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Dear Ms Roger

### **Family Support Program, Family Law Services Research**

Thankyou for the opportunity to participate in the research being undertaken by The Allen Consulting Group for the Commonwealth Attorney-General's Department into its Family Support Program, and for providing us with the consultation Discussion Guide in relation to the research. Our answers to the questions contained in that Guide are set out below.

### **Background and context of NLA response**

National Legal Aid (NLA) represents the Directors of the eight State and Territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

The services of each legal aid commission include family law, family violence, and child protection legal services. These family law services include telephone and face to face information, advice, non-legal and legal referral services, community legal education, legally assisted family dispute resolution, duty lawyer services at courts, and grants of legal assistance for either in-house or external legal representation, including for Independent Children's Lawyers (ICLs).

Grants of legal assistance are made only to applicants who are financially eligible, and whose cases meet matter type guidelines and have merit in the context of limited legal aid funding. People who are not eligible for a grant of legal assistance can participate in a legal aid dispute resolution conference provided another party in their matter is legally aided for the conference or there is an ICL involved.

The Family Support Program (FSP) services generally provide non-legal services but in a legal environment.

The linkages between legal aid commissions and FSP family law services exist in the context of the provision of the respective service delivery, and the laws relevant to family breakdown.

**Q1. Are there any key contextual factors (eg. policy changes or other events) that are shaping the family law environment or could be impacting the provision of FSP family law services?**

Key contextual factors shaping the family law environment include the following:

- an improved understanding of family violence and other dynamics;
- recent legislative change in family law;
- a culturally diverse country;
- a geographically diverse country;
- families presenting with multiple/issues eg significant levels of substance abuse and mental ill health;
- demand for services exceeding capacity of existing service providers and increasing;
- a limited and competitive funding environment;
- Commonwealth/State divide in relation to the division and funding of family and child protection services, and
- recent research, reports and recommendations.

**Q2. What key considerations impact service access and effectiveness for Aboriginal and Torres Strait Islander (ATSI) clients and clients from Culturally and Linguistically Diverse (CALD) and vulnerable backgrounds? Are there any**

**barriers to these clients effectively accessing and navigating the set of FSP family law services?**

NLA suggests that key considerations that impact service access and effectiveness for ATSI and CALD clients to the family law system generally, and barriers to effective service access by them, have been identified and canvassed in the Family Law Council reports "Improving the Family Law System for Aboriginal and Torres Strait Islander Clients" and "Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds" February 2012.

**Q3. How well do FSP family law services work with other family support services (eg. drug and alcohol, mental health, family violence and homelessness services)? Are referral linkages in place? Could the level of integration be improved? Are there any barriers to enhancing the level of integration?**

Please see answers to Q.4 & Q.5 below.

**Q4. What linkages currently exist between FSP family law services and other parts of the family law system (eg. Family Law Courts, legal assistance services, private legal practitioners)? Could the level of integration be improved? Are there any barriers to enhancing the level of integration?**

Please also see answer to Q.5 & Q.6 below.

Linkages include initiatives such as the Family Pathways Networks (FPNs) and mechanisms like cross-sectoral representation on committees and boards of the FSP and other service providers. These linkages foster and/or support constructive relationships and direct service delivery linkages such as memoranda of understanding and referral protocols between service providers. They also encourage a co-operative systemic and holistic approach to the identification of issues and service delivery that supports the best "fit" in relation to need and service delivery, and help to ensure that limited funded services are stretched to as many people in need as possible.

In relation to integration generally, our view is that there is nearly always room for improvement. Our experience is that linkages and integration are stronger where there is mutual respect for the respective complementary roles and skills brought by the different providers to client focussed service delivery.

Levels of integration would benefit from:

- Improved understanding of respective roles and purpose/priorities of other service providers in the family law system, including in relation to information sharing

of/about risk assessments. There continues to be a lack of common understanding in respect of the limits of client confidentiality, the information that can be shared, with whom and the difference between confidentiality and admissibility.

- The provision of resources to support initiatives which build understanding of other services including where and how they fit in the family law system. An example of such an initiative might be cross-sector training as part of continuing professional development with recognition credit for attendance.
- Greater recognition of the importance of cross-sector meetings and the importance of having agency decision makers at such meetings.
- Showcasing successful collaborative relationships and identification of useful models of service delivery and information sharing, noting that one size will not fit all. Family law issues and responses to them are shaped by many factors which vary across Australia.
- Increased use of technology to support information flow across the sector building on learnings from initiatives such as the Dandenong Project.<sup>1</sup>
- Some FSP providers might benefit from being able to have a greater experience of the litigation experience for clients which would improve capacity to see and understand potential future pathway for clients. Options could include a “Walk in their Shoes” tour of the family courts, the provision of referral services at the family courts like the Dandenong and Wollongong Family Law Courts programs, and observation in the family courts and the state AVO/VRO/IVO lists (including participating as seconded workers) and the State and Territory Children’s Courts.

Barriers to enhancing the level of integration in some places include:

- lack of/or incomplete recognition of a legal issue/s;
- inadequate understanding of relevant law/s;
- provider concerns about information sharing (including effect of Family Law Act 1975 restrictions) and breaching confidentiality/privacy and/or conditions of service agreements;
- the perception that going to court is “bad”, mistrust of lawyers and the legal process;
- an incomplete understanding of the role of legal assistance, including legal assistance by private legal practitioners;

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<sup>1</sup> Federal Magistrates Court Review of the Dandenong Project, Theresa Layton, Yarrandale Enterprises Pty Ltd (March 2012)

- limited and competitive funding environments, and
- collaboration takes time and professional time is both limited and expensive.

Resource challenges have been highlighted by the recent reduction in funding to the FPNs with the amount of these “savings” being passed on to other service providers such as the Contact Centres and Aboriginal and Torres Strait Islander Legal Services to provide for a much needed increase in direct service delivery.

**Q5. To what extent does your organisation work with FSP family law services? Are there any linkages or integrations?**

Please also see answer to Q.4 above.

Each commission has a telephone legal information and advice line. Staff make and receive warm and other referrals to FSP services from these help lines and other commission services, including duty lawyer services.

Some examples of linkages between legal aid commissions and the Family Relationship Centres (FRCs) follow:

FRCs and family dispute resolution services

- The Northern Territory Legal Aid Commission (NTLAC) has an MOU and a close working relationship with the Darwin FRC, and is a member of the FRC Darwin Consortium Reference Group. NTLAC lawyers present at the Darwin FRC's 'Kids Come First' Parent Information sessions. NTLAC clients will also attend these information sessions when possible. NTLAC legally assisted FDR also accesses the FRC child consultants and potentially their indigenous consultant for clients of the NTLAC. NTLAC and Darwin FRC deliver shared training occasionally. A strong working relationship has developed through these arrangements.
- Victoria Legal Aid (VLA) has recently entered into a MOU with all 15 FRCs located in Victoria. This MOU allows VLA's family dispute resolution conferencing program (Roundtable Dispute Management or "RDM") clients to voluntarily access FRC information sessions, prior to an RDM Conference. Through the active RDM case management system clients are encouraged to attend information sessions in order to better prepare themselves for their conference and to connect them into the referral and service pathways that they may need to support them to maintain agreements after conferences.

VLA's Legal Help Line, triages clients and will refer family law clients who are not eligible for VLA assistance directly to FRCs, and other FDR providers. There are also two service agreements between VLA's Legal Help and Chadstone and Melbourne FRCs. Legal Help provides fortnightly information sessions to

Melbourne FRC and accepts e-referrals from both Chadstone and Melbourne FRCs

- Legal Aid Queensland (LAQ) and the local FRCs have protocols for appropriate referrals between FRCs and the LAQ Dispute Resolution Program to ensure that where the complex family dynamics or issues involved in the parental dispute would benefit from a lawyer assisted model of mediation, that these matters are referred to LAQ.

LAQ developed in partnership with Relationships Australia a DVD which assists separated parents understand the types of mediation services available, both a lawyer assisted model through LAQ and the facilitative model through FRCs. The DVD highlights the mediation service models and indicates which service may better suit their family need.

- The Legal Services Commission of South Australia (LSCSA) has a dedicated family lawyer who liaises with all five FRCs in South Australia and referral processes are in place with each of them. Special arrangements are also in place with the FRCs with regard to training and a programme where both the LSCSA and FRC assist in the training of law students.
- Legal Aid Western Australia (LAWA) and the metropolitan Perth FRCs have long standing arrangements for warm referrals between FRCs and LAWA. Referrals are made to LAWA in circumstances where risk factors such as family violence and child welfare concerns have been identified and it is considered that clients require legal advice and representation either in family dispute resolution (FDR) or family court proceedings. LAWA will refer clients to the FRCs in circumstances where they have not attended FDR and these risk factors do not appear to be present or where court orders have been made which address the risk issues and the parties are prepared to negotiate in respect of the living arrangements for the children. Some FRCs still seem challenged in identifying the appropriate circumstances for making referrals for legal advice. LAWA is continuing to work with the FRCs to resolve these issues.
- VLA, Relationships Australia Victoria and Family Mediation Centre, as industry partners, have joined with Latrobe University as a financial industry partner in a research funding application. Should this application be successful, VLA and partners will participate in a 3 year study which aims to develop practical models of FDR which are more attuned and appropriate for CALD communities.

#### Co-ordinated FDR (CFDR) Pilot

LAWA, and the Legal Aid Commission of Tasmania (LACTas), are funded as host sites for the pilot of co-ordinated FDR which also involves FSP services. In Queensland LAQ is represented on the local steering committee for the Queensland site auspiced by Relationships Australia.

The CFDR Pilot is intended to provide integrated service delivery in cases involving family violence. Particularly close and effective working relationships have been established with a number of service partners as a result. For example in WA, very effective referral and case management relationships have been established in terms of the provision of clinical services with the Domestic Violence Advocacy Service run by Women's Health and Family Services (women's service); Centrecare Counselling (women's and men's service); Communicare Breathing Space (men's service), and Relationships Australia Counselling (men's and women's service). Similarly effective working relationships in terms of the provision of legal assistance and management of cases have been further developed with the Aboriginal Legal Service WA and each of the 6 community legal centres involved in the pilot. The pilot has also been a catalyst for robust discussions about a range of services to clients including FSP services and has led to further shared professional development including seminars about child inclusive practice and children's contact services.

There are benefits to participants and to service partner relationships from such programs, but the resources required are considerable taking into account the small group of participants involved and the outcomes generated in the context of an environment of limited resources.

#### Children's Contact Centres

The family law clients of legal aid commissions and the children represented by ICLs generally present with multiple risk issues in the context of disputes about parenting arrangements for children. In these circumstances the need for interim spend time with arrangements to be supervised by children's contact centres and reports provided to the family courts is very common. The centres play an important role in enabling children to maintain relationships with their parents whilst managing potential risk issues and legal aid commissions appreciate their role and the benefits provided by their services. Interaction is significant and generally positive, and wait list issues are understood.

Levels of integration and information sharing vary across the country. There is concern in some places in relation to information sharing arrangements with the centres, including risk assessment information. Some commissions have identified issues in relation to the perspective of some centres in relation to client confidentiality, the information that can and should be shared and with whom, including the ICL, and general concern about being required to attend court to give evidence.

#### Parenting Orders Programs

Parenting Orders Programs (POP) designed for families with a history of difficulties in making and keeping parenting arrangements are helpful for clients who need ongoing support to maintain agreements made through legally assisted FDR.

Legal aid commissions refer clients to POPs as considered appropriate.

LAQ has a referral resource of FSP services across the state which is available at every office and used routinely during FDR conferences to assist separated families access appropriate services in their location to assist with the workability of agreements reached.

LAQ staff present training at POP organised training events to enhance relationships, create a greater awareness and understanding of Court processes and the roles that each stakeholder has and an understanding of the respective services offered.

Again, there can be issues in relation to the identification of risk and concerns about confidentiality.

### Pathways Projects

Representatives of legal aid commissions are active Pathways general members or steering committee members. Two representatives on the NLA Family Law Working Group are currently the Chairs of the Pathways Group in their respective states. FSP service providers are also active Pathways members. Examples of Pathways projects include:

- Family Law Pathways Kiosk in South Australia, which is a court based information and referral service, and which enables, for example, ready enquiry about matters such as availability of intake services at a children's contact service.
- "Child Focused Dreaming", a DVD produced by the SA Family Law Pathways Network with the aim of encouraging aboriginal people to use the resources of FRCs in resolving disputes about their children.
- "When Separating" DVD, a multi media resource, using funds provided by the Attorney-General's Department and the WA Family Pathways Network, with content relevant to all jurisdictions. A reference committee was established for the project including WA Family Pathways Steering Committee members. The DVD was developed and produced by LAWA in consultation with this committee in relation to the development of the content of the chapters, promotional materials and marketing. The first 7 chapters have been produced and distributed via CD ROM, website and YouTube. An additional chapter on *Working with High Conflict Families* is being developed and produced, using a similar approach, with further funding support from the WA Family Pathways Network in 2012/ 2013.
- In the Northern Territory, the Top End Family Law Pathways Network has produced a DVD/web-based resource: "Moving Beyond Family Conflict - A Guide to Family Dispute Resolution in the Northern Territory", the concept for this originated from LAQ's Life After Separation DVD. It has 7 chapters covering family dispute resolution processes, including in relation to participation where there are circumstances of family violence, options whether or not agreement has been reached, and other helpful family services available. NTLAC and FSP services developed the content of the chapters and provided actors for the

photographs. DVDs are available and provided to all FSP services to use in that service, and the resource is also on NTLAC's website and live on NTLAC's Facebook page.

- Working group in NSW which includes Judiciary from the Federal Magistrates Court, NSW Children's Court, Aboriginal Community Organisations, the Aboriginal Legal Service (NSW and ACT), Legal Aid NSW, Department of Aboriginal Affairs NSW, and FSP service providers, which is attached to and supported by Greater Sydney Family Law Pathways Network. The intention is to establish an Aboriginal Family Law Pathways Network with a view to connect the organisation wider to NSW Government agencies and Aboriginal community organisations. This group is in its infancy and is not funded at this stage.

#### Conferences and training events

Legal aid commissions also regularly present at and attend FSP service provider conferences and training events.

#### Family Relationship Advice Line (FRAL)

Legal aid commissions all have established information and/advice lines and services. Submissions were made at the time that the FRAL would effectively be duplicating a service when existing and effective service delivery was already occurring through established services well placed to serve their local callers with an understanding of both commonwealth family laws and inter-related state based laws and procedures.

It is important that all online services can link people into appropriate local services, and therefore that referral information is up to date and accurate.

#### **Q6. Does your organisation have any legal assistance association/partnerships with FRCs in your jurisdiction and how effective are they? Do any partnerships provide services to all FRC clients or only those from disadvantaged backgrounds?**

Please see answer to Q.5 above.

We refer to the final report of the "Evaluation of the Family Relationship Centre legal assistance partnerships program" March 2011<sup>2</sup> which relates to the partnership period between June and December 2010.

#### Victoria

Victoria has an MOU with the 15 Victorian FRCs and VLA's Legal Help provides information sessions to Melbourne FRC and accepts e-referrals from disadvantaged clients from Melbourne and Chadstone FRCs. Service agreements were put in place

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<sup>2</sup> Australian Institute of Family Studies, Lawrie Moloney, Rae Kaspiew, John De Maio, Julie Deblaquiere, Kelly Hand and Briony Horsfall

when funding for the Legal Partnerships Programs (involving VLA, community legal centres, and FRCs) ceased. As the new service agreements are recent, they are yet to be evaluated.

#### New South Wales

Legal Aid NSW has very effective partnerships with the following FRCs:

- Coffs Harbour FRC
- Wagga Wagga FRC
- Northern Beaches FRC
- Wollongong FRC.

It is considered that the most useful service for clients is the legal advice clinics and these are available to all clients regardless of whether or not there is a background of disadvantage.

#### South Australia

LSCSA's FRC dedicated family lawyer provides advice to FRC clients either face to face or by telephone and has set up an effective priority warm referral system for people who approach FRC's and are identified as needing legal advice. This advice is available at all LSCSA offices, including in regional areas and at the Aboriginal Legal Rights Movement (ALRM) through the LSC out-posted family lawyer. These advice services are not restricted to those from disadvantaged backgrounds.

#### Northern Territory

NTLAC and the FRC have strong referral pathways for the provision of conflict advice to FRC clients who are unable to access the FRC legal advice service, which the Darwin community legal service is funded to provide.

#### Queensland

LAQ has formalised partnerships with FRCs and with CLCs through the provision of conflict advice. The services arising from this partnership/s are not limited to clients from disadvantaged backgrounds. These relationships appear quite effective.

#### Western Australia

As outlined in more detail in response to Q.5, LAWA and the metropolitan Perth FRCs have long standing arrangements for warm referrals between FRCs and LAWA.

### **Q7. Can you comment on what dictates whether a client comes to a LAC for family dispute resolution or goes to a FRC?**

We suggest that people are likely to present at a commission rather than a FRC when they think their problem is urgent, recognise it involves legal issues and serious aspects which suggest an immediate legal response is necessary, eg family violence, child protection, crime aspects, and where they want someone to speak for them,

often because, whether it is recognised as such, there is awareness of power imbalance.

Other factors likely to affect choice of initial attendance at either an FRC or a legal aid commission are advertising and referral points.

If a client contacts a commission for advice regarding a family law matter they are advised of the requirements under the Family Law Act 1975<sup>3</sup> to participate in Family Dispute Resolution. This advice includes information as to the different services that are available and which might best suit the client's needs.

A number of clients seek legal aid to commence court proceedings but are referred to alternate dispute resolution, including to FRCs, in the first instance if they are not excluded as inappropriate.

Commissions have secure facilities and, with lawyers assisting, are able to conduct conferences in relation to children's matters in circumstances where an FRC might have issued a certificate stating that FDR was not appropriate (family violence and other risk factors). Commissions can also provide conferences in relation to property matters. Except in cases of urgency and/or where matters have been screened as unsuitable commissions will generally not consider litigation grants unless legally assisted FDR has been attempted first.

Examples of when a client will be guided to the FRC sector or other FSP funded services (or the client may elect the FRC or other service) include the following:

- where the dispute does not fit within legal aid eligibility tests, ie by reason of means, merit, guidelines, limited legal aid funds and priorities;
- if the dispute is in relation to communication only FRC services may be more useful for the client;
- if the dispute is in relation to parental capacity, parent education programs and referrals provided by the FRC may assist the parents;
- matters which do not involve urgency or risk and the parties are assessed to have some capacity to resolve disputes with guidance, and
- where the dispute is one where the jurisdiction of the court cannot really assist. For example, carer parent wanting the other parent to have more time; disputes involving older teenagers where the court would not make orders.

A client may elect and be guided to a commission FDR process where:

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<sup>3</sup> And Family Court Act 1997 in WA.

- There is benefit and/or a preference for binding parenting orders as opposed to a parenting plan. For example, the client instructs that issues concerning lack of trust/compliance regarding arrangements for the delivery and return of children are central to the dispute in circumstances where enforceable court orders will provide the best management option.
- There are issues of parental responsibility and it appears that negotiations will be unlikely to be successful by reason of a party's behaviour/attitude. For example, disputes where there is a denial of contact with children, relocation issues, medical treatment issues and sometimes travel issues.
- Where a client has used an FRC process before and does not consider that such a process will assist further (or has already obtained a certificate from an FRC that the case is not appropriate for FDR at the FRC).
- Where inequality of bargaining power, family violence and/or high conflict exists.
- Where the matter is urgent and can be more quickly facilitated through a commission legally assisted dispute resolution process.
- Where there is a complex connection between property and children's matters.
- Where there are factors that make it more likely the matter would be deemed unsuitable at an FRC or have already been so deemed: such as restraining orders, substance abuse, involvement with child protection authorities and family violence/high conflict.
- Where the parties have been referred by a court for commission FDR with their lawyers.
- Where an Independent Children's Lawyer has been appointed.
- Where the matter will require legal advice and assistance including extensive reality testing and negotiation to ensure proposals are workable.

Some clients are advised to use a commission dispute resolution service but at the same time referred to FRC services in terms of assessment, referral and parent education programs (eg, Kids in Focus) or other FSP funded services such as parenting orders programs (eg Mums and Dads Forever in Western Australia).

**Q8. Are there aspects of your service model for providing family dispute resolution, which FRCs might be able to benefit from in their service delivery? For example what strategies, if any do you have to engage party B in the process? How are clients with violence issues (current or past) dealt with?**

It is suggested that FRCs could benefit from an earlier and enhanced inclusion of legal advice and identification of legal issues as part of the intake process, and as a factor relevant to and the consideration of the appropriateness of FDR and the timing of the conference if one is to occur. There will sometimes be a benefit to “holding orders” being put in place to achieve some stability for the children and to facilitate the preparedness of the parties to negotiate at the conference.

In many FRCs there are long waiting lists and the emphasis on parent education can mean that families take a long time to move through the FRC processes. This delay can have legal implications in a number of ways, for example impacting adversely where a parent is having no contact with their children. The recognition of the impact of such delay from a legal perspective can sometimes be limited. The delay can have an adverse impact on the parent’s “spend time with” case at court if agreement is not reached at the conference.

#### Engaging party B

Engaging party B in the process can be difficult for all services with the highest proportion of certificates across the country being issued due to failure or refusal of party B to participate.

Provision of legal advice before the mediation process is considered a useful strategy to encourage people to attend informed FDR. In a situation of power imbalance, regardless of which party is party B, a clear understanding of the law and particularly in relation to the interaction of children's matters and financial and property matters is essential.

Commissions offer some incentive for some party B clients to participate as attendance at dispute resolution is a requirement in many cases before a litigation grant can be considered. Accordingly, funding for party A to the dispute to commence court proceedings should mediation not occur due to the party B refusal is an incentive for party B clients to accept invitations to mediate.

As part of the process, the provision of legal advice to party B about the reality of the situation were the matter to proceed to court, also helps to engage them in the FDR process.

The approach of LANSW and which generally reflects the approach of commissions to engaging party B is set out below:

- LANSW conference organisers attempt to engage party B by letter from address supplied by party A, also phone calls, SMS messages and email;
- party B is recommended to obtain independent legal advice and referred to panel lawyers in their area;
- clients with violence issues are carefully screened for both suitability and safety;

- party A is already legally assisted, party B may need assistance with and/referrals to domestic violence and other services, and
- where safety is a concern and the matter has been deemed suitable through intake, consideration is given to telephone, telephone shuttle or face-to-face shuttle processes.

#### Clients with violence issues

The primary considerations for commissions under the legal aid family law funding guidelines include a consideration of risk, family violence and other complex issues, and the need for clients to access legal advice and support.

Commissions have a range of ways of ensuring that family violence issues are addressed appropriately including screening and risk assessment processes, the involvement of legal advice before during and after a dispute resolution conference and attendance of lawyers at conferences which also helps to support vulnerable clients. The advice session(s) with lawyers also serve as a further level of screening and risk assessment to ensure that dispute resolution is appropriate at this time. Many of the commission conference chairpersons are highly experienced family lawyers and/or social workers used to dealing with high conflict families and cases involving family violence.

Commissions have secure rooms, video conference facilities, duress alarms, and special processes to handle potential violence, for example in some commission locations a security officer is available to be called on as needed. Where, for example, there is a restraining order in place and/or family violence or high conflict background, the security officer may be asked to do a walk around so that all parties are aware that a security officer is on the premises.

The screening checklist is provided to the chairperson on a confidential basis and is not shared with the other lawyer/party. This represents an additional screening check before proceeding and also ensuring that the arrangements for the conference are appropriate.

#### **Q9. To what extent is the effectiveness of FSP family law services dependent on face-to-face contact? How could technology be used in the future to increase service reach and efficiency?**

Our experience is that many clients and practitioners seem to prefer face to face service delivery. Notwithstanding this, commissions often use audio and video links to clients and other parties/providers including for FDR conferences for a range of reasons including service reach, and to address safety issues. Skype and similar technologies are increasingly being used.

NTLAC has received feedback from regional locations that where the first conference might have been by phone and the second by video conference, that the second was much easier and more constructive. NTLAC is looking into purchasing NBN compatible technology in order to enhance video conferencing.

In Queensland over the past 5 years there has been an increasing trend towards mediations occurring by telephone, partly due to geographical distances between parties and their legal representatives, for safety considerations and occasionally for the parties convenience. A review of settlement rates over this period has revealed that the settlement rate for telephone conferences is higher than for face-to-face/onsite/shuttle mediations.

It is suggested that further examination of settlement rates depending on the technology used may be warranted.

Particular issues in relation to delivery of services using technology include:

- Use of technology to connect presumes access to technology at the client end. The most common technology, being the use of telephones, does not work for many clients who do not have reliable credit levels and/or cannot remain on hold for long periods of time, and in some communities there are no working/phones. Clients are increasingly gaining access to email and computer based communication technology, however often email access can be interrupted and or access is limited and not instantaneous.
- The interface between different technology systems.
- Where interpreters are required conferences by phone/video can be more challenging than physical face-to-face.
- Nuances of body language may be unavailable or harder to detect (particularly through older non-digital video technology).
- Some people, including some FDRPs and legal practitioners, can manage the technology better than others.
- Some people can be reluctant to place trust in telephone or AV services particularly if there has been a poor historical association with service delivery from telephone service providers in related matters or other areas of their lives.
- Making, maintaining and exchanging records can be more of a challenge. Many clients have limited capacity to remember what they have been told and limited capacity to take “file notes” of communications that are useful to them. Clients who are able to keep clear records and to make note of who they are dealing with are more effective users of these style of services. It is not uncommon for face to face service providers to have clients who have accessed various non face to face

services and who present with patchy records and/or recollections of various things said to them with no idea who they saw, when they were advised or what they themselves told those service providers.

Accordingly, FSP services might benefit from:

- i) Services having a “casework” perspective that ensured a responsibility by the service provider to maintain contact and service provision, and from time to time provide the client with written records to confirm service delivery arrangements.
- ii) Partnering with face-to-face services in the client’s location that could assist with back-up services, including maintaining access to telephones and computers, dealing with complaints and trouble shooting.
- iii) Going out to other locations and providing some face-to-face outreach services coupled with technology based remote services.

**Q10. What kinds of performance indicators does your organisation use to measure service effectiveness for family law issues? Would any of these be of relevance to FSP family law services?**

The range of performance indicators used by commissions include:

- partial/interim and final settlement rates (reported to the Commonwealth over many years);
- timeliness to hold a mediation (from date application received to date of conference);
- durability of agreements reached (eg through client satisfaction surveys);
- number of referrals/information resources provided to separated families, and
- conversion statistics (including reasons why cases do not proceed to conference; categories of cases being screened out, eg family violence, substance abuse, child abuse allegations etc).

Commissions also conduct surveys of clients about commission services. For example, LAWA and VLA conduct a family law client survey every 2 years across a range of services including FDR. In terms of FDR, the questions in the LAWA survey ask about the following areas:

- identifying the issues involved;
- the advice and support received from the client’s lawyer;

- level of satisfaction with the conference (including the intake and screening process);
- level of satisfaction with the conference chairperson (FDRP);
- changes in conflict and communication between the parties;
- agreements reached and durability of agreements, and
- overall satisfaction with the legally assisted FDR process.

The feedback from surveys is used to inform program development and improve service delivery.

**Q11. Are there any key considerations that should be explored in measuring effectiveness of FSP family law services? What measures could potentially be used as an indication of:**

- How well services keep families out of court?
- How many enduring parenting agreements are made?
- How effective they are in relation to ‘best interests of the child?’

NLA respectfully suggests that further consideration be given to what needs to be measured, eg measures of success might include whether the service provided was appropriate for the family in their circumstances, rather than, for example, how well services are keeping families out of court.

The aim of the system should be to seek a resolution outside court in appropriate cases, freeing up court resources so that cases which do require a judicial determination can be expedited.

Whilst we understand the need to divert families from court where appropriate there will be situations when an expeditious court hearing is the best option. Thought needs to be given to whether keeping the particular family from court could in fact be prolonging or exacerbating a potentially/harmful situation, and/or prolonging the inevitable at unnecessary cost. Putting resources into situations which will end up in court in any event is not efficient or effective.

Commission legally assisted dispute resolution programs are designed to service cases prior to court or late intervention matters where interim orders/investigations have been made by the court, thereby assisting court resources and public funds more broadly by providing a timely, legally assisted dispute resolution process.

There is concern that if there is an emphasis on “keeping families out of court”, that this might encourage agencies to “keep” families in circumstances where issuing a section 60I certificate and/or making a warm referral to a legal aid commission for

lawyer assisted FDR or court proceedings might be a better option for achieving safety for vulnerable children and family members.

There is a lack of longitudinal research in respect of outcomes for families who have reached agreement in FDR conferences at FSP services. Such research would be of benefit in assessing the durability of agreements reached in this environment and, importantly, whether these families avoid involvement in family court proceedings in the future.

The measure for considering what constitutes an “enduring” parenting agreement is also a complex issue. The content of parenting plans and court orders are generally relied on at times where there is a dispute. It is not uncommon for matters to “settle down” and for clients to subsequently change the practical arrangements arising from orders and agreements, without formally amending these agreements. It is also difficult to measure the comparative benefit of an enduring agreement made in a simple matter to a short term agreement in a highly conflicted matter where the agreement is in the child/ren’s best interests and may promote the safety of vulnerable parents and children over a shorter time frame. Sometimes matters will be settled for an interim or trial period only with this being appropriate in the circumstances of the particular family. Perhaps the best kind of outcome is one that equips parties to resolve future disputes themselves, or with minimal external assistance. Being "adaptable" is perhaps more helpful for children than sticking to an agreement (and "enduring" agreement) that no longer meets the children's needs. The LSCSA is exploring a programme to gauge how well individual agreements reached at FDR stand the test of time.

Determining whether agreements reached are in the best interests of children is also a challenging issue and perspectives on whether this is the case will vary depending on the perspective of each participant in the process, including the FDRP. Surveys and/ or consultation with key stakeholders (eg parents, children, the FDRP) would be beneficial for this purpose.

The cost effectiveness of identifying, establishing and monitoring performance must also be considered.

#### Client Surveys

Surveys could usefully be conducted with clients who:

- are current clients of the FSP service;
- have used FSP services in the past, and
- are currently involved in the court process because their parenting disputes have escalated since attending the FSP service.

Assessment of the outcomes of such surveys need to incorporate a critical understanding of relevant issues including:

- the reasons why some clients have failed to participate effectively in service delivery (eg multiple/complex family factors), and

- that dissatisfaction may be a consequence of not achieving their desired outcome rather than dissatisfaction with the service provided.

#### Expert Round Table or Survey

A round table of stakeholder/experts (including service providers, judicial officers, lawyers, family consultants and psychologists/psychiatrists) could consider representative case studies to analyse the appropriateness and timeliness of services provided. These case studies would need to reflect the relevant issues from the perspective of all stakeholders including the service provider, the clients, their children and any relevant external stakeholders.

#### **Q12. Do you have any other comments or questions?**

No.

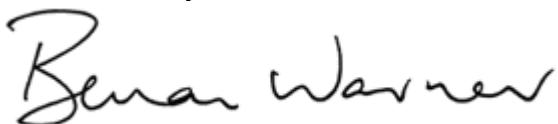
#### **Conclusion**

Thank you for the opportunity to provide this response to the Discussion Guide. If you would like to discuss any aspect of the matters raised, please do not hesitate to contact us.

Individual commission representatives would be happy to provide you with further information about commission services and collaboration with FSP services to the extent that you are not already aware of them as a result of the work of Allen Consulting on the NPA Review.

If you require anything further please contact Ms Smith who will refer the matter appropriately.

Yours sincerely

A handwritten signature in black ink that reads "Bevan Warner". The signature is fluid and cursive, with "Bevan" on top and "Warner" below it, both starting with a capital letter.

Bevan Warner  
Chair