

Dr Warren Mundy
Independent Reviewer
National Legal Assistance Partnership Review
Via email: submissions@nlapreview.com.au

26 October 2023

Dear Dr Mundy

Family and Relationship Services Australia (FRSA) is the national peak body for family and relationship services, including family law services. FRSA has 165 members, with 135 members in a direct service delivery role providing services to approximately 580 000 Australians each year.

The range of services provided includes:

- Family Relationship Centres
- Family Dispute Resolution (FDR) and Regional FDR
- Children's Contact Services
- Family Law Counselling
- Family Relationship Advice Line
- Parenting Orders Program
- Supporting Children after Separation Program
- Children and Parenting Support Services
- Communities for Children Facilitating Partner
- Family Mental Health Support Services
- Family and Relationship Services
- Specialised Family Violence Services.

The legal assistance sector provides a critical role in enabling access to justice for economically and socially disadvantaged Australians. As noted by the Law Council of Australia, "people experiencing disadvantage are often more vulnerable to legal problems", at the same time experiencing significant barriers – lack of finances and low legal literacy, for example – to accessing legal support.¹ FRSA welcomes the opportunity to contribute to this review.

FRSA Members' principal touchpoint with the National Legal Assistance Partnership (NLAP) is in the area of family law. Our sector is an integral part of the family law system, providing less adversarial non-judicial pathways to resolving family disputes, as well as post-separation support services for parents and for children.

I reflect briefly, within the context of family law, on three of the questions put forward in the NLAP Review Issues Paper.

¹ Law Council of Australia (August 2018), *The Justice Project [Final Report: Overarching Themes](#)*, p. 6.



To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?(p. 16)

Self-represented litigants

As outlined in the Issues Paper (p. 26.), legal costs are prohibitive for many but only a narrow pool of people are eligible for legal aid. In 2014 the Productivity Commission estimated that around 8% of households across Australia are eligible for legal aid without having to make a contribution, whereas between 12-14% of households fell below the poverty line (using different poverty measures).² Anecdotal feedback from our Members suggests that the 'missing middle' is growing as more and more families struggle to meet basic living costs and the capacity to access legal services moves further out of reach. We are concerned, therefore, that the number of unrepresented litigants in the family court may rise.

Needless to say, navigating the court system and understanding the law without legal representation can be a bewildering and daunting experience. This can result in self-represented litigants agreeing to less than favourable outcomes in their family law matters. This is particularly the case for those experiencing family violence. Research on self-represented litigants has found that violence related trauma impedes a victim/survivor's capacity to present their case in a court.³ I do note, of course, that the separately funded Family Violence and Cross-Examination of Parties Scheme, administered by Legal Aid Commissions, provides for cost-neutral or low-cost legal representation for victims/survivors (and perpetrators) of family violence who do not meet the strict means test for legal aid and would not otherwise be able to afford legal representation. Therefore, legal representation offered through the Scheme may improve a victim/survivor's likelihood of negotiating consent orders in their best interests.⁴

While acknowledging the value of the Family Violence and Cross-Examination of Parties Scheme, FRSA nonetheless remains concerned that there are vulnerable litigants who neither qualify for legal aid or legal representation under the Scheme.

Measuring unmet legal need

FRSA recently mapped the concepts of need, demand and supply and the challenges in measuring need in the family and relationship services sector,⁵ and we therefore recognise the limitations outlined in the Issues Paper (pp 15-16) in understanding unmet legal need. We are encouraged that despite these limitations the Review will bring together available evidence across different areas of law to estimate unmet legal need and identify where need may be increasing. While now a little dated, I point you to a [study](#) undertaken by KPMG on behalf of the Attorney-General's Department in 2016, which looked at current and projected demand for family law services.

² Productivity Commission (2014), *Access to Justice Arrangements: Inquiry Report, Appendix H*.

³ Australia's National Research Organisation for Women's Safety. (2020). Exploring the impact and effect of self-representation by one or both parties in family law proceedings involving allegations of family violence: Key findings and future directions (Research to policy and practice, 24/2020). Sydney: ANROWS, p. 7. See also, Wangmann, J., Booth, T., & Kaye, M. (2020). "No straight lines": Self-represented litigants in family law proceedings involving allegations about family violence (Research report, 24/2020). Sydney: ANROWS, Chapter 4.

⁴ A 2021 [Review](#) of the Ban on Direct Cross-Examination concluded that the ban on direct cross-examination is working effectively.

⁵ FRSA (December 2021), *Service Demand: Family and relationship services – Issues Paper*.



FRSA would welcome the opportunity to work with the legal assistance sector in the future to look at ways of better capturing legal need in the area of family law, including where a social or socio-legal remedy is warranted.

How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements? (p. 20).

An outcome of the COVID pandemic for the family and relationship services sector was the realisation that, when safe and suitable, a number of services delivered by our Members could be offered online. The use of telepractice increased accessibility of services to some people who would otherwise be unlikely, or unable, to access services including people who live at a distance from face-to-face services, time-poor parents and people who have difficulty leaving the home due to physical or mental illness/disabilities.

While telepractice is not suitable in all cases and for all people, it may form a small part of a solution to service delivery challenges in regional, rural and remote locations, alleviating the need for locally based staff and circumventing conflict of interest issues where there is an insufficient pool of locally based staff. We do not have visibility over funding guidelines for CLCs, LACs and ATSILs, but we do observe that for some services delivered by FRSA Members, the capacity to deliver services remotely is limited by strict geographical service boundaries in the funding guidelines. This means the capacity to 'shift' resources to areas of higher need or to circumvent conflict of interest issues may be inhibited. I note there may be opportunity to enable greater use of telepractice with the context of legal assistance services.

Of course, what is ultimately required to ensure access to justice is a well-resourced and supported legal assistance sector and this will require in part an investment in workforce development.

How should holistic service provision improve outcomes and reduce the demand for legal assistance services? (p 25)

Legally assisted Family Dispute Resolution

FRSA Members value the relationship between their services and CLCs, which evolved with the introduction of the FRC Legal Assistance Partnerships Program, in December 2009 and the Coordinated Family Dispute Resolution (CFDR) pilot, which commenced in late 2010. The FRC Legal Assistance Partnerships Program, which was funded by the Attorney General's Department, enabled Family Relationships Centres (FRCs) to partner with legal service organisations so that legal information, advice and assistance could be provided to clients of FRCs.

The CFDR pilot was designed for separating families with a history of family violence where there were ongoing safety concerns for parents and their children. The multidisciplinary model involved a case manager/family dispute resolution practitioner (FDRP), a specialist family violence professional for the victim of family violence, a support professional for the perpetrator of violence, a legal advisor for each party, a second FDRP and child consultants. This pilot highlighted the benefits to separating families of a more supportive, non-adversarial and multi-disciplinary approach.

While these programs are no longer funded, strong relationships between some FRCs and CLCs have endured. Family Dispute Resolution (FDR) practitioners report that FDR has better



outcomes, and disputes have earlier resolution, when timely legal advice or information has been provided in conjunction with family relationship support. Being legally well informed assists clients to enter FDR with more realistic expectations and confidence to make decisions. Legally Assisted Family Dispute Resolution (LAFDR) can address some of the barriers to participation in non-adversarial dispute resolution, including power imbalances and family violence. Importantly, this reduces the number of cases going to court.

FRSA Members currently work with a mix of CLCs and private law firms to provide reduced-cost/no-cost legal information, legal advice and legally assisted FDR to family law clients. However, as there is no dedicated funding for this work, not all FRSA members delivering FDR are able to offer legally assisted FDR.

A recent economic evaluation undertaken by the Centre for International Economics for FRSA found a benefit-cost ratio of 7.85 for family law services delivered by FRSA members, which is very high. Avoided court costs and improved client outcomes such as family functioning and child wellbeing, reduced violence and improved feelings of safety contribute to this high benefit cost ratio.⁶ FRSA sees merit in capitalising on this strong return on investment by expanding the family law services offerings to include legally assisted FDR for parenting and for property matters across the country. Accordingly, we recommend greater government investment in legally assisted FDR and correspondingly greater engagement between the family relationship services sector and the legal assistance sector.

In closing I draw your attention to recently passed legislation amending the Family Law Act, which enshrines the requirement that an Independent Children's Lawyer (ICL) meets with the child and gives the child an opportunity to express their views. To ensure that ICLs are able to adequately meet this participatory dimension of their role and ensure that children's views are heard in a safe and respectful way, commensurate funding for ICLs is required.

Yours sincerely

Jackie Brady
Executive Director

⁶ The Centre for International Economics (12 September 2023), *Family and Relationship Services Economic Evaluation: Using cost-benefit analysis to assess the value of services – [Final Report](#)*.