum rate of some family benefits for that child.

Mediation A process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), jointly identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement that will accommodate their needs. The mediator has no advisory or determinative role in the content of the dispute or its resolution, but may advise on or determine the process of mediation through which resolution is attempted. Mediation is a process that emphasises the participants' own responsibilities for making decisions that affect their lives. The agreement reached is not legally binding.

Mediation or arbitration A process in which the parties attempt mediation. Where issues remain unresolved the mediator arbitrates a decision. See Special Masters Program for an example of this process.

Men's Telephone Counselling Service This is a national telephone counselling service, due to be launched later this year, which will help men with family relationships. It will provide men with confidential support for the cost of a local call from anywhere in Australia. It is anticipated that this service will be of particular assistance to men in rural and regional Australia who face particular difficulties accessing relationship support services.

Multidisciplinary approach to services This approach provides overall delivery of services by bringing together two or more professional disciplines or branches of learning in a collaborative way in order to meet the needs of clients in a holistic way.

Narrative therapy A form of therapeutic counselling which considers the construction of meaning as evolving through interactions and stories, and provides understanding of people, events and actions in such a context. This form of therapy is considered not just a technique but a perspective and is used to help separate the individual from the problem. It considers local knowledge as a basis for the construction of helpful narratives. The therapy provides a means by which therapist and client can question and examine, from descriptions of the world, what form reality or knowledge of the world takes place.

One-stop shop A concept that envisages provision of the delivery of services, including information, involving several agencies in one location as a central contact point. The client would be able to attend a location and be provided with information and advice that meet his/her needs or receive appropriate referral to another agency. (A common Internet entry point has been suggested as a virtual one-stop shop.)

Parenting order A court order made under Part VII of the Family Law Act dealing with such matters as the parent with whom the child is to live, contact between a child and other persons, maintenance of the child, or any other aspects of parental responsibility for the child.

Parenting plan A parenting plan is a written agreement, which may or may not be registered, that is made between the parents of a child, and that deals with one or more of the following: the person with whom the child is to live, contact between the child and another person(s), maintenance of the child, or any other aspect of parental

responsibility for the child. These matters correspond to the provisions in the Act dealing with a court's power to make orders for residence, contact and specific issues.

Part VII of the Family Law Act This refers to the part of the Act which deals with children's matters. A complete new part replaced the previous Part VII in 1996. It aims to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

Pathway The way people take through the separation process using the family law system.

Pre-filing The period before formally filing an application for orders to be made by the court.

Pre-hearing conference A conference before the matter is listed for final hearing in the Family Court of Australia. It is conducted by a deputy registrar, often with a court counsellor, and is another opportunity for people to settle their case. Otherwise, the deputy registrar determines if the matter is ready for final hearing and sets both the date for the hearing and the timetable for the filing of court documents. The pre-hearing conference will be replaced by a pre-trial conference as the Family Court of Australia progressively introduces a new case management system (begun in Sydney on 31 May 2001).

Primary dispute resolution (PDR) or Alternative dispute resolution (ADR)

'Primary dispute resolution' is the terminology introduced in the 1995 amendments to the Family Law Act to emphasise that alternatives to litigation as a means of resolving family disputes should be the first choice. However, the Act does not define 'primary dispute resolution', 'mediation' or other forms of dispute resolution used in the family law context. Within the field, the term 'alternative dispute resolution' is used to describe a wide range of dispute resolution services. In this paper, the term 'primary dispute resolution' means all the techniques and processes known as alternative dispute resolution. Primary dispute resolution refers to the wide range of processes in court, community and private settings that aim to resolve matters outside formal court determination and includes many other processes such as conferencing (in legal aid commissions), expert appraisal and early neutral evaluation.

Procedural orders These orders relate to procedural steps which must be followed as the case moves along the path to determination.

Protection order See Apprehended violence order.

Referral When a client approaches an agency and the client's needs are outside the scope or expertise of the agency, a client is referred to the agency or service which will more appropriately deal with the problems facing him/her.

Registrar Qualified lawyer appointed to the court who has the power to hear certain cases, including divorce, maintenance and some interim children's matters.

Resident parent The parent with whom the child lives.

Self-represented litigant A person engaged in a lawsuit who is not represented by a lawyer but is representing him/herself.

Separate representative See Child representative.

Unbundled legal assistance Unbundling is the process of providing legal information and support, but not beginning-to-end representation to clients. Unbundled assistance in family law matters comprises information about dispute resolution options; referral to mediation or counselling; assessment of merits of the case and settlement recommendations; preparation of information or settlement options for negotiations or conciliation; analysis of available income and help to develop realistic economic plans; or referral to necessary ancillary professionals such as therapists or counsellors. Unbundled services may be provided by legal aid commissions, community legal centres, private law firms and courts.

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Please note that the Internet addresses provided, current at the time, may have been removed.

The following abbreviations are used in this bibliography.

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ACOSS	Australian Council of Social Services
AGPS	Australian Government Publishing Service
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
FaCS	Commonwealth Department of Family and Community Services
FLC	Family Law Council
NADRAC	National Alternative Dispute Resolution Advisory Council.

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