



Australian Government

Attorney-General's Department

Civil Justice Division

**TOWARDS A NATIONAL
BLUEPRINT
FOR THE FAMILY LAW SYSTEM**

February 2009

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Introduction

1. In July 2008 the Attorney-General convened a roundtable of representatives of key organisations in the family law system. Participants at the roundtable were asked to focus on what was needed to build collaboration for the early resolution of family disputes and improve the management of entrenched family law cases. One recommendation from the roundtable was that a blueprint be developed for the family law system to assist with the management of different types of family law cases by specifying the ideal pathways through the system.
2. The purpose of this paper is to analyse the role of each of the entities that currently make up the family law system and to propose options for a blueprint that provides for a more integrated family law system. This paper also identifies key issues that will be addressed at the inaugural conference of the family law system in February 2009.
3. For the purposes of this paper, the family law system includes the Family Courts of Australia and Western Australia, the Federal Magistrates Court, legal aid commissions, community legal services, private legal practitioners practicing family law, Indigenous legal services, family dispute resolution practitioners and services funded under the Family Relationship Services Program (FRSP) (including family relationship centres).
4. Other important institutions that work in the area of family law or family law related matters include State courts, Centrelink, the Child Support Agency, child protection and family violence agencies and other (non-FRSP) funded family and crisis support services.

A more effective family law system

5. Agreement on what makes a more effective family law system assists with setting the framework for the blueprint. Based on public consultations and previous inquiries into the family law system,¹ it is proposed that a more effective family law system is one that:
 - provides access to justice
 - is streamlined and timely, with simple pathways and minimal duplication of effort (processes)
 - ensures the safety of all parties
 - operates with the best interests of the child being the paramount consideration (Part VII *Family Law Act 1975*)
 - is child-focussed
 - is fair, treats all parties with respect and is as inexpensive to families as possible
 - reduces level of personal distress

¹ Dot points 4 to 9 are from *Out of the Maze – Pathways to the Future for Families Experiencing Separation, Overview and Recommendations*, July 2001, p.11.

- provides options for families which are suitable to their situation and take account of other elements of the system
- is flexible enough to respond to changing family/children's needs
- ensures that people do not fall through the cracks
- strengthens cultural accessibility
- strengthens positive parenting, and
- consists of entities that are working towards the same outcome, for example, self-sufficient parenting arrangements that are in the child's best interests.

Question 1: Is this an appropriate description of a more effective family law system?

6. Examining the current pathways through the family law system and comparing them to what a more effective system might be expected to deliver helps to identify areas for improvement.
7. Mapping the pathways through the current family law system is, in itself, a complex task largely because the family law system was not designed as a system. In 2001, the system was found to be a loosely constituted group of institutions and services,² with different areas of responsibility. Entry points to the system were found to be random, with the 'first-to-know' agency having a disproportionate influence on the path taken.³ The implementation of the family relationship centres has helped to improve this, by providing clients with information, referral and a visible entry point to the system. While the Centres have become a key entry point, other entry points remain and are equally important, particularly in areas where Centres are not readily accessible.
8. It therefore remains the case that clients have several entry points to the system and are likely to be engaged with several services simultaneously while trying to resolve a family law matter. However, changes to the legislation mean that all entities are now working towards the early resolution of disputes, outside the litigation pathway (where appropriate); and this is occurring regardless of the type of service accessed and the stage of the process at which a client enters the system.⁴

Enhancing the current family law system

9. There are a number of factors that will influence a client's entry point to the system. These include accessibility/availability of the service, urgency (and timeliness of response), personal preferences, cost, the client's knowledge of the system, presenting need, the other party's entry point and whether or not the other party has initiated the process.
10. Rather than attempting to map all possible pathways that a client may take, the role of each entity in the family law system is described at **Attachment A**, along with its client profile, pathways and referral data.

² Family Law Pathways Advisory Group Report, *Out of the Maze – Pathways to the future for families experiencing separation*, July 2001, p.15.

³ *ibid.*, p.16.

⁴ The Family Law Pathways Advisory Group found that this was not happening in 2001.

11. Three case studies are outlined at **Attachment B** to illustrate the range of services likely to be involved in assisting clients through the current family law system. In the first case study, conflict between the parties is minimal. In the second and third case studies, family violence is identified.
12. An examination of this information demonstrates a number of issues with the current approach:
 - there are many different entry points to the system and the actual client pathways, particularly for clients who deal with more than one entity within the family law system, are complex
 - there is overlap and duplication within the system itself and between the family law system and services available outside the system
 - there is no system-wide approach to screening for violence and assessing client need, with each entity having its own systems in place to manage these issues - clients are often assessed multiple times using different approaches
 - there is no system-wide case management approach to help clients navigate the system
 - there is no consistent approach to information sharing across the system, particularly when clients are referred from one entity to another and have to re-tell their story, and
 - there appears to be a lack of support at the post-agreement or post-order stage of the process.

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| Question 2: Do these observations accurately reflect issues with navigating the current family law system? |
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Identifying ideal client pathways through the system

13. An agreed understanding of ideal pathways for particular family law cases, underpinned by consistent language, improved information sharing and a focus on supporting clients throughout the process may improve outcomes for families and the efficiency of the system.
14. **Attachment C** outlines the ideal pathways for four case types: low conflict, high conflict (no violence), high conflict (violence) and child abuse. The ideal pathways are described within a four-tiered structure. Clients may opt out of the system at any tier (because their needs have been met) or may be engaged in several tiers at the same time (ie tiers are not mutually exclusive). The first tier identifies the different ways that clients may seek information on the family law system. The second tier identifies the different access points to the family law system and includes an initial screening process to identify case type. The third tier identifies the range of service interventions available, with the aim of resolving the majority of parental disputes without judicial intervention (unless inappropriate). The fourth tier identifies court processes.
15. The ideal pathways are premised on the notion that regardless of the entry point chosen by the client the outcome should be the same. All entities and practitioners in the family law system would play an important role in identifying case types and linking clients to their ideal pathways.

16. This would involve all entities and practitioners either providing or arranging for an initial assessment of need. At this point clients should also be provided with information (as per legislative requirements) and a safety check should be made. Safety should be monitored throughout the process. If referrals are needed, their purpose should be explained and clients assisted in making contact with relevant entities. With the client's consent, information should be transferred to the other entity. A support plan, and process for following up with a client, should also be discussed.
17. This ideal pathway requires each entity to:
 - screen the family for safety and monitor this throughout the service
 - assess the client's needs, make appropriate referrals, and transfer information where possible
 - ensure that the client has received legal advice and information as required under the Family Law Act, and
 - ensure that the client understands where to go next should further assistance be required (support plan).

Question 3: Are these minimum requirements appropriate?
Are the ideal pathways for the four case types appropriate?

Tools to support screening, assessment and referral of clients

18. Most key entities and practitioners in Commonwealth-funded services and the courts screen for safety and assess client need, although different processes are used.⁵ The processes used by other entities and practitioners are varied or unknown. A common assessment tool would assist those entities and practitioners that do not already have a process in place. The first step could include asking the three screening questions.⁶ If a safety risk exists, the client should be referred to an appropriate organisation (such as a family relationship centre, the Family Relationship Advice Line, domestic violence/crisis support service) that is able to conduct a more comprehensive assessment process.
19. If the client is unwilling to take up the referral, a standard check list could be used to identify client need,⁷ and provide information on other service options.
20. **Attachment D** provides examples of assessment tools.

Question 4: Should standard safety questions be asked by all entities and practitioners?
Is a standard assessment check list required?
Is a system wide assessment framework needed?

⁵ Family relationship centres and Family Relationship Advice Line use the Screening and Assessment Framework, along with their own tools. Legal aid commissions have different tools and processes in each State. The Family Court of Australia has a *Safety at Court Protocol* and a family violence policy for Child Dispute Services.

⁶ Do you have any reason to be concerned about your safety or the safety of your children? Do you have any other worries about your children? Do you have any reason to be concerned about anyone else's safety? Commonwealth Government, *Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line*, January 2008, p.26.

⁷ Many examples exist of assessment tools used within the system. Child Support Agency is currently developing an online tool to assist clients to navigate their way through the family law system.

Post-agreement and post-order support

21. There appears to be a gap in the provision of post order/post agreement support services. An option may include the development of a tailored support plan for clients that explains court orders or agreements and includes processes for checking how the orders or agreements are working further down the track. The support plan could also outline what is likely to be needed next should the order/agreement break down, what help is available and where to go to get it. Providing clients with this information would help prevent them falling through the cracks within the system and having to enter or re-enter the litigation pathway. The responsibility for drafting such a plan would rest with the last entity with which the client either reached an agreement or order.

Question 5: Should a support plan be provided to all clients post-order/agreement?

22. In the current system, if one party breaches an order, the other is required to take the matter to court to seek redress. Depending on the circumstances of the case, the court may order the parties to attend a post separation parenting program to resolve the issue. To streamline the client pathway, clients could be encouraged to first approach a family relationship centre or other FRSP-funded post separation service, rather than the court (where appropriate). This option could be outlined in the support plan.
23. One example of this is when a parenting order is made in the Federal Magistrates Court. The court advises parties of their rights, obligations and enforcement options, and includes this information with the order. The court has also introduced a requirement for clients seeking enforcement of an order to first seek relationship assistance.

Enhancing collaboration within the family law system

24. In 2001 it was noted that substantial cross-agency collaboration was needed to effectively meet the needs of separated families; and that the family law system was not fully integrated and did not always operate coherently.⁸ Given clients are likely to be engaged with several entities simultaneously, collaboration between entities is needed to streamline processes and achieve optimal outcomes for clients.
25. Family Pathways Networks currently exist and were intended to enhance collaboration across entities at the local level. Membership and activities are determined by each network, based on interests, needs and capacity.

Question 6: Should Family Pathways Networks be enhanced?

⁸ *Out of the Maze – Pathways to the Future for Families Experiencing Separation, Overview and Recommendations*, July 2001, p.14.

26. There are examples of effective collaborative projects within the current system, at national, state and local levels. An example of a national project that was undertaken by a cross-system working party to improve client pathways between the courts and children's contact services is the *Guideline for the Family Law Courts and Children's Contact Services*.⁹
27. The Family Court of Australia hosts a quarterly family law forum to discuss shared issues arising within the family law system.¹⁰ The Court has also implemented its Magellan initiative and has developed protocols with child protection agencies.
28. Draft Guidelines for *Working Relationships between Family Relationship Centres and Legal Aid Commissions* are being developed and will include examples of different types of collaboration and processes for improving each entity's family dispute resolution program.¹¹
29. Collaborative arrangements at the State level include a Memorandum of Understanding agreed between the Family Court of Western Australia, the Department for Child Protection and Legal Aid Western Australia. It establishes cooperative working arrangements between the parties and documents the procedures for sharing information and resources. A Memorandum of Understanding also exists between the South Australian Legal Aid Commission and Relationships Australia SA which outlines the roles and responsibility of the Commission's family dispute resolution services and that of the family relationship centres provided by Relationships Australia SA.
30. Protocols are in place between Legal Aid Western Australia and community legal centres to govern referrals between entities to ensure streamlining of services to clients.¹²
31. A State-wide group of Victorian family relationship centres has been established to work collaboratively with each other and other entities in the system. Many family relationship centres have also established steering committees or reference groups that operate at the local level.
32. Various family relationship centres facilitate informal cross sector collaboration within their local area. For example, by hosting family law forums and organising training events in which practitioners from across the sector are invited.

Question 7: What further work is needed to facilitate better collaboration across the family law system?

⁹ Attorney-General's Department, *A guideline for family law courts and children's contact services*, January 2007. The Guideline was developed in consultation with Children's Contact Services, Federal Magistrates' Court, Family Court of Australia, legal aid commissions, NSW Local Court, Law Council of Australia -Family Law Section and the Attorney-General's Department. The Guideline outlines processes and procedures of the respective entities and includes model orders.

¹⁰ Representatives includes Federal Magistrates Court, the Family Law Council, the Family Law Section of the Law Council of Australia, National Legal Aid, the Attorney-General's Department, the Department of Families, Housing, Community Services and Indigenous Affairs, the Child Support Agency, the Australian Institute of Family Studies, non-government organisations and community legal centres.

¹¹ These guidelines are being developed by National Legal Aid.

¹² Commonwealth Government, *Review of Commonwealth Community Legal Services Program*, March 2008, p. 39.

Enhancing referral processes

33. The family law system is a multi-disciplinary one. Various entities within the system have their own area of expertise. Not all entities within the system are expected to be experts in all areas. Some entities are better placed than others to undertake some of the above tasks. Effective referrals are therefore essential to improving processes and outcomes for clients – they ensure clients get the services they need without having to re-tell their story.
34. Different approaches have been taken to enhance referral processes across the system. Some entities address this through formal arrangements (such as guidelines, protocols or Memoranda of Understanding as described above), while others have informal arrangements which tend to operate at the local level.
35. National referral arrangements exist between family relationship centres, the Family Relationship Advice Line, Child Support Agency and Centrelink. Formal referral and information sharing protocols are in the process of being developed between the legal aid commission and family relationship centres in Victoria and Tasmania.
36. The Family Court of Australia has implemented referral arrangements with approximately 80 Commonwealth, State or community-based organisations that provide family support and crisis intervention services. Through the Court's Integrated Client Service Delivery staff are skilled in dealing with a range of clients and are able to refer 'at risk' clients to a service that is part of the national network of community-based organisations.¹³
37. Referral protocols that include ways of improving information sharing could streamline client pathways. Family Pathways Networks could further support relationships at the local level.
38. **Attachment E** provides examples of referral arrangements that exist within the family law system.
39. Referral protocols could be supported at the client level by a standard referral form.¹⁴ A standard referral form would include client details, issues identified and services needed. It should contain a section that records the client's consent to transfer this information. Training in the application of these tools would also be needed.
40. One of the key functions of Family Relationships Online is to support the referral process by providing information on family law and related services. Other Commonwealth, State and local databases also exist to support the referral process (eg the Child Support Agency's Community Services Directory and the ACT Government's ParentLink).

¹³ Accessed on 4 December 2008 at <http://www.familycourt.gov.au>.

¹⁴ Many organisations have different forms in place eg Anglicare WA and Family Court of Western Australia; Family Law Section, Law Council of Australia – Family Dispute Resolution Referral.

Question 8: What formal referral processes are needed at the national and state levels to support local arrangements?
Who should develop these processes?
How could Family Relationships Online further support the referral process?
Is a standard referral form required? If so, who should be involved in its development?

41. Improving the way information is shared across the family law system is critical to improving service delivery and streamlining the system. However, different confidentiality and admissibility provisions apply to family counsellors, family dispute resolution practitioners and family consultants. The provisions impact on the extent to which information can be shared between entities.
42. Family counsellors and family dispute resolution practitioners (in all entities across the system) must not disclose a communication unless a client has consented to the disclosure, there is a risk of child abuse or disclosure is necessary under Commonwealth, State or Territory law.¹⁵ Evidence of anything said to a family dispute resolution practitioner, or to whom a family dispute resolution practitioner refers a person, is inadmissible unless a child has been abused or is at risk of abuse.¹⁶
43. The role of family consultants in the courts has been extended to enable them to combine the roles of a reporter and a conciliator/mediator.¹⁷ Evidence of anything said to a family consultant is admissible.¹⁸
44. Courts may either refer or order clients to attend counselling, family dispute resolution or post separation services at any time after an application has been filed. Admissibility provisions apply when ordered to these services, and the only information provided to court, if required, is in relation to attendance and unsuitability.¹⁹ The provisions may prevent the court from obtaining information relevant to the case. One option is to provide the court with the discretion to determine whether or not evidence of anything said, during a court-ordered service, is admissible. Similar powers already exist in Division 12A of the Family Law Act. This option may reduce the need for further hearings, family reports or other court processes. However, it may impact on a client's ability to engage with the practitioner or counsellor; and resource implications may arise if the practitioner or counsellor is required to report to courts.

¹⁵ S10H *Family Law Act 1975*

¹⁶ s10J *Family Law Act 1975*. The exceptions to s10J(1) (Evidence inadmissible) include s10J(2) an admission by an adult or a disclosure by a child that the child has been abused or is at risk of abuse, unless, in the court's opinion, there is sufficient evidence of the admission or disclosure from other sources.

¹⁷ Family Court of Australia, *Finding a Better Way – A bold departure from the traditional common law approach to the conduct of legal proceedings*, April 2007, p. 59. Note: The role of the Family Consultant is outlined as part of the Child Responsive Program.

¹⁸ s11C *Family Law Act 1975*.

¹⁹ s70NED *Family Law Act 1975*. Note: This provision is in relation to contravention applications.

45. Regardless of the number and type of formal protocols in place, their effectiveness is dependent on the client's preparedness for the referral. The onus rests with entities to provide sufficient information about the referral and why it's being made and facilitate the referral process.

Question 9: Is there a need to amend confidentiality and admissibility provisions in the Family Law Act?
What else would assist with improving the sharing of information across the family law system?

Streamlining service delivery

46. Duplication and gaps in service delivery currently exist within the family law system. Appropriate streamlining of similar services would simplify the system and clarify client pathways. Areas which present significant opportunities for streamlining include Commonwealth-funded family dispute resolution, post separation services, children's services and telephone advice.
47. **Attachment F** sets out options for discussing how this streamlining could be achieved. The main options include:
- consolidating FRSP-funded family dispute resolution services with family relationship centres
 - consolidating parenting orders programs, children's contact services and post separation cooperative parenting services
 - expanding services available at family relationship centres to include family counselling and legally assisted family dispute resolution
 - providing FRSP-funded service providers with more flexibility to provide a range of post-separation and child-inclusive services
 - looking at the operation of the three free hours currently available at family relationship centres
 - adopting a more consistent approach to fees policies for FRSP-funded and court-ordered services, and
 - reviewing the number of telephone advice lines and the different types of child support programs that exist within the family law system.

Question 10: Are there any other service delivery issues within the system?
What changes are needed to make the system more efficient?
Are there any areas that should be prioritised and how should this work be progressed?

Family Violence

48. The previous Government released *A Family Law Violence Strategy* in 2006 which formed part of the family law reform agenda and focussed on the right of children to grow up in an environment free from violence. Additional funding was also made available to increase specialist family violence services.
49. Amendments were made to the Family Law Act in 2006. The amendments included the elevation of the status of the protection of children from harm associated with family violence to that of a primary consideration,²⁰ and the imposition of obligations on family courts to deal with allegations of violence expeditiously.²¹
50. Project Magellan, an initiative of the Family Court of Australia, which comprises a multi-disciplinary system of case management for matters where there are allegations of sexual abuse or serious physical abuse of a child before the court, has been rolled out nationally. The Family Court of Western Australia has implemented its own version of this case management system, known as Child Related Proceedings (this has superseded the Columbus Program). This includes cases where there are allegations not only of child abuse or child sexual abuse, but also of domestic violence or where levels of violence are such that there are concerns for the safety of children.
51. The Department has consulted with key stakeholders to find better ways to address family violence in the family law system. Discussions have focussed on improved communication and cooperation between services, training for staff, support services and safeguards for victims of violence, and responses to people using violence.
52. The National Council to Reduce Violence against Women and their Children has consulted with, or received submissions from around 2000 stakeholders conducting a consultation process to develop a national plan to reduce violence against women and children.
53. The Family Law Council has been asked to consider ways to improve coordination of the family law system and State and Territory systems in relation to family violence and is expected to complete this report in early 2009.
54. The specific issues that arise in family violence cases are addressed in the Family Violence Discussion Paper at **Attachment G**.

Question 11: What needs to be done to improve the family law system's capacity to respond to the issues of family violence in family law matters?
How can information sharing be improved to ensure the safety of parties and timely access to appropriate support services?

²⁰ s60CC(2)(b) *Family Law Act 1975*.

²¹ S60K *Family Law Act 1975*.

Protecting children at risk

55. The current way the legal system responds to children at risk is fragmented across jurisdictions. Cooperation between different jurisdictions is limited. This can result in an ineffective response to identifying and protecting children at risk.
56. The existence of two separate systems – the family law system and the child protection system - not only creates difficulties for families who are trying to navigate their way through the system but also causes overlapping responsibilities as well as gaps between the two systems.
57. The Government is developing a new national framework for child protection and well-being. One aim of the national framework is to enable a more integrated response across governments and non-government organisations in a range of fields that impact on the wellbeing of children, young people and families.

Question 12: What more can be done by the family courts, family lawyers and the service sector to improve coordination across services and enhance information sharing for cases involving children at risk? How can cooperation between the family law system and the child protection system be enhanced to eliminate the gaps between the two systems?

Conciliation/Arbitration

58. Changes to the Family Law Act and the establishment of new and expanded family relationship services (including family relationship centres) in the past three years have strongly encouraged the resolution of family disputes outside the courts where possible. The impact of those initiatives can already be seen in decreased filings in family courts.²² Family dispute resolution outside the courts has played a significant role in helping families avoid the cost and trauma of litigation. This includes family dispute resolution undertaken in family relationship centres, other government-funded family dispute resolution services, legal aid commissions and private mediation practices. Models of family dispute resolution vary from mediation to conciliation and family conferencing. In family relationship centres and legal aid commissions, family dispute resolution is essentially a conciliation process, with the family dispute resolution practitioner providing advice and guidance, particularly in relation to focusing on the needs of the children involved.

²² There was an 18% decrease in filings for final orders in the family law courts between July 2007 and June 2008 compared with the previous year. This coincided with the introduction of a requirement to attempt family dispute resolution before filing new cases in the courts in July 2007 at the same time as a major expansion of family relationship services.

59. However, there are still too many families who do not resolve their disputes over parenting arrangements and are left with no option other than to remain in conflict or to file in the courts. While there are cases that do require judicial determination, other families are entering the court system who would be better off resolving their disputes outside the courts. Now that family relationship centres have been rolled out and the impact of the family law system changes is beginning to be felt, the question arises whether the conciliation role of family relationship centres and legal aid commissions could be strengthened and whether there needs to be a capacity for arbitration of parenting disputes outside the courts.²³
60. One proposal for filling the gap between family dispute resolution and court processes was the Families Tribunal recommended in the *Every Picture Tells a Story* report.²⁴ The proposed tribunal would have been able to make a binding order, reviewable by the courts.
61. An alternative to creating a new layer in the family law system is to build on the structures already available. For example, senior practitioners with appropriate experience and qualifications could be accredited to attempt to resolve a dispute and, if unsuccessful, make a decision, reviewable by the courts.
62. Such a decision making process (arbitration) could be an option following unsuccessful family dispute resolution processes or as an alternative to family dispute resolution where the conflict is such that it is unlikely the family will reach agreement.
63. A further option is for suitably qualified family dispute resolution practitioners to have the power to make recommendations to the family if an attempt to conciliate a dispute is unsuccessful, with the recommendation given appropriate weight by the court if the matter is subsequently filed.

Question 13: Should there be a capacity under the Family Law Act for arbitration of children's matters, with binding orders reviewable by the courts?

Who should be able to exercise such powers - accredited practitioners in family relationship centres? In legal aid commissions? In other services or private practice?

Is there a role for a collaborative law approach as a basis for an arbitration process?

Who should pay for the services of the arbitrator?

Should there be a power to make recommendations, instead of or in addition to a power to make decisions?

Should there be further powers to resolve financial matters outside court?

²³ *The Family Law Act 1975* already provides for arbitration of property disputes outside the courts.

²⁴ House of Representatives Standing Committee on Family and Community Affairs, *Every picture tells a story*, December 2003, Recommendation 12.

Understanding and supporting our clients

Children

64. The need for a greater child-focussed approach within the family law system has led to the implementation of a number of initiatives including:
- professional development programs for legal and family dispute resolution practitioners
 - the implementation of child-inclusive practice in family relationship services
 - increased funding for the parenting orders program and the children's contact services
 - guidelines that clearly define roles and responsibilities for child representatives in family court proceedings (known as Independent Children's Lawyers)²⁵
 - research into child-inclusive mediation
 - less adversarial court processes to support a child focus
 - the Family Court of Australia's Child Responsive Program
 - training in child-inclusive practice for services funded under the FRSP, and
 - a section on children in the Family Law Section of the Law Council of Australia's *Best Practice guidelines for lawyers doing family law work* (2004).²⁶
65. The court must consider a number of factors when determining the child's best interests.²⁷
66. The challenge for practitioners across the family law system is to encourage parents to focus on what is in the best interests of their child when determining parenting arrangements. Parents need to understand the impact of their behaviour on their child, and how this affects their relationship with their child, as well as the child's relationship with their other parent.
67. The benefits of a child-focussed approach are known. Parents often become less antagonistic towards one another when they understand the impact their conflict is having on their children.²⁸
68. Although interventions which directly involve children can achieve good outcomes, children should not be subjected to uncoordinated multiple interventions as this may impact on their well being.

Question 14: Is further work needed on child-focussed and child-inclusive practice? If so, what form should this work take?
What other approaches could assist practitioners to determine what is in the best interests of a child?

²⁵ These guidelines were first issued as a practice direction in the Family Court of Australia.

²⁶ Note: these are currently being updated.

²⁷ s 60CC *Family Law Act 1975*.

²⁸ Australian Government, *Review of the Family Relationships Services Program*, 2004, p.68.

Grandparents

69. Amendments to the Family Law Act in 2006 recognised the important role that grandparents play in a child's life. Specific references to grandparents and other relatives of the child have been made to ensure that the courts recognise the importance of the relationships that the child has with their wider family. Family dispute resolution practitioners are required to advise on the types of issues that parenting plans may cover. This includes the amount of time a child spends with other people, such as grandparents.
70. Preliminary work is underway to enhance the delivery of family dispute resolution services at legal aid commissions to include grandparents and other extended family members.
71. It is anticipated that the outcome of this work may be relevant to other services including family dispute resolution practitioners working in family relationship centres and other Commonwealth funded services.

Question 15: Is further work needed on including grandparents and other extended family members (where appropriate)? If so, what form should this work take?

Aboriginal and Torres Strait Islanders

72. Funding has been provided for advisers for Aboriginal and Torres Strait Islander clients in 12 family relationship centres, for Indigenous Information Officers on the Family Relationship Advice Line, for the Family Violence Prevention Legal Services Program and Legal Aid for Indigenous Australians Program. Competencies are being developed in relation to providing family dispute resolution services to Aboriginal and Torres Strait Islander clients.
73. The roundtable identified two options that may improve the experience of Aboriginal and Torres Strait Islander clients in the family law system. The first option is to strengthen the provision of culturally appropriate services by the courts. The second option is to improve access to culturally appropriate legal assistance services.

Question 16: Are further strategies needed to strengthen the provision of culturally appropriate services by the courts and other entities in the family law system?
Does access to culturally appropriate legal assistance services need to be improved? If so, how can this be done?

Culturally and Linguistically Diverse Clients

74. The Family Court of Australia has implemented the *Living in Harmony* project which aims to improve the services the Court provides to culturally and linguistically diverse clients. Family relationship centres have developed local strategies to engage these clients, such as through partnerships with migrant resource centres.

Question 17: Is further work needed to improve the family law system's capacity to respond to the needs of culturally and linguistically diverse clients? If so, what form should this work take?

Self represented litigants

75. Legal aid commissions provide duty lawyer services for self represented litigants in family law matters at the Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia. A national protocol has been developed that includes a description of the type and level of assistance provided, and the obligations of duty lawyers.
76. Under the Victorian Court Network Project, trained volunteers are available to assist individuals accessing the Court (including in relation to family law matters), with support, information and referral.
77. The Family Law Assistance Program is administered by Monash University and funded by the Attorney-General's Department. A drop-in service is provided through the Dandenong Registry. It is designed to assist people involved in family court litigation who do not have legal representation. Law students provide information and advice on family law procedures, mediation and other forms of dispute resolution and the impact of family breakdown.
78. Information is available to assist self represented litigants through various websites including those of the courts and legal aid commissions.

Question 18: What else should be done to support self represented litigants through the family law system?

Understanding and supporting our system

Need for a common language

79. Feedback received by the Department indicates that there is some support for the development of a single glossary of common terms to assist in creating a cohesive, integrated family law system. Current common words and the multiple descriptions used throughout the family law system is at **Attachment H**. The diversity of meanings attributed to a single word adds to the confusion for clients attempting to navigate their way through the system.

Question 19: Should a single Glossary of Common Terms be created?
If a single glossary is required, who should be involved in the development of it?

80. Each stakeholder within the family law system has a different way of recording and defining client and case activity. This inconsistency means that it is difficult to monitor the pathways and track the volume of clients progressing through the system.

Question 20: What work is needed to improve our understanding of the activity levels and outputs across the family law system?
Who should be involved in this work?

National Products to assist individuals

81. Family Relationships Online was established as a key tool to provide families with access to information about family relationship issues and services that can help. The Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs have produced national information products and resources that are accessible through Family Relationships Online. There are many other products that have been developed by a range of stakeholders and are accessible through other means.
82. The Child Support Agency has an online questionnaire to assist clients to identify the services they need and where to find them. The Child Support Agency has also established a reference group to develop a web-based separation information and referral tool.
83. Further education of young people in relation to families and separation was suggested in 2001.²⁹ It was considered that a national education package for schools could enhance individual's capacities for healthy relationships, provide information about positive parenting models and conflict resolution, and encourage help seeking behaviour.

Question 21: What further work needs to be done to improve the community's knowledge of the family law system?
Are additional national products needed?
If so, what form should they take and who should be involved in their development?

Research

84. A range of Commonwealth-funded research activities related to the family law system is currently underway. The Australian Institute of Family Studies has been commissioned to evaluate the effectiveness of each component of the family law reforms, namely changes to the legislation, the implementation of new services (such as family relationship centres and the Family Relationship Advice Line) and expansion of existing early intervention and post-separation services. The evaluation is expected to be completed in December 2009 and the framework is accessible at <www.ag.gov.au>.
85. The Attorney-General has identified research priorities for the Department which include:
 - outcomes for children in the new family law system
 - comparing the outcomes and the efficacy of different service models/service delivery methods in the new family law system
 - outcomes for families in the new family law system that are affected by family violence

²⁹ Family Law Pathways Advisory Group Report, *Out of the Maze – Pathways to the future for families experiencing separation*, July 2001, p.26.

- cultural factors affecting services and outcomes for separating families, and
 - child-inclusive practice models.
86. Developing a national research agenda would help identify the areas of priority within the family law system.

Question 22: Is an agreed system wide national research agenda needed?
If so, who should be involved in its development?

A multi-disciplinary approach

87. It is generally recognised that a multi-disciplinary approach to resolving family law issues is needed. Research suggests that areas of potential conflict may exist between family lawyers and family dispute resolution practitioners and that these areas may inhibit positive working relationships. The areas of potential conflict include confusion about role boundaries, hierarchical approaches to the inter-professional relationship, identifying and managing disputes involving violence and lack of understanding of the other profession’s skill base, responsibilities and work practices.³⁰
88. The research recommends that each profession improve its understanding of the other’s role, that communication protocols for mutual clients be developed and that understanding family violence and its impact on children needs to be increased. Other developmental opportunities may include familiarising family dispute resolution practitioners with the relevant law governing the ‘best interests of the child’ and family lawyers with the relevant research that informs family dispute resolution practitioners’ work with parents.
89. Better identification and management of family violence in the family law system has been introduced as an essential competency for those seeking to be accredited as family dispute resolution practitioners.³¹ Options for developing accreditation standards for other practitioners working in the system, such as family counsellors, are currently being explored.
90. It has also been proposed that a national code of conduct, a national continuing education scheme for professionals working in the family law system, and an accreditation system for family lawyers be implemented.³²

Question 23: What should be developed to support a multi-disciplinary approach to resolving family law issues?
Who should be involved with this process?

³⁰ Rhoades, H., *Family lawyers and child-focussed dispute resolution: Managing inter-professional relationships in the family law system*, Final Report, 2008, pp. iii. & 38.

³¹ s3(2) *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*.

³² Family Law Pathways Advisory Group Report, *Out of the Maze – Pathways to the future for families experiencing separation*, July 2001, p.26-33.

ATTACHMENT A – Description of entities in the family law system

Family Law System Entity: Legal Aid for Indigenous Australians Program

Description and Role

Aboriginal and Torres Strait Islander Legal Services are funded by the Australian Government to improve the access of Indigenous Australians to high quality and culturally sensitive legal aid services so that they can fully exercise their rights as Australian citizens.

Aboriginal and Torres Strait Islander Legal Services provide legal advice and information, duty lawyer services at courts and ongoing legal services in relation to a particular legal problem. Ongoing assistance is subject to clients meeting eligibility criteria, including a means test and priorities for assistance as set out in the Policy Directions for the Delivery of Legal Aid Services to Indigenous Australians.

Family law matters covered by the Policy Directions include divorce in certain circumstances, and parenting orders, denial of child/parent contact, child support assessments, child maintenance, and domestic violence orders.

Assistance can be provided where there are reasonable prospects of success, the client would be disadvantaged if the Services were not provided and/or the client fears for their safety or for the safety of a child or another person in their care.

Family law services are not normally available unless the client has participated or is willing to participate in counselling or mediation with the other party.

Referrals primarily from: Self, police, legal aid commissions, community legal centres and welfare services.

Referrals primarily to: Family Violence Prevention Legal Service, legal aid commissions and counselling services.

Client Profile

Clients are disadvantaged Aboriginal and Torres Strait Islander people and their partners. Eligible clients whose gross income is less than \$46,000 can receive services free of charge. There is a graduated contribution requirement for clients with income above this level.

Presenting need: General family law issues including divorce, parenting orders, denial of child/parent contact, child support assessments, child maintenance, and domestic violence orders.

Desired outcome: Resolution of legal issues through agreement or court orders.

Client Pathway

Entry point: Initial contact with an Aboriginal and Torres Strait Islander Legal Service is primarily through service field officers who maintain contact with Aboriginal communities. Clients may also seek assistance through visiting service offices or by telephone.

Exit points: Completion of legal matter by negotiation, or court proceedings, referral to counselling or other legal aid provider.

Typical pathway: Clients receive varying levels of assistance depending on need, capacity of the organisation in terms of other priorities for assistance (approx 90% of Aboriginal and Torres Strait Islander Legal Services work is meeting demand in relation to criminal law matters) and conflict of interest issues.

Assistance may be in the form of information or advice or referral to another agency. In instances where the organisation identifies a legal conflict clients will be referred to another agency for assistance.

Family Law System Entity: Family Violence Prevention Legal Service

Description and Role

Family Violence Prevention Legal Services are funded by the Commonwealth Government to provide information, legal assistance, casework, counselling, court support, referral and community promotion. These services are managed by Aboriginal and Torres Strait Islander communities and provide culturally appropriate assistance to adults and children who are victims-survivors of family violence and/or sexual assault.

Family Violence Prevention Legal Services provide the following services to victims-survivors of family violence and sexual assault: legal assistance, advice, casework and court support where it relates to family violence and sexual assault; counselling, where it relates to family violence and sexual assault; child protection; information, support and referral.

Legal assistance may be provided in the form of assistance with family violence restraining orders, child protection, victim's compensation and family law (where it relates to family violence).

Referrals primarily from: Self, police, health service, a shelter or other legal service.

Referrals primarily to: A shelter, other legal service (legal aid commission, community legal centre or private lawyer), police, Centrelink, health service, child protection agency, counsellors, public housing agencies and other agencies necessary to deal with a client's immediate needs.

Client Profile

Family Violence Prevention Legal Services are for Aboriginal or Torres Strait Islander persons, their partners or carers who are victims-survivors of family violence or sexual assault. Individuals may be women, men, children and young people.

Services are not available for non-Aboriginal or non-Torres Strait Islander individuals unless the service will provide a direct and substantial benefit to an Aboriginal or Torres Strait Islander person.

Assistance must not be provided to perpetrators of family violence.

Mediation is not provided to clients although a staff member may attend a mediation session as a client's advocate or support person.

Presenting need: Family violence and/or sexual assault.

Desired outcome: Protection from family violence and sexual assault.

Client Pathway

Entry point: Victim-survivor of family violence and/or sexual assault contacts the service by phone or in person.

Exit points: Following the provision of information, referrals, counselling, one-off or ongoing legal assistance.

Typical pathway: Clients will receive various levels of assistance depending on their needs. Some clients will require information regarding support services available to them. A range of referrals to relevant local services may be provided (eg community health centres, accommodation services, the police and Centrelink).

Counselling services will be provided to victims-survivors, including children. If counselling is not available in-house, clients will be referred to an appropriate counselling service.

Clients with family violence issues will be provided with advice and appropriate referrals. Legal assistance in the form of case work may include court representation, negotiation of agreements or ongoing case management. A solicitor acting for a client on an ongoing basis may assist through to a final hearing of an application for a family violence restraining order. The solicitor may assist a client to apply for victim's compensation.

Family Violence Prevention Legal Services may not always have the resources available to assist a particular client. If this is the case, a client may be referred to a legal aid commission or community legal centre. If neither of these services are available or are unable to help, the client may be referred to an external private lawyer who may provide assistance on a pro bono basis.

Family Law System Entity: Legal Aid Commissions

Description and Role

Each State and Territory has established an independent statutory commission to provide legal aid services for disadvantaged people. The commissions use the services of both salaried lawyers (employees of the commissions) and the private legal profession to provide legal representation. Other services provided by commissions include information, community legal education and legal advice comprising advocacy and minor assistance such as preparation of documentation, advice on process etc, and duty lawyer services.

Information services: These services provide information about such matters as legal rights and responsibilities, alternative dispute resolution processes, legal, court and tribunal processes, and the availability of a grant of legal assistance. Referrals are also made to other appropriate services, both internally (such as other legal aid services) or externally (such as financial, counselling or family relationship services).

Community legal education and publications: These include community legal education services (eg classes, forums, workshops, community development and liaison) and publications.

Legal advice and minor assistance: These services provide specific legal advice in relation to a person's individual circumstances and analyse the options available to that person to resolve his/her legal matter. Minor assistance services provide self-help assistance greater than that provided under legal advice services but short of direct representation.

Duty lawyer services: A family law duty lawyer scheme operates at the Family Court of Australia, Family Court of Western Australia and the Federal Magistrates Court.

Family Dispute Resolution: These services are child-focussed and are provided under a grant of legal assistance that involve participation by parties to a family law dispute, at least one of whom is a legally assisted person, in a process facilitated by a neutral third party for the purpose of resolving the dispute between the parties by consent as an alternative to the litigation pathway.

Litigation services: Litigation services are legal services provided under a grant of legal assistance that provide access for legally assisted person to a suitably qualified legal practitioner who will represent them and assist them in resolving a legal matter that is before a court or tribunal. Applicants for commission services that are provided under a grant of legal assistance must first meet the eligibility criteria (means and merits tests).

Independent Children's Lawyers: If an Independent Children's Lawyer is ordered by the Court, commissions will make a grant of legal assistance for the Independent Children's Lawyer. An application for a grant of assistance for an Independent Children's Lawyer is not means tested. If parties involved in the matter are not legally aided, commissions, taking into account each party's capacity to pay, may require total costs and disbursements of the Independent Children's Lawyer to be paid.

Referrals primarily from: Self, private lawyers, and family law duty lawyer services. Some other referrals from community legal centres, family relationship centres, other Commonwealth or State funded organisations, such as welfare, financial, counselling and health agencies.

Referrals primarily to: Community legal centre, family relationship centres, other commonwealth or state funded organisations, such as welfare, financial, counselling and health agencies.

Client Profile

Clients are members of separated families. Clients may have complex needs and issues of family violence may be present. Eligibility for legal aid is means and merits tested. Clients are typically disadvantaged.

Presenting needs: In family law matters legal aid services provided under a grant of legal assistance for separate representation of children; any other orders relating to children, including parenting orders, location orders and recovery orders; parenting plans; injunctions relating to family violence, child support and child maintenance, spousal maintenance; dissolution and nullity of marriage; property proceedings; enforcement proceedings; or contempt and breach of court orders proceedings. These services are aimed at resolution of the family law dispute. Issues of family violence and child protection may also present. Legal Aid Queensland is the only legal aid commission that provides an arbitration service for property matters only.

Desired outcomes: Resolution of family law dispute with an agreement/consent orders either fully settled, partial or interim.

Client Pathway

Entry point: Clients may approach legal aid either via a referral or through self-initiation. They may initially seek legal information through the telephone advice line, by attending in person at a legal aid commission office or visiting a legal practitioner who undertakes legally-aided work.

Exit points: include resolution through Commission's family dispute resolution process (usually with consent orders), referral to another family dispute resolution service or another legal service (where client does not meet the means test), and litigation where matter does not resolve through family dispute resolution processes.

Typical pathway: In family law matters, a grant of legal assistance may be made to a person to fund legal representation either to participate in a family dispute resolution conference, or to proceed to litigation if it is considered the matter is not appropriate for family dispute resolution. Consideration must be given to whether the matter is appropriate for family dispute resolution before approving a grant of aid for litigation

Where the Commission considers that a non-legally represented family dispute resolution process would be more appropriate, they refer the client to a family relationship centre or other family dispute resolution service. If no resolution is achieved through that process and the person satisfies the means test, the client may be referred back to the Commission to participate in a legally represented family dispute resolution process or to receive advice and assistance in making an application to a family court.

If people do not come to an agreement during a family dispute resolution process or, only partially come to an agreement, an application may be made to a family court for resolution of the matter. If a person satisfies the means and merits test they may be represented by legal aid. If they do not satisfy the means test the person will be referred to an alternative lawyer. In some cases parties who come to partial settlement at a family dispute resolution conference may be referred for a second family dispute resolution conference at a later date.

Family Law System Entity: Community Legal Centres

Description and Role

Community legal centres are independent, community organisations that provide free legal services to the disadvantaged and those with special needs who meet the Centres specific eligibility criteria. They provide a range of assistance on legal and related matters (including family law issues) through the provision of information, advice, casework, community legal education and law reform and legal policy. A key role is also to refer clients to other services that can assist. Almost 31% of work undertaken by the centres involves family law.

In some instances, centres are funded by the Commonwealth and State Governments, or by one of those parties, and are situated in urban, regional and remote locations around Australia.

Women's legal services are specialist services located in all States and Territories providing core services to women through telephone advice lines, community legal education and law reform activities. Significant levels of their service provision are devoted to family law activities.

The Commonwealth funded Child Support Scheme Legal Services Program, comprises specialist community legal services providing information and legal advice in relation to an individual's rights and responsibilities under the Child Support Scheme. Those seeking assistance will have a child support liability or child support entitlement, and will predominantly be on a low income or receiving Centrelink income support.

The centres are a key component of Australia's legal aid system and complement services provided by legal aid commissions and the private legal profession.

Referrals primarily from: Community based organisations, legal aid commissions, other community legal centres, other government departments/agencies, family courts and Centrelink.

Referrals primarily to: Other community legal centres, private practitioners or the Law Society Referral Hotline, legal aid commissions, other government departments/agencies, community based organisations, family relationship centres and family courts.

Client Profile

Low income and special needs individuals. Many clients need assistance with more than one legal problem and these problems are often complex.

Presenting needs (family law related): Issues involving child support, child/spousal maintenance, contact and residency, divorce and separation, family violence, property, and child protection.

Desired outcome: Individuals are provided with knowledge about the legal system and their rights. They are provided with assistance to prevent their legal problems and disputes from escalating, and to resolve their issues.

Client Pathway

Entry point: Individuals can access services delivered at the centres, face-to-face, over the telephone and through outreach services at other local and rural community-based locations. Many centres run court assistance schemes facilitated by the local court registrar and the police, particularly for Apprehended Violence Orders.

Exit points: Clients will exit the service upon referral to another service at any point following their initial contact with the centre, or at the completion of service delivery by the centre (ie following the conclusion of an advice, case, or attendance at a community legal education session).

Typical Pathway: The centres have intake and assessment processes to determine the best way to assist a client. Clients may be provided with information, advice and/or referrals to a range of other services that may assist. They may require ongoing assistance and representation.

The range of services and referral paths offered, recognise the inter-relationship between legal and non-legal problems. Staff assess for indicators of family or domestic violence and identify whether there is any immediate safety risk. If a risk is identified, the service will support the client to take appropriate measures or to access services that will enhance the client's safety (ie to apply for a protective order or access emergency accommodation).

Advice may be provided in relation to advocacy, support, referral and/or legal advice. Depending on the resources of the centre, assistance may be provided through the interpretation of legal documents, drafting of simple correspondence, and making telephone calls on the client's behalf.

The centres aim to assist people to resolve parenting disputes as quickly as possible and provide clients with the capacity to resolve legal problems without the need for litigation. They do so by referring clients to dispute resolution services where appropriate.

Family Law System Entity: Child Support Agency

Note: The Child Support Stakeholders Working Group is currently mapping client pathways through the family law/child support system.

Description and Role

The Child Support Agency was established in 1988 to administer the Child Support Scheme in accordance with child support legislation. The Child Support Agency is a government agency that is part of the Department of Human Services which works to improve government, social and health-related services to Australians. The role of the Child Support Agency is to support separated parents to transfer payments for the benefit of their children. It provides support and assistance to both parents, including calculating, collecting and transferring child support and administers international cases when requested. It also offers products, services and referrals to help parents with other aspects of separation.

The Child Support Scheme aims to balance the interests of both parents and focus on the needs and costs of children. Australian families may make child support arrangements in one of three ways:

1. Self administration - an entirely private arrangement between parents which includes cases where child support is not sought
2. Private collect - registration and assessment by the Child Support Agency but with payment made directly between parents, or
3. Child Support Agency collect - registration, assessment, collection and transfer by the Child Support Agency.

Service delivery processes are consistent across all Child Support Agency outlets.

The Child Support Agency does not provide legal advice or family dispute resolution services.

Referrals primarily from: Centrelink, family relationship centres or the Family Relationship Advice Line.

Referrals primarily to: Community organisations, Family Relationship Advice Line and family relationship centres. Procedures are in place for warm referring change of assessment customers through to the Advice Line or a family relationship centre who need assistance with their parenting arrangements. For customers in distress or at risk of family violence, referrals are primarily made to the Priority Telephone Referral Service or to Centrelink social workers.

Client (customer) Profile

All separated parents, regardless of the type or length of their relationship who have cases registered with the Child Support Agency and who are paying or receiving child support through the Child Support Agency, or who have made private arrangements for the transfer of child support.

Presenting needs: Seeking information and assistance relating to child support assessments and payments. There may be a range of other issues that require referral to external agencies or crisis intervention.

Desired outcomes: Parents share the cost of supporting their children according to their capacity, through arrangements that are simple, flexible and efficient, and that adequate support is available to all children not living with both parents.

Client (customer) Pathway

Entry point: Separated parents can apply for an administrative assessment of child support based on a legislative formula which takes into account many different family circumstances. Parents can apply over the phone, in person or electronically. Alternatively, parents can register a court order or a child support agreement.

Exit points: When child support is no longer payable (eg child has turned 18, is no longer a dependent, the parents have reconciled or the paying parent or child dies).

Typical pathway: New customers are case managed for up to nine months to support them at the beginning of their relationship with the Child Support Agency and to ensure their payment arrangements are sustainable. The New Customer business line routinely makes referrals as part of their service offer to newly registered parents. After nine months, the customer is moved to the Customer Support Services area.

Other pathways: The customer remains with the Customer Support Services area unless:

- they accrue significant debt and are transferred to the Enforced Collect area
- they have multiple issues and contact Child Support Agency repeatedly. They are then transferred to the Personalised Services area
- they apply for a 'Change of Assessment' or they object to a decision. They are then transferred to the Specialised Services area until the Change of Assessment/Objection process is finalised, or
- there is a threat to a customer and it is deemed to be immediate and real. The Child Support Agency is able to override Privacy and Secrecy provisions and will call the police after a risk assessment is made of the threat.

Family Law System Entity: Centrelink

Description and Role

Centrelink is an Australian Government statutory agency, delivering a range of Commonwealth services to the community, supporting those in need and assisting people to become self-sufficient through information, support payments and referral. Intake, screening and assessment processes are consistent across all Centrelink outlets.

Centrelink does not provide legal advice or family dispute resolution services.

Referrals primarily from: Self, family/friends, community services, family relationship centres, Family Relationship Advice Line, Family Assistance Office, and legal services.

Referrals primarily to: Child Support Agency, family relationship centres, Family Relationship Advice Line, legal aid commissions and other legal services, employment related network agencies, other community services, and state/local government funded programs.

Client Profile

All Australians.

Presenting needs (as they relate to family relationship issues): Separated with care arrangements (agreed or disputed), change of care (agreed or disputed), child out of care without consent, pre-separation enquiring about income support payments post separation, domestic violence (pre or post separation with disputes over children), foster care (formal or informal), couples without children (pre and post separation).

Desired outcomes: Customers receive the information, support and/or referral to address their specific circumstance/issues.

Barriers: Eligibility requirements for income support and family assistance.

Client Pathway

Entry point: Customers seeking information, support and/or referral can approach Centrelink in person at a Centrelink Office, online or by telephone or through an agent such as Medicare (for Family Assistance customers).

Exit points: Once the customer's business needs have been met through either support offered by Centrelink or through a referral to an external agency.

Typical pathway: Depending on the customer's circumstances, the customer will be initially assessed by a Customer Service Adviser. The customer may be referred to internal Centrelink services (eg social worker) or to other external service providers.

Family Law System Entity: Family Court of Western Australia

Description and Role

The Family Court of Western Australia was established in 1976 as a State court under section 41 of the *Family Law Act 1975*. It is almost exclusively federally funded, with some administrative support provided by the WA Department of the Attorney-General.

The Court exercises federal jurisdiction in all matters that may arise under Part VII of the Act in relation to children and all matrimonial causes, including property. The Court also has jurisdiction under the federal *Marriage Act 1961*, *Child Support (Registration and Collection) Act 1988* and *Child Support (Assessment) Act 1989*.

The Court exercises State jurisdiction under the *Family Court Act 1997(WA)* in relation to ex-nuptial children and de facto (including same-sex) children and property matters, as well as other State laws such as the *Adoption Act 1994 (WA)* and the *Restraining Orders Act 1997 (WA)*.

The Court sits in Perth, and country circuits are conducted at Albany, Broome, Bunbury, Geraldton, Kalgoorlie, Karratha and South Hedland.

Referrals primarily from: Self-represented litigants, family relationship centres, family dispute resolution practitioners, family relationship services, private lawyers, legal aid commissions and community legal centres.

Referrals primarily to: Family relationship centres, family dispute resolution practitioners, family relationship services, legal aid commissions and private lawyers.

Client Profile

The Court considers the range of family law matters that arise in Western Australia, from simple and less conflicted matters, which are dealt with by Family Law Magistrates, to the more complex matters heard by judges.

There has been a recent reduction in the percentage of self represented litigants. They now comprise 40% of filings in children's matters and 7% in property matters.

Presenting Needs: Separating parents seeking a divorce, separated parents with child support matters, property disputes and parenting disputes. Family violence, child abuse, mental health, and drug and alcohol issues are common risk factors the Court needs to respond to and manage.

Desired outcomes: Timely resolution and safe and sustainable parenting.

Client Pathway (children's matters)

Entry points: Information sessions may redirect clients to non-court processes, or referrals to family relationship services (which can either be as an exit point from the Court or as a Court ordered part of the case).

Exit points: Clients may be referred to a family dispute resolution service, other family relationship service, or legal aid commission for dispute resolution services. There may be case resolution through a settlement conference or case resolution following a trial and a judgment is made.

Typical pathway: The Court holds free information sessions, at which attendance is compulsory for most parties to applications for parenting orders, property settlement and injunctions. If children and property are involved then two such sessions are necessary. (Only 11% of applications filed in 2007-08 sought orders for both children and property). The sessions cover principles, processes, documentation, legal representation and costs. The DVD titled *Consider the Children* is shown to highlight the impact that parental conflict has on children.

Prior to filing an application at court for a parenting order, parties must attempt family dispute resolution with a registered family dispute resolution practitioner and obtain a certificate. Exemption from participation in family dispute resolution will be granted in circumstances such as alleged family violence or child abuse. Individuals may obtain legal advice. At any stage in the process, the Court may order the attendance of the parties at family dispute resolution, irrespective of whether the parties have already engaged in the process, although that fact may affect such a recommendation.

Following the filing of an application, a family consultant is appointed and conducts a Case Assessment Conference. Each party is seen separately (with their lawyer if they have one) and is asked about whether there are any issues of family violence, child abuse, mental health or substance abuse. If it is safe and appropriate to do so, the parties will be brought together to discuss the presenting issues. Where any risk issues are identified, they are reported as part of the family consultant's report to the court at the Case Assessment Conference Hearing. This hearing is held on the same day, immediately after the Case Assessment Conference. The oral report from the Consultant also summarises the key issues and includes recommendations about appropriate external referrals for interventions. These may include the parenting orders program, drug and alcohol services, or family violence programs. The Family Law Magistrate or Judge may also use Family Law Act section 69ZW (or the State legislation equivalent) orders to obtain information from the police and/or the Department of Child Protection. The allocated family consultant and judicial officer team will then jointly case manage the case, monitor progress, obtain information from referral agencies where required, and conduct follow up conferences until the matter is resolved.

Each case is also allocated a case coordinator to act as a point of contact for the parties as the case proceeds through court.

The Court may request legal aid funding and appoint an Independent Children's Lawyer to represent the interests of the child. Orders for single expert reports or family reports prepared by the allocated family consultant are also commonly made.

Family Law System Entity: Federal Magistrates Court of Australia

Description and Role

The Federal Magistrates Court provides a simpler and more accessible alternative to litigation than the Federal Court and the Family Court. The Court conducts regular regional circuits and is able to conduct sittings in most regions of Australia.

Seventy nine percent of family law applications (excluding divorces and consent orders) are filed in the Federal Magistrates Court. The Federal Magistrates Court has jurisdiction in:

- applications for divorce
- property disputes
- parenting orders
- enforcement of Family Court or Federal Magistrates Court orders
- location and recovery orders
- warrants for the apprehension or detention of a child, and
- determination of parentage and recovery of child-bearing expenses.

A docket system is used to manage cases. A case is allocated to the same magistrate for its duration. Less adversarial processes are used to enable cases to be managed flexibly and to identify cases early that are suitable for dispute resolution which might lead to earlier settlement.

Referrals primarily from: Self-represented litigants, private lawyers, family dispute resolution practitioners, family relationship centres, Family Court, legal aid commissions and community legal centres.

Referrals primarily to: Family Court, family relationship centres, funded family dispute resolution services, legal aid commissions, and other family relationship services (eg parenting orders program, children's contact services).

Client Profile (family law matters)

The Federal Magistrates Court generally considers family law matters which are less complex and involve less conflict than those considered by the Family Court. There are a significant number of self-represented litigants. In 2007-08, 16.5% of family law filings were made by self-represented litigants.

Presenting Needs: Separating parents seeking a divorce, separated parents with child support matters or parenting disputes, separated couples with property/financial matters.

Desired outcomes: Timely resolution and case settlement.

Client Pathway (family law matters)

Entry points: By filing an application or by transfer from the Family Court. Matters can also be transferred from State and Territory courts. (If it is an appeal against an order of a State court it is a hearing de novo before the Family Court. However, the parties can seek transfer from the Local Court to the Federal Magistrates Court).

Exit points: By a referral to a family dispute resolution provider, other family relationship service or the Family Court. Resolution may be through a mediated agreement/conciliation conference, settlement or judgment.

Typical pathway: Prior to filing an application with the court for a parenting order, parties must attempt family dispute resolution with a registered family dispute resolution practitioner and obtain a certificate. There are exceptions to this requirement including where there is family violence, child abuse or the matter is urgent.

Following the first court hearing before a Federal Magistrate, there may be dispute resolution processes, a procedural adjournment, settlement, a conciliation conference (for property matters only), or the matter may be listed for trial.

If there is no resolution of the matter following dispute resolution or a conciliation conference, the matter may be listed for trial.

Magistrates may order parties to attend dispute resolution processes (family counselling, family dispute resolution and/or conciliation). These orders may be for parties to attend a family relationship centre. In 2007-08, 35.7% of orders made for parties to attend community-based dispute resolution led to the full or partial settlement of those cases.

Four dispute resolution coordinators are located in the four main regional registries. The coordinators provide support to, and clinical supervision of, family consultants, as well as dispute resolution.

Family consultants are employed in regional areas and provide dispute resolution services or family assessments and/or family reports to assist the judicial officer in determining child dispute matters. Family reports may also be prepared by an approved external provider. In regions where there is a permanent Federal Magistrate, the family consultant assists in the management of cases on a daily basis. They undertake joint conferences with a Registrar, advise Federal Magistrates in matters relating to children, and assist in urgent matters.

Sessional Registrars hear uncontested divorce applications. Property disputes are generally referred to Family Court Registrars for conciliation. Child support disputes will be referred to the Family Court Registrar for conciliation if the matters are likely to be settled.

Legal aid commissions provide duty lawyers in registries of the Family Court and the Federal Magistrates Court. Self-represented litigants with family law matters may be assisted by a duty lawyer who may provide legal advice, in limited circumstances may draft consent orders, and in urgent matters may prepare documents and provide one-off representation.

Family Law System Entity: Family Court of Australia

Description and Role

The Family Court is Australia's superior court in family law determining cases with the most complex issues, facts and multiple parties. It covers specialised areas in family law and provides national coverage as the appellate court in family law matters. Jurisdiction has been extended to include de facto financial causes.

The Family Court has responsibility where there are allegations of sexual abuse or serious physical abuse of a child. These cases may be streamed into the Magellan case management system where they receive specialised assistance.

A docket system is used to manage cases. A case is allocated to the same judge for its duration. Less adversarial processes are used to enable cases to be managed flexibly and to identify cases early that are suitable for dispute resolution which might lead to earlier settlement.

Referrals primarily from: Self-represented litigants, private lawyers, community legal centres, family dispute resolution practitioners, family relationship centres, Federal Magistrates Court and legal aid commissions.

Referrals primarily to: Family relationship centres, funded family dispute resolution services, other family relationship services (eg parenting orders program, children's contact services), Federal Magistrates Court, legal aid commissions, community legal centres, community based and non-government based organisations, mental health services, drug and alcohol services, and child protection agencies.

Client Profile

Any individual. Cases may involve multiple parties including corporate entities in financial cases, and can include a child welfare agency and/or allegations of sexual abuse or serious physical abuse of a child (Magellan), relocation, family violence and/or mental health issues. Less complex cases (including the majority of divorce applications) are referred to the Federal Magistrates Court.

In previous years a large proportion of the Court's clients have not used a legal representative. However, as the Court's focus has shifted to dealing with the most complex of family law cases, there has been an increase in the percentage of clients using legal representatives. Self-represented litigants have access to duty lawyers.

Presenting needs: Separated families with complex issues and entrenched conflict, seeking parenting orders eg parental responsibility, recovery, location and declaration of paternity, financial orders eg division of property (including superannuation) and spouse maintenance. Individuals seeking decrees of nullity or validity of marriage, Hague Convention matters and special medical procedures.

Desired outcomes: Timely resolution and case settlement.

Client Pathway

Entry points: Through filing an application or by transfer from the Federal Magistrates Court or state courts.

Exit points: Matters may resolve at any stage of the proceedings through a mediated agreement/conciliation, settlement or judgment. Parties can also exit through a referral to a family dispute resolution provider, other family relationship service or the Federal Magistrates Court.

Typical pathway: Prior to filing an application to court for parenting orders, an individual will need to have attempted family dispute resolution through a registered family dispute resolution practitioner and obtained a certificate. Participation in family dispute resolution is not compulsory in circumstances where there is urgency or there are allegations of family violence or child abuse.

Prior to filing an application for financial orders, an individual needs to genuinely try to resolve their dispute with their former spouse by following pre-action procedures which include attempting dispute resolution, exchanging information (disclosure) and if issues are not resolved, providing a written notice of issues and offer of settlement to their former spouse. Pre-action procedures are not required to be followed where there is urgency or there are allegations of family violence or fraud. Individuals may obtain legal advice prior to filing an application.

Following the filing of an application, there will be an initial assessment conference or first hearing event by a family consultant, registrar or judge. Interim parenting orders may be sought whilst awaiting the final hearing. The family consultant will seek early resolution through the Child Responsive Program which includes an Intake and Assessment meeting followed by a Child and Family Meeting resulting in a Children and Parent's Issues Assessment. A Settlement Meeting with the parents and their lawyers can be convened if the matter is likely to settle. If the matter does not settle, a family assessment report may be ordered on the first day of a Less Adversarial Trial. Those interventions facilitated by a family consultant are admissible in Court. The registrar will seek early resolution of a financial case through conciliation where appropriate.

These services may be provided in-house or through referral to a family relationship centre or other family relationship service. Referrals may also be made to other appropriate services if required (ie for a mental health assessment, attendance at a drug and alcohol course). If the matter is not resolved, court processes will continue. There will be a hearing before a judge and the delivery of a judicial decision. Cases that have more entrenched conflict and complexity are more likely to proceed to trial and to be in court over a longer period with additional processes involved.

Under the Child Responsive Program each case involving children's matters will be allocated to a family consultant. A family consultant will assist and advise the clients, provide referrals, give evidence, prepare a family assessment report if required and advise the court on appropriate non-court programs and services. The program aims to include children early in the process, to provide them with an opportunity to put forward their views.

The Magellan case management system is provided where there are allegations of sexual abuse or serious physical abuse of a child. The case is managed by a small team consisting of a judge, registrar and family consultant, and relies on strong inter agency collaboration (ie with child protection agencies). An Independent Children's Lawyer will be appointed.

Legal aid commissions provide duty lawyers in registries of the Family Court and the Federal Magistrates Court. Self-represented litigants with family law matters may be assisted by a duty lawyer who may provide legal advice, in limited circumstances may draft consent orders, and in urgent matters may prepare documents and provide one-off representation.

Family Law System Entity: Family Relationship Centre

Description and Role

Family relationship centres are operated by community-based organisations and are funded to provide information, advice and referrals for families at all stages of their life. For separated families, centres provide three free hours of family dispute resolution on parenting issues and also provide information and preparatory sessions.

Each centre has developed its own service model and processes. However, services are required to be delivered in line with the *Operational Framework for Family Relationship Centres*, and the terms of the funding agreement.

Centres do not provide counselling or legal advice, legally assisted family dispute resolution or dispute resolution in relation to property or financial matters (unless linked to a parenting issue). They will refer clients to appropriate services if needed.

Similar services include funded family dispute resolution services, private family dispute resolution practitioners, legal aid commission family dispute resolution services, and the telephone dispute resolution service. The Family Relationship Advice Line and Family Relationships Online provide similar assistance in relation to information provision.

Referrals primarily from: Other centres, self, private legal practitioners, family/friends, and legal aid commissions. Other referrals are from Centrelink, child protection agencies, the Child Support Agency, community legal centres, other community organisations, family courts, and the Family Relationship Advice Line.

Referrals primarily to: Other family relationship services, support services (eg domestic violence and mental health services), legal aid commissions, community legal centres, and the Family Relationship Advice Line. Referrals are also to child protection agencies, the Child Support Agency and private legal practitioners.

Client Profile

All families, including separating and separated families, and can include grandparents and other extended family members.

Presenting needs: Primarily post-separation parenting, communication issues, conflict, family separation, relationship breakdown and parenting issues.

Desired outcomes: Parents are able to focus on the needs of their children and to resolve disputes without the need for litigation.

Client Pathway

Entry point: Party A by telephone or in person, seeking information, referral and/or dispute resolution service. Party B by telephone or in person following contact from the centre.

Exit points: Clients can exit after intake, pre-family dispute resolution work, following attendance at an information session, or during or after completing the family dispute resolution process. Clients will also be referred to other services, if needed.

Typical pathway: Clients undergo an initial intake and assessment process where client safety is screened and client needs are identified. Clients receiving a referral may be provided with service information or a facilitated referral.

Clients seeking family dispute resolution are assessed in more detail (usually by a practitioner or other qualified person) and are screened further for concerns around safety and family violence. Party B is contacted by the Centre and invited to attend the Centre for an assessment. Prior to commencing family dispute resolution, each party separately attends an information session (often compulsory) that explains the process and the benefits of child-focused family dispute resolution. The parties also attend individual sessions in preparation for the joint family dispute resolution session. Where assessed as appropriate, most centres also provide access to child inclusive practice where children engage with a child consultant and their views are fed back to the parents as part of the joint session.

Following the completion of family dispute resolution, the parties will have either fully or partially resolved their issues and drafted a parenting plan. In cases where the issue remains unresolved, the centres can issue a certificate.

Centres will follow up with their clients, both when referrals have been made and at completion of the family dispute resolution process, to offer further assistance if appropriate.

Other pathways: In cases with special needs, referrals may be needed to enable the parties to participate in family dispute resolution. Where family dispute resolution is assessed as appropriate, shuttle and/or co-mediation models can be used. If family dispute resolution is assessed as not appropriate, the client will be referred to court or other suitable services. Clients will also receive other assistance such as information.

Family Law System Entity: Family Relationship Advice Line

Note: The telephone dispute resolution component of the Advice Line is described separately.

Description and Role

The Advice Line is funded by the Australian Government. It is a free national telephone service providing information, advice, referral and telephone dispute resolution (see note above) to assist people affected by family relationship or separation issues. The Advice Line complements the services provided by the family relationship centres.

The Advice Line also provides advice to family dispute resolution practitioners about their obligations under the *Family Law Act 1975* and can provide basic legal information to individuals. However, it cannot provide callers with personalised legal advice, representation, or assistance in completing/sighting legal forms.

Similar services include Lifeline, Parentline, Mensline and Kids Helpline. Telephone based legal advice services are also operated by the family courts and legal aid commissions.

Referrals primarily from: Self, Child Support Agency, family courts, and family/friends. Other referrals are from legal services/practitioners, Centrelink, family relationship centres or other family relationship services.

Referrals primarily to: Family relationship centres, the Advice Line's telephone dispute resolution service, legal services/practitioners, dispute resolution services, counselling, and family courts. Referrals are also to other family relationship services, the Child Support Agency and Centrelink.

Client Profile

Any individual affected by family relationship or separation issues including parents, grandparents, children, family dispute resolution practitioners and other professionals may access this service. Callers may choose to remain anonymous.

Presenting needs: Primarily separation, relationship, parenting and court or legal issues related to family law matters.

Desired outcomes: Callers are provided with a better understanding of the relevant information and services available and how to access them to help with their family relationships and parenting.

Client Pathway

Entry point: An Information Officer will answer each call.

Exit points: A call may be completed by an Information Officer, Parenting Adviser, a telephone dispute resolution booking officer or Legal Adviser depending on the level of information and assistance required to meet a caller's needs and the point at which a referral to an external service is made.

Typical pathway: All calls are answered by an Information Officer who offers the caller the opportunity to speak to an Indigenous Information Officer. If the caller accepts this offer, the Information Officer will warm transfer the caller straight through to an Indigenous Information Officer. The Information Officer (or Indigenous Information Officer) will briefly screen the caller for safety and other critical concerns. Where safety is not identified as a concern, the Information Officer will respond to the caller's queries with information and details about services that may be suitable to assist the caller. Callers who are separating or separated will generally be warm transferred through to a Parenting Adviser.

A Parenting Adviser (a qualified social worker) will undertake further in-depth screening and assessment and work with the caller to develop a strategy on how to address their needs. All Parenting Advisers are required to report child abuse according to the mandatory requirements under the Family Law Act. A Parenting Adviser will assess a caller's need to obtain legal information, and if appropriate, will warm transfer the caller to a Legal Adviser. If a caller requires assistance through family dispute resolution or other support services, the Parenting Adviser will refer the caller to the telephone dispute resolution service or other appropriate external service.

For callers transferred through to a Legal Adviser, the Legal Adviser will provide basic legal information and may refer the caller to a legal service provider (usually a Legal Aid Commission) if the caller requires complex or ongoing legal advice.

For callers transferred to the telephone dispute resolution service, the booking officer will make arrangements with the caller for an intake interview. Please see separate description for this service.

Other pathways: Where the Information Officer identifies that the caller has safety concerns, the Information Officer will immediately warm transfer the caller through to a Parenting Adviser.

Where the Information Officer identifies there may be a risk of urgent child abduction, or if the caller is a family dispute resolution practitioner, the Information Officer is able to directly warm transfer the caller through to a Legal Adviser.

Family Law System Entity: Telephone Dispute Resolution Service
(*Note: This is a component of the Family Relationship Advice Line*)

Description and Role

The telephone dispute resolution service provides telephone based family dispute resolution services to those who have parenting issues in dispute. Clients may receive assistance with property issues if these issues are linked with their parenting issues.

The service does not provide counselling or case specific legal advice. However, staff can link with Legal Advisers working on the Advice Line to seek basic legal information. Lawyers cannot be present during the dispute resolution process.

The service is funded by the Australian Government and is provided by a community based organisation.

Similar services include family relationship centres, other funded and private family dispute resolution services.

Referrals primarily from: Family Relationship Advice Line, family relationship centres and other funded family dispute resolution services.

Referrals primarily to: Legal services/practitioners, relationship counselling/reconciliation services and family relationship centres.

Client Profile

Separating and separated families.

Presenting needs: Post-separation parenting and property issues.

Parties may live in disparate locations within Australia, one party may live overseas, or the telephone medium may be more appropriate given the particular needs and issues of the parties.

Desired outcomes: That wherever possible, parents are able to focus on the needs of their children and to resolve disputes without the need for litigation.

Client Pathway

Entry point: Party A via a warm referral seeking assistance through family dispute resolution. Party B by telephone prior to receipt of a letter from the service.

Exit points: Clients can exit after receiving information and an assessment, following intake, or during or after completing the dispute resolution process which results in a parenting agreement. The client may exit because Party B does not contact the service, they no longer wish to participate in family dispute resolution, or they are provided with a referral to another service to better meet their needs.

Typical pathway: Staff conduct an initial assessment of Party A to identify any special needs, such as interpreter services, and to assess whether a referral to another service is appropriate in conjunction with or instead of family dispute resolution services. Party B will be contacted by either Party A or the service provider and invited to contact the service. If Party B is willing to participate in family dispute resolution, information, support, in-depth screening and assessment, and an intake process will be provided to both parties. They will receive information about the family dispute resolution process and the need to focus on their children.

Provided the practitioner is satisfied that it would be appropriate to proceed, family dispute resolution will commence. Depending on the needs of the clients, and the assessment of the practitioner, family dispute resolution may be provided through a range of means (facilitative, co or shuttle mediation) although all processes will be child-focussed.

Following the family dispute resolution process, the clients will have either resolved their issues and may have developed a parenting agreement and/or be issued with a certificate. The service will follow up with their clients 6 and 12 months following the completion of the family dispute resolution process and will offer further assistance if appropriate.

Other pathways: Where abuse or violence is evident, referrals may be needed to enable the parties to participate in family dispute resolution. Provided family dispute resolution is appropriate, shuttle and/or co-mediation models will be used and any certificates issued will reflect the outcome. If family dispute resolution is not appropriate, the client will be advised of the exceptions, may or may not be issued with a certificate, and may be referred directly to court.

Family Law System Entity: Children's Contact Services

Description and Role

Under the Family Relationship Services Program, community-based organisations are funded to provide children's contact services. These services aim to minimise a child's exposure to conflict or unsafe situations. They provide safe, neutral and child-focused venues for supervised visits and changeovers to occur between children and their parents and other significant persons in the child's life.

Staff work with families to encourage positive interaction between children and their parents, and to support the strengthening of these relationships. Over time and where possible, parents are encouraged to move to self-management of their arrangements for spending time with their children. Each service develops its own service model and processes. Some services use a case managed approach and may provide information and referral to clients.

Children's contact services do not provide counselling, family dispute resolution, or legal advice.

There are some non-government funded services offering a similar type of service, and some state funded services offer similar services for child protection cases.

Referrals primarily from: Family courts, self, private legal practitioners, legal aid commissions, family/friends, and other family relationship services (eg parenting orders program, post separation cooperative parenting services).

Referrals primarily to: Other family relationship services (eg parenting orders program, post separation cooperative parenting services, family relationship centres and supporting children after separation program), legal aid commissions, private legal practitioners, and community organisations (eg family violence services and mental health services).

Client Profile

Separated or divorced parents who are in high conflict and in dispute about issues of parent-child contact, and their children.

Presenting need: Court orders, post-separation parenting difficulties, family violence, allegations of abuse (including sexual, emotional and physical), substantiated abuse, reintroduction of a parent or family member when they have spent little or no time together, communication issues, high levels of parental conflict, inability to self-manage parenting arrangements, or breached court orders.

Desired outcome: Children maintain or establish a relationship with both parents, parents move towards independent management of their relationship with children.

Client Pathway

Entry point: Court ordered from the family courts, or voluntary referral from another agency (as outlined above) or self referral. Most initial contact is by telephone or by filling out an application form that may be obtained from the contact service's website.

Exit points: Clients exit the service once they move towards self managed care (usually between 3-6 months). Clients who are unable to move towards self managed care may go back to court to have new orders put in place or leave the service without a resolution of care arrangements. In some cases, for example, substantiated abuse, clients may remain in a service for longer periods of time.

Typical pathway: As models differ from service to service, pathways may vary between services. Generally, clients undergo an initial intake and assessment which includes screening for safety (including whether there are any court orders in place), determining suitability for the program, and identification of needs and requirements of service. If the clients are deemed suitable for the program, they will be offered a position, however there may be a waiting list. Some services offer a short introductory seminar for clients on waiting lists or prior to starting in the service.

Some services may refer clients to other programs that may benefit the client and increase their ability to move towards self managed care arrangements (eg anger management, family violence, drug and alcohol, parenting orders programs). This may be prior to commencing in the children's contact service or while they are using the service. Some services may develop a casework plan for the family detailing a range of interventions and strategies that may be necessary to achieve their desired outcomes.

Many services provide an orientation/familiarisation visit to the children's contact service for children prior to using the service. Clients attend the service for supervised visits or changeovers. Some clients may start using the service for supervised visits and then progress to using the service for changeovers. Most clients are encouraged to move towards self managed care arrangements within 3-6 months of starting with the service. Clients with substantiated abuse may use the services in some circumstances if deemed safe and appropriate by the service but may never move towards self managed care. Clients leave the program once they can manage their care arrangements with their children or when no resolution can be reached and clients need to go back to court to have new orders put in place.

Family Law System Entity: Parenting Orders Program

Description and Role

Under the Family Relationship Services Program, community-based organisations are funded to provide the parenting orders program.

The parenting orders program assists separating families in high conflict over parenting arrangements. In many cases parents have already been through the court process to have parenting arrangements determined. Some may have previously breached orders made by the court. The courts may encourage or order parents to attend this program in conjunction with the family's use of a children's contact service.

Each organisation develops its own service model. However, services generally use a variety of child-focused and child-inclusive interventions to respond more effectively and flexibly to families needs and work where possible with all members of the family. This involves a case worker intensively managing one or both parents (depending on the model) and getting them to understand the effect their conflict is having on their children. An important part of the program is when the parents hear about what the children want. Family members, including children, can receive a range of services such as counselling, mediation and group work education as part of the parenting orders program.

Parenting orders programs do not provide legal advice.

Other family relationship services offer programs which may assist clients to address some of their issues and needs. However, the Parenting orders program is unique in offering the range of interventions targeted at parents in high conflict and their children.

Referrals primarily from: Family courts, children's contact services, family relationships centres, self, private legal practitioners, legal aid commissions. Other referrals are from other family relationship services, the Family Relationship Advice Line and the Child Support Agency.

Referrals primarily to: Children's contact services, funded family dispute resolution services, family relationship centres, other family relationship services, family violence and mental health services, and the Family Relationship Advice Line. Referrals are also to child protection agencies, the Child Support Agency, legal aid commissions, community legal centres and private legal practitioners.

Client Profile

Separated or divorced parents who are in high conflict and in dispute about issues of parent-child contact, and their children.

Presenting need: Court orders, post-separation parenting difficulties, communication issues, high levels of parental conflict, inability to self-manage parenting arrangements and breached court orders.

Desired outcome: Workable parenting arrangements/parenting plan.

Client Pathway

Entry point: Court ordered from the Family Court or Federal Magistrates Court, voluntary referral from another agency including a children's contact service or self referral. Most initial contact will be by telephone.

Exit points: Clients leave the program once their arrangements over the care of their children have been resolved or when no resolution can be reached and clients need to go back to court to have orders put in place. This could take anywhere from 3 months to 2 years.

Typical pathway: Clients undergo initial intake and assessment which includes screening for safety, suitability for the program and the identification of needs and issues. As models differ from service to service, pathways may vary. Many services develop a casework plan for the family detailing a range of interventions and strategies that may be necessary to achieve their desired outcomes. Some services offer an introductory education session to parents (in different groups). This may be offered to clients while they are on the waiting list to attend the full program. Parents may then attend a more intensive therapeutic group work program (6-8 weeks) concurrently with counselling and support if needed.

Children may also attend individual counselling and support and/or group work at the same time. Some services offer an intensive family therapy model with a group work program being optional and supplementary to the family therapy component. Family dispute resolution may be offered at a suitable stage in the program to begin negotiations to develop a workable parenting arrangement/plan. Clients leave the program once their arrangements over the care of their children have been resolved or when no resolution can be reached and clients need to go back to court to have orders put in place.

Family Law System Entity: Supporting Children after Separation Program

Description and Role

Under the Family Relationship Service Program, community based organisations are funded to provide the supporting children after separation program. These services aim to assist children from separating or separated families to deal with issues arising from the breakdown of their parents' relationship and provide opportunities to participate in decisions that impact on them.

Each organisation develops its own service model and processes. However, services are required to be delivered in line with the '*SCaSP-Description and Operational Requirements*'.

Children can receive a range of services including information and referral as part of the intake and assessment process, general education sessions, individual or group counselling, and support services. In some cases children may also participate in child consultations to provide feedback to parents/family members as part of family dispute resolution processes. Parental permission will usually need to be gained before the child participates in any activity.

In order to provide the most effective intervention for the child, the entire family may require family relationship services. An important element of service models is the development of links between other services and strong referral pathways within the local service system to ensure family members also receive services.

Services are not designed to deal with the needs of children with high and complex needs or for reporting to courts. These children will be referred to other appropriate services.

Referrals primarily from: Family relationship centres, other family relationship services (eg parenting orders program, children's contact service, post separation cooperative parenting program), parents, self, schools, other community organisations, family courts, Family Relationship Advice Line, Child Support Agency, child protection services.

Referrals primarily to: counselling and support services, mental health services, drug and alcohol services or child protection services (where the program **is not** appropriate for children) and a range of family relationship services for adult family members.

Client Profile

Children from separating or separated families.

Presenting needs: Children experiencing issues arising from the breakdown of their parents relationship.

Desired outcomes: Improved skills and knowledge for children to manage their family relationships, and improved relationships between children and parents.

Client Pathway

Entry point: A child or a child's family may contact an organisation by telephone or in person, seeking information and referral. Family members may be undertaking an intake and assessment for another program and the organisation may identify the benefit of that family enrolling their child in the program. Organisations delivering the program may deliver general education sessions in community settings which may result in children being referred internally for further counselling and support services.

Exit points: Children may exit at a range of points as service models are flexible to cater for a range of needs. Children may receive only part of the model, such as information during an education session conducted in a community setting. Others may receive more intensive support including a mix of interventions such as a general education session, individual or group counselling, followed by support and further referrals to other services if needed.

Typical pathway: Children attend a general education session held by an organisation, usually in a community setting (eg a school). Services will, wherever possible and relevant, include an intake and assessment process that includes the parents and family of the child to identify the needs of the child and any wider familial issues for which the family may need referrals.

Most children receive information and referral as part of the intake and assessment process and participate in general information/education sessions. Children with higher needs may also receive a mix of individual or group counselling and support services. In a minority of cases children may also participate in child consultations to provide feedback to parents as part of family dispute resolution processes.

Other pathways: Family court referrals. Children may also be referred from other family relationships services including children's contact services and parenting orders programs. Children may also enter the program as part of the child-inclusive component of family dispute resolution.

Family Law System Entity: Post Separation Cooperative Parenting
(Note: these services have only been operational since October 2008)

Description and Role

Under the Family Relationship Services Program, community-based organisations are funded to assist highly conflicted separated parents, including clients of children's contact services, in (14) regional areas to learn how to manage their conflict in their children's best interests. The program is aimed at individual parents and is useful even if only one parent attends.

Post separation cooperative parenting services are designed for regional areas, for example, where distance may be a barrier to accessing services. Services deliver a short single-session psycho-educational workshop or seminar in which parents learn how parental conflict affects children and how to focus on the needs of their children. Services also provide counselling, support, information and referral to help parents build skills and develop strategies for implementing what they have learnt.

Post separation cooperative parenting services do not provide family dispute resolution or services to children.

Referrals primarily from: Family courts, children's contact services, family relationship centres, other family dispute resolution services and self. Other referrals are from other family relationship services, private legal practitioners, community legal centres, legal aid commissions, Child Support Agency and Family Relationship Advice Line.

Referrals primarily to: Children's contact services, funded family dispute resolution services, family relationship centres and other family relationship services. Referrals are also to family violence services and mental health services, Family Relationship Advice Line, child protection agencies, Child Support Agency, legal aid commissions, community legal centres and private legal practitioners.

Client Profile

Separated or divorced parents in high conflict, living in regional areas. They may have court orders or be using a children's contact service and need assistance in moving towards self management of parenting arrangements.

Presenting needs: Post separation parenting difficulties, communication issues, high levels of parental conflict, inability to self-manage parenting arrangements.

Desired outcome: To increase a parents' focus on their child and to provide them with the motivation and skills to manage relationship difficulties in the child's best interest. A key goal is for parents to be able to manage their own parenting arrangements.

Client Pathway

Entry point: By referral, voluntary from another agency, court-ordered or from a children's contact service. Most initial contact is by telephone.

Exit points: Clients exit when they have developed skills and are child-focussed. This may be decided by the service or the client. If they are also clients of a children's contact service, they will exit when they are able to manage their parenting arrangements without the assistance of the children's contact service.

Typical Pathway: Each parent will take part in an intake and assessment process whereby screening for safety and group readiness will be undertaken. Parents may also receive information and referrals to other services for their families, such as counselling for children, family dispute resolution or child consultations. If needed, counselling or other assistance will be provided to the parents to ensure group readiness and to prepare for the educational workshop.

Parents will attend a single, short, psycho-educational workshop or seminar (which takes approximately four hours but may take up to a day). Separated parents will attend separate sessions. These workshops use confronting techniques to motivate parents to change how they manage conflict, for the sake of their children.

Follow up will include counselling and other forms of support, such as case management, to help parents turn workshop learnings into positive longer term change. Activities may vary by location and individual needs.

Family Law System Entity: Family Dispute Resolution Services funded under the Family Relationship Services Program

Description and Role

Funded under the Family Relationship Services Program, family dispute resolution services assist families in dealing with conflict, decision making, and reaching agreements relating to parenting and/or property issues through family dispute resolution (FDR). Regional family dispute resolution (RFDR) services also provide information, education and counselling to assist individuals to manage their changed family circumstances. These services do not provide legal advice although clients may have their lawyers present during the FDR process.

Although these services have similar processes, each organisation has its own approach to screening, assessing client need, case management and referral (which is generally locally based).

Similar services include family relationship centres, the telephone dispute resolution service, legal aid commission dispute resolution and private family dispute resolution services.

Referrals primarily from: Self, private legal practitioner, family/friends, legal aid commissions and family relationship centres. Other referrals are from other funded family relationship services and family courts.

Referrals primarily to: Private legal practitioners, other funded family relationship services and community legal centres. Other referrals are to domestic violence services, family courts and family relationship centres.

Client Profile

Separating and separated families.

Presenting needs: Primarily post-separation parenting, property disputes, parenting, relationship breakdown, family separation and communication issues.

Desired outcomes: Parents are able to focus on the needs of their children and to resolve disputes without the need for litigation.

Client Pathway

Entry point: Party A by phone or in person, seeking FDR services. Party B by phone or in person following contact from the service.

Exit points: Clients can exit after intake, pre-FDR work, or during or after completing the FDR process. Clients may also be referred to other services, if needed.

Typical pathway: Staff conduct an initial assessment of Party A to identify whether dispute resolution is appropriate, whether there are any special needs (such as interpreter services) and whether a referral to another service is appropriate in conjunction with or instead of FDR services. Models vary from service to service and are generally based on the organisation. All services will provide a level of screening and assessment, intake and pre FDR work. Information will be provided to Party A about the FDR process and the need for parents to focus on their children. Party B will be contacted by the service provider and invited to attend the service. If Party B is willing to participate in FDR, they will be screened and assessed, provided with information about the process and have intake and pre FDR sessions. Provided the practitioner is satisfied that it would be appropriate to proceed, FDR will commence. Depending on the flexibility of the service provider, the needs of the clients, and the assessment of the practitioner, FDR may be provided through a range of means (facilitative, co, shuttle, advisory, joint). All services provide a child-focussed approach. Some services provide a child inclusive approach. Lawyers may be present during the sessions provided the parties agree.

Following the FDR process, the clients will have either resolved their issues and may have developed a parenting plan and/or be issued with a certificate. Some services will follow up with their clients following the completion of the FDR process and will offer further assistance if appropriate.

Other pathways: In cases with special needs, referrals may be needed to enable the parties to participate in FDR. Where FDR is assessed as appropriate, shuttle and/or co-mediation models can be used. If FDR is assessed as not appropriate, the client will be referred to court or other suitable services. Clients will also receive other assistance such as information.

Family Law System Entity: Private Family Dispute Resolution Practitioners

Description and Role

The field of private family dispute resolution practitioners is multi-disciplinary in nature. Family dispute resolution practitioners assist members of families, affected by separation and divorce to resolve some or all of their disputes with each other. Different types of dispute resolution models may be employed by practitioners. Family dispute resolution can help separating families resolve disputes as an alternative to going to court. If the matter cannot be resolved, the practitioner can issue a certificate for an individual to take to court.

In order to issue certificates, family dispute resolution practitioners must be registered. This means they have to meet the required standards of training, experience and suitability for inclusion on the Family Dispute Resolution Register. Final accreditation standards for family dispute resolution practitioners are now available. All currently registered family dispute resolution practitioners must meet the new standards by 1 July 2009 in order to remain accredited.

Family dispute resolution is also provided by practitioners at family relationship centres, other funded family dispute resolution services, telephone dispute resolution service, legal aid commissions and court-based services.

Referrals primarily from: Self, private lawyers and Family Relationship Advice Line.

Referrals primarily to: Private lawyers and family courts.

Client Profile

Separating and separated families.

Presenting need: Primarily post-separation parenting, property, relationship breakdown, and communication issues.

Desired outcome: Parents are able to resolve disputes without the need for litigation.

Client Pathway

Entry point: An individual makes contact by phone, email or in person seeking assistance through family dispute resolution.

Exit points: An individual can exit following an assessment process, during or after completing the family dispute resolution process which results in either an agreed parenting agreement/plan and/or a certificate. Clients may also be referred to other services, if needed.

Typical pathway: Unknown.

Family Law System Entity: Private Lawyers

Description and Role

A lawyer provides clients with information and advice about the law and the legal system as they affect the client's presenting issues.

A lawyer is obliged to inform clients about non-court based family services and the courts processes and services. This information includes the services available to assist with reconciliation between the parties, the legal and possible social effects of proposed proceedings, the services provided by family counsellors and family dispute resolution practitioners and to make appropriate referrals to enable clients to receive assistance in dealing with the various issues arising in relationship breakdown.

Lawyers can provide information, advice and referrals for clients needing assistance. They can help parties reach agreement and tailor solutions to suit the client's circumstances, provide advice and representation during negotiations with other parties, legally assisted family dispute resolution and at court, educate, advise and guide clients about the law and legal procedures.

Assistance may be provided during a single consultation or on an ongoing basis, depending on the needs of the client.

Some lawyers may be able to provide dispute resolution services such as collaborative law or mediation. Some lawyers may also have a Specialist Accreditation in family law. The *Best Practice Guidelines for Lawyers Doing Family Law Work* (March 2004) outline the principles that all family lawyers aim to follow in family law proceedings.

Referrals primarily from: Self, Law Society referral services, other lawyers, medical practitioners, accountants, dispute resolution practitioners, mental health professionals, family relationship centres, legal aid commissions, community legal centres, and other community-based service providers.

Referrals primarily to: Private family dispute resolution services, mediation, family relationship centres, other funded family dispute resolution services, other family relationship support services, legal aid commissions and family courts.

Client Profile

Individuals requiring legal advice and assistance.

Generally these individuals will have the capacity, either from their own resources or with family or other assistance, to meet the cost of provision of private legal services. If not, they may qualify for legal aid; and in that event the lawyer will assist them in completing an application or refer them to a legal aid commission.

Presenting needs (family law related): Relationship difficulties, relationship breakdown, separation, parenting issues and arrangements for children, child support, property division, spousal maintenance, family violence and personal protection, and divorce.

Desired outcomes: Resolution of an individual's legal issues in a timely and cost-effective manner, utilising appropriate dispute resolution options and avoiding litigation wherever possible.

Client Pathway

Entry point: Individuals may receive some initial advice by telephone. Most clients will make an appointment with the lawyer to provide information about their circumstances and to receive advice.

Exit points: Clients may complete contact with a lawyer upon receiving one off information, or following ongoing advice or representation. Clients may be provided with a referral to another service following their initial contact, or at any time during their relationship with the lawyer.

Typical pathway:

Advice - For clients seeking assistance with a legal matter, a lawyer will provide advice about the relevant legal principles and the client's rights and responsibilities. The advice may be of a general nature about the law, or about a specific issue such as a parenting plan or agreement which the parties are considering. Lawyers can prepare documents, such as parenting plans, consent orders, financial agreements and child support agreements, to implement settlements arrived at between parties in relation to parenting and/or financial issues.

Parenting issues - A lawyer must advise clients about alternate dispute resolution services. Clients will be advised that (except in cases involving urgency, child abuse, violence or risk of abuse or violence) they must attend family dispute resolution before lodging an application with the court seeking to resolve a children's matter.

Financial issues - The lawyer may endeavour to resolve issues by negotiation with the other party or their legal adviser, refer a client to an external dispute resolution service provider or may be involved in arranging, preparing for and attending dispute resolution sessions with the client. Some lawyers will be able to assist through collaborative law, mediation or arbitration.

Following a family dispute resolution process, a lawyer may advise on the appropriateness and effect of a proposed agreement and explain the client's rights, entitlements and obligations. Alternatively, a lawyer instructed to commence proceedings will represent the client (or brief Counsel) and work through the court processes towards an outcome that is in the best interests of the child. For non parenting matters, the lawyer will assist a client through negotiations with their former partner, and represent them at court if non-litigious settlement attempts are unsuccessful.

ATTACHMENT B – Case Studies

Case Study 1: Parties have separated amicably but are having difficulty reaching agreement on care arrangements.

Mary and John have been married for 12 years and have two children aged 10 and 5. Mary has been unhappy in the relationship for a couple of years and both parties have decided to separate. The separation is amicable and there is no history of family violence. Mary has moved out of the family home with both children and is living with her parents in the same town. John remains living in the family home and is depressed about the separation. Mary is seeking information on “where to from here?”

| Potential Entry Points | Current Pathway |
|--|---|
| Family Relationship Centre | Information may be provided initially, followed by intake and screening to identify and triage issues and then possible referral to family dispute resolution. |
| Family Relationship Advice Line | Information officer would provide basic information and transfer call to parenting adviser who would refer Mary to local family relationship centre. |
| Child Support Agency | Mary would be provided with information (and/or links with Centrelink). She would be referred to the family relationship centre or Family Relationship Advice Line. |
| Centrelink | Mary would be provided with information (and/or links with Child Support Agency). She would be referred to a family relationship centre, Family Relationship Advice Line or legal service (such as a family dispute resolution). |
| Legal Aid Commission | Mary would be provided with legal advice and minor assistance. As Mary is not legally represented and has not previously attempted dispute resolution, she is likely to be referred to a family relationship centre. |
| Community Legal Centre | Mary would be provided with legal information and advice (including child support) and may or may not be referred to a family relationship centre. |
| Private Lawyer | Mary would be provided with legal information and advice (including child support) and may or may not be referred to a family relationship centre. |
| Federal Magistrates Court (or Family Court of Western Australia) | Mary would be advised that unless an exception applies, she should attempt to resolve any disagreement through family dispute resolution. Mary is likely to be referred to a family relationship centre, or a funded family dispute resolution service. |

At the suggestion of a neighbour, Mary has decided to contact the family relationship centre located in her town to seek information and advice. Mary calls the centre outlining her circumstances and an appointment is made. During the telephone call, the centre completes an initial intake process designed to gather basic client information and screens for the safety of both Mary and the children.

When Mary attends the centre, a more in-depth screening and assessment process is undertaken to assess her presenting needs and determine the level of information, support and referral Mary and her children require. The centre recommends that if a family dispute resolution process is undertaken, Mary should seek legal advice before deciding on or finalising any agreements.

Mary's presenting needs/issues and referral

| Presenting needs | Referral |
|------------------------------------|---|
| Mary and children need counselling | Referred to external counselling service. Children referred to <i>supporting children after separation</i> program. Centre can facilitate warm referral if required. |
| Income support | Referred to Centrelink and Child Support Agency (warm transfer or priority call system). Child Support Agency will contact John. In the intervening period Mary receives maximum family tax benefit until Child Support Agency is notified of new arrangements. Mary and John have 13 weeks to finalise parenting arrangements before family tax benefit is affected. |
| Care arrangements for children | Centre commences screening, assessment and, if appropriate, dispute resolution process. |
| Property settlement | Centre may assist with dispute resolution. If this is not available, Mary is referred to legal aid, community legal centre/women's legal service or private legal practitioner. |

Referred to family dispute resolution to develop agreement on care arrangements for the children

The centre concludes that Mary's case is suitable for family dispute resolution. Prior to commencing family dispute resolution, Mary is required to attend an individual session with a family dispute resolution practitioner as well as an information session that will prepare her for participating in the joint, child-focused family dispute resolution session.

Mary is advised that the first three hours are free, and of the fees policy that applies thereafter. Mary is given information about the dispute resolution process, parental responsibility and parenting plans. Mary is also informed that, where it is in the best interests of her children and reasonably practicable, she should consider an arrangement where she and John equally share the time spent with their children. If this is not appropriate, Mary should consider an arrangement where her children spend substantial and significant time with her and John.

Mary is informed that unless an exception¹ applies, she should attempt to develop a parenting plan and resolve any disagreement through family dispute resolution. Mary is told that the family dispute resolution practitioner will not disclose a communication made in family dispute resolution unless the disclosure is required or authorised under the *Family Law Act 1975*. Separate to the exceptions in section 10J of the *Family Law Act*, communications may be disclosed if Mary's consent is obtained.

At the same time, the centre writes to John advising him that it has been contacted by Mary and inviting him to contact the centre to make an appointment to discuss the matter. *If John fails to make contact after several approaches by the centre, Mary will be issued with a s60I (8)(a) certificate (stating that the other person did not wish to participate).*

After receiving the letter from the centre, John contacts his lawyer. John is advised along the same lines as Mary and provided with information about non-court based family services and court processes and services. John's lawyer informs him of the likely outcomes for his case, and recommends that John participate in the dispute resolution process at the centre. John's lawyer provides advice on property and child support matters.

¹ s60I(9) *Family Law Act 1975*.

John attends the centre and receives the same intake, screening and assessment process as Mary. He is also referred to a counselling service to assist with his depression and is ready to proceed to dispute resolution. John and Mary attend several sessions at the centre and develop a parenting plan that includes child support provisions. The centre seeks information from Centrelink during the process and Mary seeks legal advice from a community legal centre/private lawyer or legal aid. She subsequently informs the Child Support Agency of the parenting plan and it is then used as the basis for her Child Support Agreement.

The parenting plan includes information about how John and Mary will consult and resolve disputes about the plan and the process to be used for changing the plan. The centre also issues a s60I(8)(b) certificate (certifying the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues) should either John or Mary subsequently seek to apply to the court (within 12 months) for an order in relation to their children.

Case Study 2 – Issues involve Family Violence

James and Marie have been married for 5 years and have one child, Jane, aged 4 years. There has been a history of physical violence by James towards Marie. During a recent incident the neighbours called the police who attended with the local Domestic Violence Crisis Service (DVCS). James was subsequently charged with common assault. An interim Domestic Violence Order (DVO) was granted which prohibited James from contacting Marie and Jane (unless James and Marie wished to make arrangements in relation to Jane ie through a family dispute resolution process). At the return conference of the DVO, Marie agreed that James could see Jane under the supervision of his mother. Following a court hearing to address the charge of common assault, James was placed on a 12 month good behaviour bond.

The DVCS notified the Care and Protection Services (child welfare) about the incident because Jane had witnessed it. As a DVO was in place, the Care and Protection Service did not assess Jane as being a child at high risk.

Marie requires emotional and financial support following her separation from James.

| Potential Entry Points | Current Pathway |
|---------------------------------|---|
| Counselling and Support Service | Marie would be referred by DVCS and provided with counselling and support and would be linked with the Child Support Agency and Centrelink to work out her financial issues. |
| Child Support Agency | Marie would be provided with assistance and linked with Centrelink to work out her financial issues. She would be referred to Child Support Agency's priority telephone referral service or to Centrelink social workers for support. |
| Centrelink | Marie would be provided with assistance and linked with the Child Support Agency to work out her financial issues. She may be referred to Centrelink social workers for support. |
| Family Relationship Centre | Marie would be provided with information about the types of assistance available to her. She would be linked with the Child Support Agency and Centrelink to work out her financial issues. |
| Family Relationship Advice Line | Marie would initially speak to an information officer who would provide basic information and transfer the call to a parenting adviser who would provide (one-off) counselling and support. Marie would be referred to the Child Support Agency and Centrelink to work out her financial issues, and referred to a domestic violence support service for counselling and support. |
| Women's Legal Centre | Marie would be provided with legal information and advice (including child support) and may be referred to a domestic violence support service. |
| Legal Aid Commission | Marie would be provided with legal advice and minor assistance. She may or may not be referred to a domestic violence support service. |

Marie takes up the referral to the counselling and support service through her contact with DVCS. The service links Marie with the Child Support Agency and Centrelink to sort out her financial issues.

Marie is satisfied with the arrangement for James to see Jane with the supervision of his mother, and decides that at this point in time she does not need legal advice or other assistance.

A few months later, Marie is not comfortable with the level of supervision that John's mother is providing and worries about Jane's safety. Marie decides James cannot see Jane any more.

James is seeking advice about how he might be able to see Jane.

| Potential Entry Points | Current Pathway |
|--|---|
| Family Relationship Centre | Following an initial assessment, James would be provided with information about family dispute resolution. James may be booked for an intake session at the centre to determine suitability for family dispute resolution and identify other needs. |
| Family Relationship Advice Line | James would be provided with information about his options in relation to family dispute resolution. He may receive a referral to a family relationship centre for assistance with family dispute resolution and other services. |
| Legal Aid Commission | James would be provided with legal advice and assessed for a grant of legal assistance. If legally-assisted dispute resolution is appropriate it would be conducted in-house (James would be referred to a family relationship centre for non-legally represented family dispute resolution if that was needed). If family dispute resolution is not appropriate, James would be referred to court. |
| Community Legal Centre | James would be provided with legal information and referred to the legal aid commission or court. He may or may not be referred to a family relationship centre. |
| Private Lawyer | James would be provided with legal information and advice and may be referred to the family relationship centre, legal aid commission or court. |
| Federal Magistrates Court (or Family Court of Western Australia) | James would be informed about the need to attempt family dispute resolution before filing in the court. James is likely to be referred to a family relationship centre or a legal aid commission unless he discloses the history of family violence in which case he would be advised that participation in family dispute resolution is not compulsory. |

At a friend's suggestion, James has decided to contact a legal aid commission to see what his options are in relation to having time with Jane. After receiving some initial free advice from legal aid, James applies for a grant of legal assistance to resolve the dispute with Marie through a family dispute resolution conference to address both parenting and property matters.

During the screening and intake process James discloses the history of family violence. He indicates that he is willing to seek help and will continue to stay away from Marie as long as he is able to see his daughter. The commission decides that the matter is appropriate for a legally represented family dispute resolution conference. James is given a grant of legal assistance for this process. The following week, the commission writes to Marie inviting her to attend a family dispute resolution conference with James. The commission also refers James to a local community based service which provides assistance to male perpetrators of family violence. James accepts the referral and starts the eight week program.

Marie is seeking advice about whether she has to attend the family dispute resolution conference at the Commission.

| Potential Entry Points | Current Pathway |
|--|--|
| Family Relationship Centre | Following an initial assessment, Marie would be provided with information about family dispute resolution, certificates and the exceptions. The centre may refer Marie straight to court (claiming an exception to family dispute resolution based on family violence), with or without a s60I(8)(aa) certificate to take with her. The centre may refer Marie to a legal aid commission (to apply for a grant of legal assistance) or to a lawyer, or community legal centre. The centre may advise Marie that it can invite James to attend the centre for non-legally represented family dispute resolution (following an assessment that it would be appropriate to proceed with family dispute resolution). |
| Family Relationship Advice Line | Marie would be provided with information about her options in relation to family dispute resolution, certificates and the exceptions. She may be advised to contact the Commission if she wishes to participate in its process. Otherwise she may be referred to the family relationship centre for assistance with family dispute resolution or to the court if she wishes to file an order, claiming an exception to family dispute resolution based on the family violence exception. |
| Legal Aid Commission | Marie would be provided with information about her legal rights and options. She may be assisted with obtaining legal representation if she meets the means and merit test. Staff will determine whether it would be appropriate to proceed with family dispute resolution conferencing within the Commission. If not, they may refer Marie (and James) to a family relationship centre or court. |
| Community Legal Centre (Women's Legal Service) | Marie would be provided with legal information and advice and may be referred to the legal aid commission to participate in the family dispute resolution conference or court. |
| Private Lawyer | Marie would be provided with legal information and advice and may or may not be referred to the legal aid commission to participate in the family dispute resolution conference or court. |
| Family Court of Australia (or Family Court of Western Australia) | Marie would be provided with information about family dispute resolution, certificates and the exceptions for applying to the court for an order. Marie may be referred to the legal aid commission to participate in the family dispute resolution conference or be advised of how to make an application based on the family violence exception, including the filing of a Form 4, <i>Notice of Child Abuse or Family Violence</i> , invoking s60K of the Family Law Act which will require the Court to take prompt action in relation to the allegation. |

At her friend's recommendation, Marie contacts her local family relationship centre to see how she can prevent James from having time with Jane. The centre informs Marie that people with disputes about a child usually need to attempt family dispute resolution before making an application to court for an order but in cases involving family violence, an exception applies and people can apply directly to court. The

centre offers Marie an intake and assessment process to determine if family dispute resolution is appropriate.

Marie advises that she is terrified of James and does not wish to participate in a family dispute resolution process either at the centre or the legal aid commission for fear that she will compromise Jane's safety. On recommendation from the centre, Marie seeks legal advice from a women's legal service who then refers her to a lawyer. The lawyer agrees to represent Marie and applies to court for a parenting order to prevent James from having any time with Jane. When making the application they rely on the family violence exception.

Legal aid provides a grant of aid to James and will represent him at court. A family consultant is assigned to the case. The family consultant meets with Marie, James and Jane and based on their assessment of risk to Marie and Jane, develops a safety plan. The court also orders the appointment of an independent children's lawyer as well as a family assessment report. The family consultant undertakes further investigation which includes gathering information from the independent children's lawyer who has been assigned to the case.

The matter goes to hearing and the judge issues an interim order requiring James and Marie to attend their local children's contact service where James will be able to see Jane every Saturday for 2 hours with supervision. The matter is to be brought back before the court in three months time.

Over the next 8 weeks James has failed to attend on three occasions and has been an hour late on another occasion. The children's contact service has expressed concern about this behaviour, Marie's reaction to the situation and the impact on Jane, and has advised the independent children's lawyer. Court is unlikely to continue with an order that has failed. Should James wish to pursue time with Jane the court is likely to require him to demonstrate his continued interest in the child by attending a parenting and/or anger management course. Once James has successfully completed the courses and is able to demonstrate his intentions to the court his application for time with Jane could be reconsidered.

Over the next six months, James completes both a parenting and anger management course and his supervised time with Jane is subsequently reinstated by the court, with a view to moving towards supervised change-over and then onto self-management.²

² The court has a wide discretion and a range of factors to consider in making orders. The outcome of this case study is just one option that is possible.

Case Study 3 –Family Violence (Family Violence Orders and Parenting Orders)

James and Marie have been married for 5 years and have one child, Jane, aged 4 years. There has been a history of physical violence by James towards Marie. During a recent incident the neighbours called the police who attended with the local Domestic Violence Crisis Service (DVCS). James was subsequently charged with common assault. An interim family violence order was granted which prohibited James from contacting Marie and Jane (unless James and Marie wished to make arrangements in relation to Jane ie through a family dispute resolution process). At the return conference the order was varied as Marie agreed that James could see Jane under the supervision of his mother. Following a court hearing to address the charge of common assault, James was placed on a 12 month good behaviour bond.

The Domestic Violence Crisis Service notified the Care and Protection Services (child welfare) about the incident because Jane had witnessed it. As a family violence order was in place, the Care and Protection Service did not assess Jane as being a child at high risk.

Marie requires emotional and financial support following her separation from James.

| Potential Entry Points | Current Pathway |
|---------------------------------|---|
| Counselling and Support Service | Marie would be referred by DVCS and provided with counselling and support and would be linked with the Child Support Agency and Centrelink to work out her financial issues. |
| Child Support Agency | Marie would be provided with assistance and linked with Centrelink to work out her financial issues. She would be referred to Child Support Agency's Priority telephone referral service or to Centrelink social workers for support. |
| Centrelink | Marie would be provided with assistance and linked with the Child Support Agency to work out her financial issues. She may be referred to Centrelink social workers for support. |
| Family Relationship Centre | Marie would be provided with information about the types of assistance available to her. She would be linked with the Child Support Agency and Centrelink to work out her financial issues. |
| Family Relationship Advice Line | Marie would initially speak to an information officer who would provide basic information and transfer the call to a parenting adviser who would provide (one-off) counselling and support. Marie would be referred to the Child Support Agency and Centrelink to work out her financial issues, and referred to a domestic violence support service for counselling and support. |
| Women's Legal Centre | Marie would be provided with legal information and advice (including child support) and may be referred to a domestic violence support service. |
| Legal Aid Commission | Marie would be provided with legal advice and minor assistance (and may be assessed for a grant of assistance). She may or may not be referred to a domestic violence support service. |

Marie takes up the referral to the counselling and support service through her contact with DVCS. The service links Marie with the Child Support Agency and Centrelink to sort out her financial issues.

Marie is satisfied with the arrangement for James to see Jane with the supervision of his mother, and decides that at this point in time she does not need legal advice or other assistance.

A few months later, Marie is not comfortable with the level of supervision that John's mother is providing and she continues to have worries about Jane's safety. Marie seeks a final family violence order and also decides James cannot see Jane any more.

James is seeking advice about how he might be able to see Jane.

| Potential Entry Points | Current Pathway |
|--|---|
| Family Relationship Centre | Following an initial assessment, James would be provided with information about family dispute resolution. James may be booked for an intake session at the centre to determine suitability for family dispute resolution and identify other needs. |
| Family Relationship Advice Line | James would be provided with information about his options in relation to family dispute resolution. He may receive a referral to a family relationship centre for assistance with family dispute resolution and other services. |
| Legal Aid Commission | James would be provided with legal advice and assessed for grant of legal assistance. If legally-assisted dispute resolution is appropriate it would be conducted in-house (James would be referred to a family relationship centre for non-legally represented family dispute resolution if that was needed). If family dispute resolution is not appropriate, James would be referred to the court. |
| Community Legal Centre | James would be provided with legal information and referred to the legal aid commission or the court. He may or may not be referred to a family relationship centre. |
| Private Lawyer | James would be provided with legal information and advice and may be referred to the family relationship centre, legal aid commission or the court. |
| Federal Magistrates Court (or Family Court of Western Australia) | James would be informed about the need to attempt family dispute resolution before filing in the court. James is likely to be referred to a family relationship centre or a legal aid commission unless he discloses the history of family violence in which case he would be advised that participation in family dispute resolution is not compulsory. |

At a friend's suggestion, James has decided to contact a legal aid commission to see what his options are in relation to having time with Jane. After receiving some initial free advice from legal aid, James applies for a grant of legal assistance to resolve the dispute with Marie through a family dispute resolution conference to address both parenting and property matters.

During the screening and intake process James discloses the history of family violence. He indicates that he is willing to seek help and will continue to stay away from Marie as long as he is able to see his daughter. The commission decides that the matter is appropriate for a legally represented family dispute resolution conference. James is given a grant of legal assistance for this process.

The following week, the commission writes to Marie inviting her to attend a family dispute resolution conference with James. The commission also refers James to a local community based service which provides assistance to male perpetrators of family violence. James accepts the referral and starts the eight week program.

Marie is seeking advice about whether she has to attend the family dispute resolution conference at the Commission.

| Potential Entry Points | Current Pathway |
|--|--|
| Family Relationship Centre | Following an initial assessment, Marie would be provided with information about family dispute resolution, certificates and the exceptions. The centre may refer Marie straight to court (claiming an exception to family dispute resolution based on family violence), with or without a s60I(8)(aa) certificate to take with her. The centre may refer Marie to the legal aid commission (to apply for a grant of legal assistance) or to a lawyer, or community legal centre. The centre may advise Marie that it can invite James to attend the centre for non-legally represented family dispute resolution (following an assessment that it would be appropriate to proceed with family dispute resolution). |
| Family Relationship Advice Line | Marie would be provided with information about her options in relation to family dispute resolution, certificates and the exceptions. She may be advised to contact the commission if she wishes to participate in its process. Otherwise she may be referred to the family relationship centre for assistance with family dispute resolution or to court if she wishes to file an order, claiming an exception to family dispute resolution based on the family violence exception. |
| Legal Aid Commission | Marie would be provided with information about her legal rights and options. She may be assisted with obtaining legal representation if she meets the means and merit test. Staff will determine whether it would be appropriate to proceed with family dispute resolution conferencing within the commission. If not, they may refer Marie (and James) to a family relationship centre or the court. |
| Community Legal Centre (Women's Legal Service) | Marie would be provided with legal information and advice and may be referred to the legal aid commission to participate in the family dispute resolution conference or the court. |
| Private Lawyer | Marie would be provided with legal information and advice and may or may not be referred to the legal aid commission to participate in the family dispute resolution conference or the court. |
| Family Court of Australia (or Family Court of Western Australia) | Marie would be provided with information about family dispute resolution, certificates and the exceptions for applying to the court for an order. Marie may be referred to the legal aid commission to participate in the family dispute resolution conference or be advised of how to make an application based on the family violence exception, including the filing of a Form 4, <i>Notice of Child Abuse or Family Violence</i> , invoking s60K of the Family Law Act which will require the Court to take prompt action in relation to the allegation.. |

At her friend's recommendation, Marie contacts her local family relationship centre to see how she can prevent James from having time with Jane. The centre informs Marie that people with disputes about a child usually need to attempt family dispute resolution before making an application to court for an order but in cases involving family violence, an exception applies and people can apply directly to court. The

centre offers Marie an intake and assessment process to determine if family dispute resolution is appropriate.

Marie advises that she is terrified of James and does not wish to participate in a family dispute resolution process either at the centre or the legal aid commission for fear that she will compromise Jane's safety. On recommendation from the centre, Marie seeks legal advice from a women's legal service who then refers her to a lawyer. The lawyer agrees to represent Marie and applies to the Family Court for a parenting order to prevent James from having any time with Jane. When making the application they rely on the family violence exception.

Legal aid provides a grant of aid to James and will represent him at court. A family consultant is assigned to the case. The family consultant meets with Marie, James and Jane and based on their assessment of risk to Marie and Jane, develops a safety plan. The court also orders the appointment of an independent children's lawyer as well as a family assessment report. The family consultant undertakes further investigation which includes gathering information from the independent children's lawyer who has been assigned to the case.

The matter goes to hearing and the judge issues a parenting order requiring James and Marie to attend their local children's contact service where James will be able to see Jane every Saturday for 2 hours with supervision.

The parenting order is in effect inconsistent with the family violence order issued earlier. Section 68P of the Family Law Act sets out obligations on a court exercising family law jurisdiction when there is an existing state family violence order in place, and the court makes a parenting order that is inconsistent with it. The parenting order issued to James and Marie addresses the obligations under S68P such as stating the circumstances and conditions by which James is to have time with Jane therefore the family violence order yields to the parenting order.

Some weeks later, James turns up at Marie's house while Jane is away on school camp for the week. An argument ensues and James physically assaults Marie to the point where the police are involved and she spends the night in hospital. Marie is now afraid for the safety of both herself and Jane and does not want Jane to have any time with James.

As the Family Law Act enables the courts to make injunctions similar to family violence orders, Jane, as the victim of the confrontation and with the support of the police and medical and forensic evidence can apply to the Family Court for an amendment to the parenting order and possibly a personal injunction under s114 (1)(a) of the Family Law Act. This would then circumvent the potential for the State court to make a further family violence order³ that could again be inconsistent with the parenting order.⁴

³ s68R *Family Law Act 1975* enables a court to revive, vary, discharge, or suspend an existing order, injunction or arrangements when making or varying a family violence order.

⁴ The court has a wide discretion and a range of factors to consider in making orders. The outcome of this case study is just one option that is possible.

ATTACHMENT C – Ideal pathways through the family law system

This narrative is to be read in conjunction with the five flowcharts which represent ideal client pathways through the family law system. It is intended for discussion purposes only.

Tier 1

Tier 1 identifies that individuals may seek information and advice about the family law system from a range of services, in person, over the phone, or from online resources. Individuals may receive this information and advice and not seek any further assistance. For others, this information and advice may direct them to seek further assistance either through the service that provided the information and advice or through another service (those outlined in Tier 2 or 4). The extent to which Tier 1 influences the decision an individual makes in terms of which service to approach for additional assistance is indeterminate but is likely to be influenced by a number of factors. These factors include accessibility/availability of services, urgency (and timeliness of the service response), personal preferences, cost, the client's knowledge of the system, presenting need, the other party's entry point and whether or not the other party has initiated the process.

Tier 2

Generally, Tier 2 is the entry point into the family law system. Entry could be through self selection, through the same Tier 1 service, or by referral from a Tier 1 service.

All services undertake some form of intake, screening and assessment process. The process should categorise an individual into one of four groups as determined by conflict level and safety issue. These groups are: low conflict, high conflict with no violence, high conflict with violence, or child abuse issues. The assessment should not only identify the level of conflict, and safety issues, but should also assess client need, capacity to pay, and service preferences (ie whether a legally assisted family dispute resolution model or a child inclusive approach may be sought).

Following this assessment and categorisation, the service will determine whether the individual can best be assisted through services provided in-house or whether a referral to another service (in Tier 3 or 4) would be more appropriate. Tier 2 services need to have a sound understanding of the role and types of assistance provided by Tier 3 services in order to make the most appropriate referral. Any client identified as having potential child abuse issues should be directed straight to court (Tier 4).

Tier 3

Tier 3 identifies the services that are able to assist clients to develop parenting arrangements. Depending on service type and client need, these services provide a range of assistance from family dispute resolution processes, education, counselling and support, legal advice and representation. The Tier 2 and 3 services may or may not be the same service for a particular client. This will depend on whether the Tier 2 service is best able to provide assistance to the particular client based on their needs and issues. A more comprehensive screening and assessment process will be undertaken by the Tier 3 service at the point of client entry. Screening and assessment should be ongoing throughout the client's contact with the service to ensure the client's continued safety as well as to check that the level and type of service continues to meet the client's needs.

Tier 3 services assist three categories of clients as identified through their Tier 2 assessment. The categories help to identify the pathways that may be best able to assist a particular client based on their level of conflict and specific needs and issues. These categories are:

- low conflict
- high conflict with no violence, and
- high conflict with violence.

Note: If there are issues around child abuse, clients will be fast tracked straight to court (Tier 4).

Low Conflict

Following an assessment which identifies there is a low level of conflict between the parties, clients should be referred to one of the following (if they aren't already in one of these services):

- a family relationship centre or other FRSP funded family dispute resolution service
- a legal aid commission, or
- a private family dispute resolution practitioner.

As these services provide different types of assistance, it is important that clients through the Tier 2 referral process are linked with the service that is most appropriate for their particular needs. For example, if a client receives legal information through a community legal centre and requires family dispute resolution with a lawyer present, a legal aid commission would be the most appropriate referral.

Following a screening and assessment process, clients will undergo a family dispute resolution process. This may or may not include pre-family dispute resolution, education and support sessions, and may take the form of shuttle mediation, joint mediation, advisory mediation, or legally assisted family dispute resolution. Ideally, the outcome is the development of a parenting plan or agreement. If an agreement cannot be reached, the practitioner will issue the clients with a certificate if they wish to file at court. Prior to, during, or following a family dispute resolution process, the clients may be referred to a range of services to assist (ie counselling or legal services). If at any point, the practitioner assesses that it is not appropriate to continue with the family dispute resolution process, they will discontinue the process and refer the clients to a service that may be able to offer other assistance.

High Conflict with No Violence

Following an assessment which identifies there is a high level of conflict between the parents, but there are no concerns of violence, clients should be referred to one of the following (if they aren't already in one of these services):

- a family relationship centre or other FRSP funded family dispute resolution service
- a legal aid commission, or
- a parenting orders program.

The processes will be similar to those outlined above for services assisting clients with low conflict issues.

High Conflict with Violence

Following an assessment identifying a high level of conflict between the parties, and there are concerns of violence, clients should be referred to one of the following (if they aren't already within one of these services):

- a family relationship centre or other FRSP funded family dispute resolution service
- a legal aid commission, or
- court (Tier 4).

For clients attending a Centre, funded family dispute resolution service, or legal aid commission, the processes will be similar to those outlined above for services assisting clients with low conflict issues. A practitioner will only proceed with family dispute resolution if, in their professional opinion, there is no safety risk or power imbalance to a party. If there are concerns about safety or a power imbalance, the parties should be referred to court.

Following the receipt of information from a Tier 1 service or following an assessment from a Tier 2 service, a client assessed as high conflict with issues of violence may be directed straight to court (Tier 4).

Tier 4

Tier 4 represents assistance through a court intervention. Primarily this intervention will be for clients who have obtained information (through Tier 1) that has directed them straight to court or following an assessment by a service (in Tier 2) that has identified issues of family violence or child abuse and has directed them straight to court. Clients may also decide to file in court if, following an intervention by a Tier 3 service, disputes have not been resolved.

Child Abuse

The Magellan case management model is in operation within the Family Court of Australia.¹ Its procedures are aimed at effectively and efficiently responding to concerns relating to child abuse allegations. The court is best placed to ensure effective information sharing with the child protection agencies, minimising risk to the child/ren.

High Conflict with Violence

As outlined above, the court may be best placed to assist clients with high conflict and with issues involving violence. Generally this would be where parties do not have an equal balance of power in negotiating parenting arrangements, or where one party is at risk of harm.

Depending on the particular case, the court may make referrals to external services either as an alternative to court processes or to assist in conjunction with court processes.

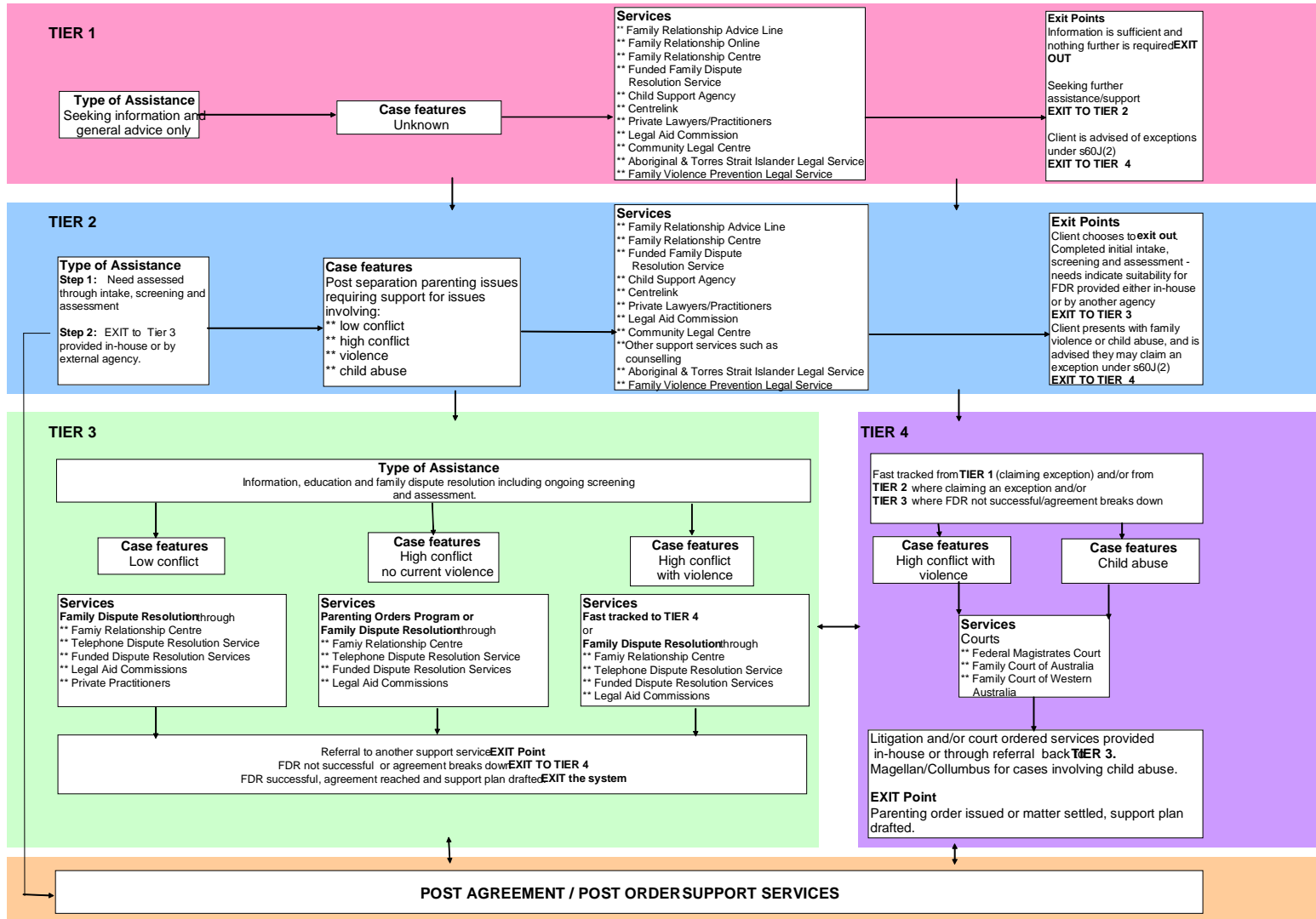
¹ A similar model operates within the Family Court of Western Australia and is known as Child Related Proceedings. This has superseded the Columbus Program.

Post order/post agreement support services

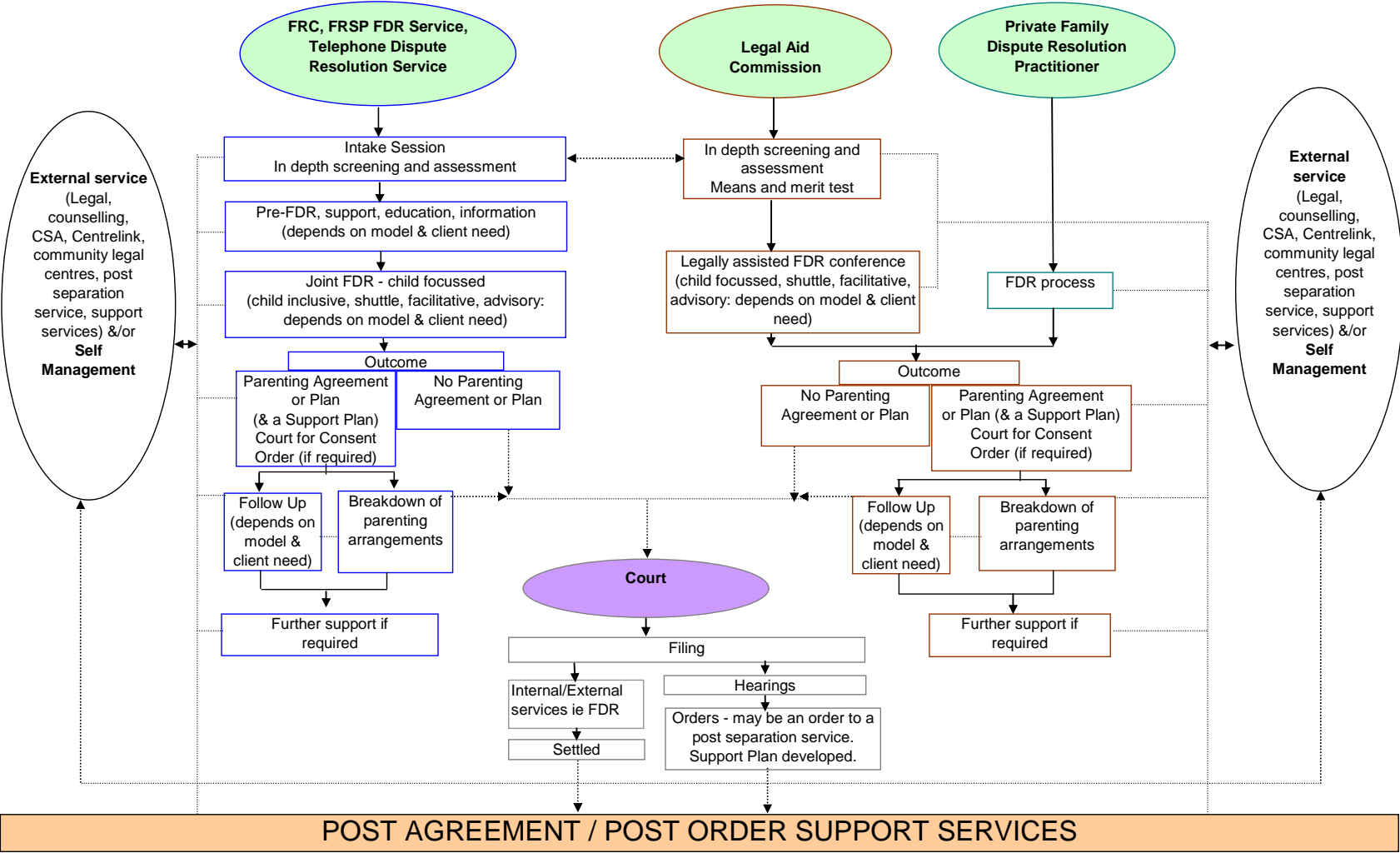
If a support plan is developed for clients at the post order/agreement stage, it should explain the order or agreement, and include processes for checking how the orders or agreements are working further down the track. The support plan could also outline what is likely to be needed next should the order/agreement breakdown, what help is available and where to go to get it. The responsibility for drafting such a plan would rest with the last entity with which the client either reached an agreement or when an order was made.

The type and range of post order/agreement support services identified in the support plan would depend on the case type and the needs of the parties. Providing clients with this information would help prevent them falling through the cracks within the system and having to enter or re-enter the litigation pathway.

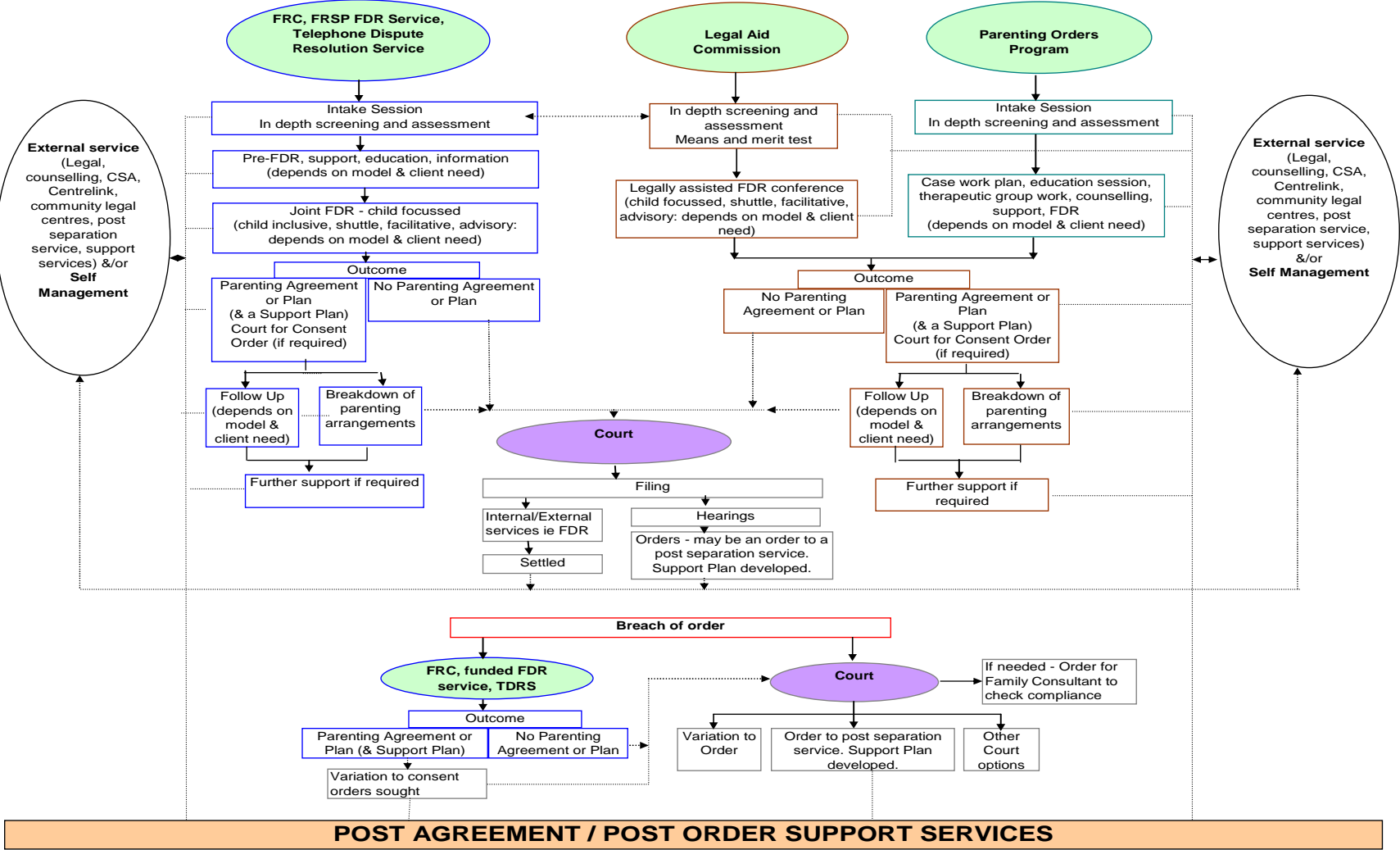
THE FAMILY LAW SYSTEM - IDEAL PATHWAYS



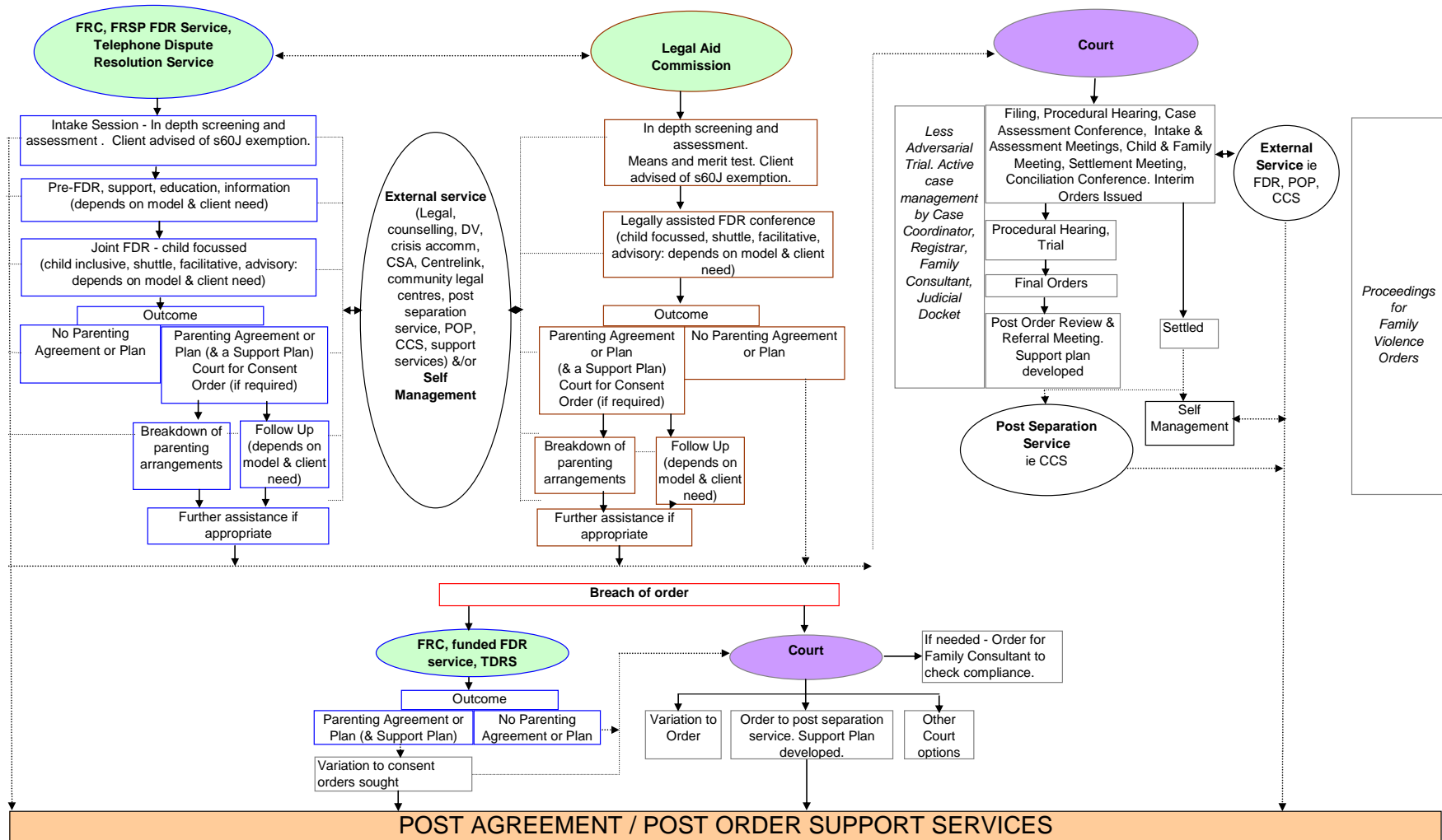
Initial Assessment: LOW CONFLICT



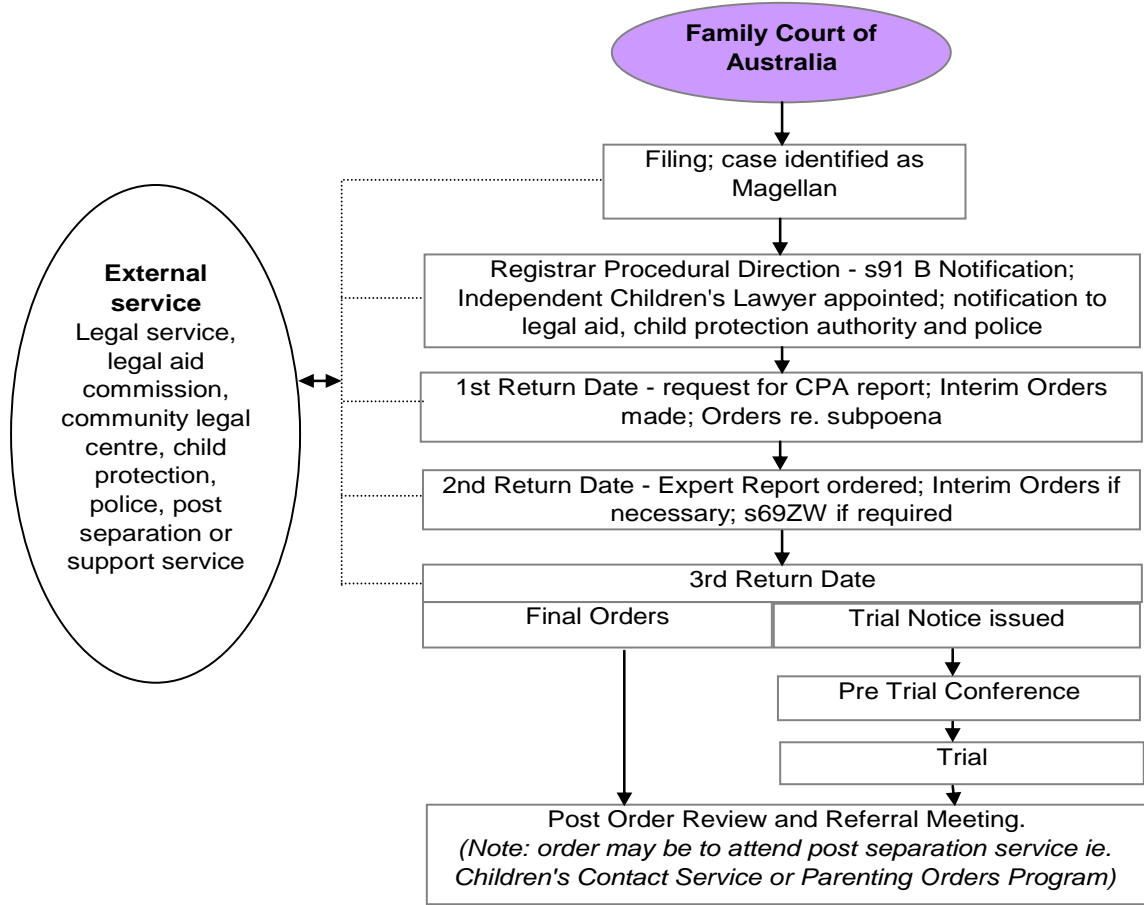
Initial Assessment: HIGH CONFLICT WITH NO VIOLENCE



Initial Assessment: HIGH CONFLICT WITH VIOLENCE



Initial Assessment: CHILD ABUSE



POST AGREEMENT / POST ORDER SUPPORT SERVICES

ATTACHMENT D – Examples of assessment tools

National assessment tools

| Entity 1 | Tool | Description |
|-------------------------------|---|--|
| Attorney-General's Department | Framework for Screening, Assessment and Referrals in Family Relationship Centres and Family Relationship Advice Line July 2008 | This framework describes and defines screening and assessment procedures in the centres and the Advice Line. The framework defines the three major risk domains and indicators of domestic and family violence, child abuse and abduction, and self-harm. It includes tools to assist practitioners and identifies the importance of supervision and support for staff working in this area. |
| Family Court of Australia | | A comprehensive screening process is undertaken by Family Consultants in the Intake and Assessment meeting (part of the Child Responsive Program). The process is guided by a questionnaire and each party is asked specific questions about the frequency, pattern and type of violence and children's exposure to violence. |
| Federal Magistrates Court | | Court staff conduct screening and assessment at intake. |

State assessment tools

| Entity 1 | Tool | Description |
|-----------------------------------|----------------------------------|---|
| Family Court of Western Australia | Family Consultant Screening Tool | Family consultants of the Court complete this tool for every parenting case. The tool assesses risks such as family and domestic violence, child abuse and child safety concerns, substance abuse, mental health, and the levels of possible conflict. |
| Legal Aid Commissions | | All Commissions conduct screening and assessment at intake to identify power imbalances and child protection issues. The tools and processes used vary from state to state. In general, intake officers use checklists to identify issues in dispute. The client and/or their legal representative may be involved in this process. Queensland has a best practice guide for understanding and defining family violence which is used to inform the screening and intake process. Western Australia participated in the development of the Best Practice Model for the provision of Programs for Victims of Domestic Violence which has a section on addressing intake and assessment and has been adopted across state agencies. |

Local assessment tools

| Entity 1 | Tool | Description |
|---------------------------------|---|--|
| Community Legal Centres | | Centres conduct their own screening and assessment processes at intake. |
| Interrelate Family Services NSW | Client Rating Scale | This form is completed by the client at the conclusion of a counselling session. It helps to identify internal change processes the client experiences. |
| | CSO Client Intake Form | This form is completed by Interrelate staff at intake and is designed to assess the risk of family and domestic violence, child safety, conflict levels and parenting arrangements. |
| | Needs Assessment | This form is completed by an Interrelate practitioner and assesses what services the client may require. Questions asked include <i>Are you fearful of your partner/ex-partner for any reason</i> and <i>Are drugs or alcohol a current issue for you or your partner/ex-partner?</i> |
| | Building Stronger Families Parent Intake | This form is completed by the client following intake and a needs assessment interview. The form covers post separation services such as Post Separation Cooperative Parenting and Children's Contact Services. |
| Relationships Australia NSW | Checklist for Family Advisor Interview: Screening and Assessment | This checklist is completed by family advisors in Family Relationship Centres operated by Relationships Australia, NSW and identifies clients' relationship issues and requirements. The checklist also assesses safety risks, mental health issues, child protection and safety, |
| Centacare Brisbane | Pre-mediation Intake Form | Completed by Centacare staff at client intake and assesses clients' needs and issues for mediation. |
| | Family Dispute Resolution Preparation Framework | This framework is completed by a family counsellor and is designed to provide clinical assessments of clients to family dispute resolution practitioners before mediation begins. The form assesses the level of acrimony and/or alliance, the degree the parents are focused on their children, concerns for child safety and issues for mediation. |
| Anglicare WA | Separation Services Screening & Assessment Tool | This tool is completed by Anglicare clinical staff and is used in conjunction with the Risk Assessment Appendices where appropriate. The tool assesses current family dynamics, levels of conflict, presence of violence and safety issues, the needs of children and child safety issues, |
| | Separation Services Intake Form | This form is completed by first point of contact staff and captures client information on needs. Questions cover background, legal assessment, child abduction assessment, and safety issues. |
| | Suitability for Family Dispute Resolution if Evidence of Domestic Violence Tool | This tool is a checklist of tick boxes assessing risk and level of dangerousness. It also provides an inventory of violence. |
| | Children's Contact Services Chats with Children Orientation Report | This form is completed by a support worker who interviews the child/ren using the service. Questions include a description of the child's demeanour on arrival, how the child feels about spending time with their non-residential parent, and child safety concerns. |

Local assessment tools

| Entity 1 | Tool | Description |
|--------------------------|--|--|
| Anglicare WA (cont'd) | Safety & Risk Assessment for Domestic Violence – Family Tool | This tool is completed by clients and assesses the level of domestic and family violence. Questions also cover suicide issues, child safety issues, and court orders. |
| | Possible Indicators for Child Murder-Suicide Questionnaire | This questionnaire is a tick box form to be completed by a clinical practitioner and assesses the possibility of child-parent murder-suicide. |
| | Suicide Risk Assessment | This tool is used in conjunction with the Dealing with Suicide or Self Destructive Risks form, and is completed by a clinical practitioner. The tool assesses client background, current stressors, level of distress, and a plan of action. |
| | Assessment Package – Perpetrator | This questionnaire has been prepared to assist and prompt counsellors to ask all the questions that are required for a thorough assessment, including a comprehensive genogram representing the client's Family of Origin and relationships. |
| | Client Information Form for Perpetrators | This form is completed by the client and is designed to assist the counsellor to understand the client's current situation and develop possible solutions. The form assesses home/family issues, work situation, emotions, and coping abilities. |
| | Dangerous Assessment Scale – Perpetrator | A Yes/No questionnaire completed by the client to assess the level of danger the client may present to a partner/ex-partner. |
| | Assessment Package – Abused Person | This questionnaire is completed by the client and is designed to assist and prompt counsellors to ask all the questions that are required for a thorough assessment of abuse the client may have experienced throughout their life. |
| | Client Information Form – Abused Person | This form is completed by the client and is designed to assist the counsellor to understand the client's current situation and develop possible solutions. The form assesses home/family issues, work situation, emotions, and coping abilities. |
| | Dangerous Assessment Scale – Partner | A Yes/No questionnaire completed by the client's partner/ex-partner to assess the level of danger the client may present to the partner/ex-partner. |
| | Personal Safety Plan | The plan is prepared by the client and assesses safety issues during a violent incident, when preparing to leave a relationship, at home and work and in public. |

ATTACHMENT E – Examples of referral arrangements

National referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|---|--------------------------------------|----------------------|--|
| Family Relationship Centres/ Family Relationship Advice Line | Other support services (general) | | These guidelines outline what the Centres and Advice Line should be aware of when making referrals to other support services. The guidelines identify the importance of having an accurate knowledge of other services and how Family Relationships Online is used to support local referrals. The guidelines outline barriers to referrals, the knowledge and skills required of staff when making referrals and definitions of different referral types. The guidelines are accessible at www.ag.gov.au . |
| Family Relationship Centres | Legal advice providers (general) | | These guidelines outline the importance of working with the local legal profession and services. Centres may not provide legal advice and must be mindful of resource implications, conflict of interest policies and means and merits tests that might apply. Examples of different types of circumstances (including urgency) and the suggested referral pathways are provided. The guidelines are accessible at www.ag.gov.au . |
| Family Relationship Centres | Family Relationship Advice Line | Centrelink | Referral arrangements are in place to link Centres with direct phone access to the Advice Line and Centrelink. |
| Family Relationship Centres | Family Relationship Advice Line | Child Support Agency | Referral arrangements are in place to link Centres with direct dedicated phone access to the Child Support Agency. Arrangements are also in place for the Child Support Agency to link customers with the Family Relationship Advice Line. There are specific procedures to facilitate the referral of change of assessment customers. |
| Family Relationship Centres/ family dispute resolution services funded under the Family Relationship Services Program | Telephone Dispute Resolution service | | Referral arrangements are in place to link Centres and family dispute resolution services funded under the Family Relationship Services Program directly to the Commonwealth-funded Family Relationship Advice Line - Telephone Dispute Resolution Service. |
| Family Relationship Centres | Legal Aid Commissions | | Draft guidelines are currently being developed by National Legal Aid to provide guidance and examples on what can be done to improve collaboration. The importance of understanding each entity's respective family dispute resolution programs and the development of local protocols are encouraged. |

National referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|---------------------------|-----------------------------|----------|--|
| Family law courts | Children's Contact Services | | These guidelines seek to improve the knowledge of judicial officers, court personnel and children's contact services staff about the processes and procedures of the respective institutions and organisations. The guidelines are not legally binding. They outline the purpose of children's contact services, the terms and conditions for use of a service, ongoing risk assessment and any subsequent changes in service delivery and what this means for clients, court processes and orders. The guidelines describe what should be considered by the judiciary when making orders (eg provision to review), authorising the release of a judgement, Family Report or expert report, and issuing subpoenas. The type of information held by courts and services that may assist with addressing client need and when that information may be shared, is also described. |
| Family Court of Australia | Federal Magistrates Court | | A Memorandum of Understanding outlines the support and services provided by the Family Court of Australia for and on behalf of the Federal Magistrates Court. Services to be provided include registry services, mediation, litigation support, information technology, knowledge management, security, accommodation and other general services. |
| Family law courts | National Legal Aid | | A Family Law Duty Lawyer Scheme National Protocol sets out guidelines for the provision of duty lawyer services by Legal Aid Commissions. Legal Aid Commission lawyers (in house practitioners) or private legal practitioners (by arrangement with the Legal Aid Commission), provide assistance to self represented litigants at the courts. |

State referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|--|---|----------|---|
| Family Court of Australia | State Child Protection Authorities | | Protocols in relation to child abuse cases exist between the Family Court of Australia and the Department of Community Services NSW, the Northern Territory Department of Health and Community Services, the South Australian Department of Human Services (Family and Youth Services), the Tasmanian Department of Community Services and the Department of Child Safety Queensland. These protocols facilitate cooperation and the sharing of information between the Court and the relevant agency, and clarify procedures to be used to protect children. |
| Western Australia Association of Community Legal Centres | Legal Aid Commission of Western Australia | | Guidelines govern referrals between the agencies and enable the streamlining of services. |

State referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|--|---------------------------------|--------------|--|
| Family Court of Western Australia | Department for Child Protection | Legal Aid WA | A Memorandum of Understanding documents the procedures for facilitating the sharing of information and resources between the parties. Procedures include the referral of clients from the Department to the Court, and the exchange of information for applications for recovery orders. |
| Legal Services Commission of South Australia | Relationships Australia SA | | A Memorandum of Understanding is in place which outlines the roles and responsibilities of the Commission's family dispute resolution services and the family relationship centre services provided by Relationships Australia SA. |

Local referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|--|---------------------------------------|----------|---|
| Family Court of Australia | Community based organisations | | As part of the Integrated Client Service Delivery Program, referrals are made from the court to services that can provide clients with family support and crisis intervention. Statements of Understanding are in place between the court and organisations including Lifeworks, Interrelate Family Services and Uniting Care Wesley to support the provision of services to perpetrators and victims of family violence (Integrated Client Service Delivery). The Court has established relationships with various stakeholders at the local level to support service delivery. |
| Legal Aid Commission Victoria and Tasmania | Family Relationship Centres | | Referral protocols are being developed to facilitate the sharing of information about joint clients. |
| Legal Services Commission of South Australia | Other support services | | A formal referral framework is used by the Commission to assess the most appropriate dispute resolution service for families. It includes target groups, locations, contact details, features and costs of other services provided by external organisations, including family relationship centres. |
| Legal Aid Commissions | Other support services | | Commissions have developed lists of support services to which they can refer parties to. |
| Legal Aid Commission New South Wales | Other legal service providers | | A cooperative legal service delivery model brings together key legal service providers to apply a coordinated and regional approach to the planning and delivery of legal services. |
| Private lawyers | Other relevant agencies/organisations | | Arrangements for supporting clients are in place between private lawyers and other lawyers, medical practitioners, accountants, dispute resolution practitioners and services, mental health professionals, Family Relationship Centres, Legal Aid Commissions, Community Legal Centres, other family relationship support services, and the family law courts. |

Local referral arrangements

| Entity 1 | Entity 2 | Entity 3 | Description |
|---------------------------------|---|-----------------|---|
| Community Legal Centres | Other relevant agencies/organisations | | Arrangements are in place to support referrals between Community Legal Centres and mental health units, police, courts and community based organisations. |
| Interrelate Family Services NSW | Other community based organisations and agencies | | Arrangements are in place with a range of other community based organisations, state agencies, Centrelink, Child Support Agency, legal services and the courts. These arrangements are through formal and informal protocols, and in some cases through a Memorandum of Understanding. |
| Community based organisations | Federal Magistrates Court and Family Court of Western Australia | | Contractual arrangements are in place supporting the provision of family dispute resolution and post separation services by community based organisations to clients of the Federal Magistrates Court. In Western Australia similar arrangements are in place and formalised through Memoranda of Understanding. |
| Relationships Australia NSW | Other community based organisations and agencies | | Arrangements are in place with local services including other Family Relationship Services Program services, Centrelink, Child Support Agency, Department of Health, Department of Community Services, the courts, Legal Aid, and family lawyers. A Memorandum of Understanding is in place with Life Care, a service for families who have experienced family violence. |
| Anglicare WA | Other community based organisations and agencies | | Arrangements are in place with the courts, family lawyers, other Family Relationship Services Program services, Legal Aid and the Child Support Agency. |
| Centacare Brisbane | Other community based organisations and agencies | | Arrangements are in place with other Family Relationship Services Program services, Family Relationship Centres, other community agencies, family lawyers, the Child Support Agency, Centrelink, Legal Aid, domestic violence services, and the courts. |

ATTACHMENT F - Streamlining of service delivery

1. The Family Relationship Services Program (FRSP) currently funds 65 family relationship centres, 66 regional and family dispute resolution services, a telephone dispute resolution service, 20 parenting orders programs, 14 post separation cooperative parenting programs, 65 children's contact services and 18 supporting children after separation programs.
2. The type of family dispute resolution model provided by services varies. Some family relationship centres and family dispute resolution services assist with property matters. Clients may have their lawyers present at family dispute resolution and regional family dispute resolution services, but not at family relationship centres or the telephone dispute resolution service.
3. Family relationship centres assist clients who are separated by large distances through teleconferencing. This aspect of service delivery is similar to that provided by the telephone dispute resolution service. As the telephone dispute resolution service is a 'virtual' family relationship centre operating on a national basis, rationalising it with other FRSP-funded services would not extend coverage. Further, such rationalisation would require additional training of staff and enhanced telephony and information technology systems.
4. Expanding the types of family dispute resolution (eg including legally-assisted family dispute resolution) available at family relationship centres may provide clients, and other entities within the system, with more options for resolving disputes outside the litigation pathway. It would also bring consistency to the type and range of family dispute resolution services delivered by FRSP-funded community-based organisations. However, introducing legally-assisted dispute resolution would mean that centres no longer operate at 'arms length' from the legal sector. Clients may feel less inclined to participate in non-legally assisted dispute resolution or even pressured to obtain legal representation, particularly if one party is represented.
5. Generally, clients in regional locations have fewer options than those in metropolitan locations when it comes to accessing services. This limitation also impacts on other entities in the family law system as it reduces their capacity to make effective and appropriate referrals.
6. Removing the distinction between regional family dispute resolution services and family dispute resolution services would simplify the service system and make service delivery more consistent. The only difference between these service types is that under regional family dispute resolution, funds may be used to provide counselling and community development. With a greater emphasis on dispute resolution, the component of funds used for these purposes could be re-directed to provide either post separation parenting programs or child-inclusive practice.
7. Badging all FRSP-funded family dispute resolution services as family relationship centres would further expand the network of family relationship centres and provide clients with an identifiable access point to the system. However, family dispute resolution services are currently filling a gap by servicing the more complex cases that require longer than three hours. These services would have less capacity to do this work if they had to operate as family relationship centres. In addition, the venues that they operate from were not resourced to provide the full range of family

relationship centre services, are likely to be in less accessible and visible locations and have not been set up to provide general information/front-desk support. Alternatively, the services could operate as Centre outlets (from their existing venues) and provide family dispute resolution services only.

Question 24: How can access to family dispute resolution and legally assisted family dispute resolution be improved?

8. The parenting orders program and the children's contact services primarily assist families who are likely to be court-ordered and have entrenched conflict. Clients of these services are likely to have been through court processes, have parenting arrangements determined, and may have previously breached orders.
9. The parenting orders program assist separating families in high conflict to reach parenting arrangements through a range of services such as counselling, mediation, group work education and child-inclusive practice. The courts may advise or order parents to attend this program in conjunction with the use of a children's contact service to facilitate supervised visits or changeovers between children and their parents. Clients of the parenting orders program are likely to need assistance with maintaining contact with their children and those of the children's contact service would benefit from the counselling, mediation and child-inclusive practice. Parents could also attend a post separation cooperative parenting workshop to help them learn how to focus on the needs of their children.

Question 25: How can access to post separation services be improved?

10. All services funded under the FRSP are required to adopt a child-focussed approach to service delivery. Some family relationship centres and family dispute resolution services offer child-inclusive services.
11. In general, the availability of child-inclusive services varies from location to location. There appears to be some duplication of the services provided by the courts' family consultants and that of family relationship centres, family dispute resolution services and parenting orders program that provide child-inclusive practice services. This duplication is more likely in metropolitan locations and gaps may well exist in regional locations, either where family consultants are not available and/or there are fewer FRSP-funded services. An option to increase the delivery of child-inclusive practice may include allowing service providers in receipt of Government funding for counselling services to use this funding source to cover child-inclusive practice.

Question 26: How can access to child-inclusive services be improved?

12. Courts may advise or order clients to attend family counselling, family dispute resolution, or post-separation services at any time through the litigation pathway.¹ This means that some clients may be engaged in court processes and with external services simultaneously. These clients may also have previously attempted family dispute resolution, and obtained a certificate, before filing with the court. While multiple attempts at family dispute resolution may result in agreement, it may also result in client burn out.

Question 27: How can the number of attempts at family dispute resolution be limited to when an outcome is likely to be achieved?

¹ s13C, s65LA *Family Law Act 1975*.

13. The Child Support Agency's (CSA) change of assessment clients are entitled to three free hours of family dispute resolution at all FRSP-funded family dispute resolution services. Clients that attend a family relationship centre, regardless of their CSA status, are also entitled to three free hours of family dispute resolution services. Clients that attend a family dispute resolution service, a regional family dispute resolution service or the telephone dispute resolution service who are not CSA change of assessment clients are charged a fee, based on their level of income. However, services must not turn clients away if they are unable to pay.
14. Courts may advise or order clients to attend family counselling, family dispute resolution, or post-separation services at any time through the litigation pathway.² Clients may access these services in two ways - either through the court's family counsellors and dispute resolution practitioners (which are free), or through external, community-based service providers (with a fees policy as outlined above).

Question 28: How can fees policies be applied in a more equitable manner across the family law system?

15. The Family Relationship Advice Line is a national telephone service providing free information, advice and referral to assist people affected by family relationship or separation issues. Basic legal information and dispute resolution may also be provided. Individuals are referred to a legal aid commission or other legal service when they require advice on complex issues or where the caller requires ongoing legal assistance or representation.
16. There are numerous free legal services across each state, including those provided by legal aid commissions, community legal services/women's legal services, private law firms and the State governments (eg LawAccess NSW). The courts have services available to assist individuals with information and procedural advice about court matters, forms and brochures, and referral advice to community and support services. The Office for Women provides a national telephone crisis counselling help line. Further, there are various crisis services in each State providing specific counselling and advice in relation to domestic violence and sexual assault. There are a range of services that provide more general support, one off and ongoing counselling, and referrals in relation to personal and relationship issues. These include Mensline, Lifeline, Kids Helpline and Parentline. Telephone based support is also available through Centrelink social workers.
17. For individuals seeking assistance, the number and types of services can be confusing. Most of these services provide referral information, which means that a caller is likely to be linked with the service that can best assist them. However, it may take a number of telephone calls before this occurs.
18. There is some duplication of function between different services. Enabling calls to be fielded, particularly in the smaller services, requires a large commitment of resources.

Question 29: How can access to telephone advice lines be streamlined?

19. There is a range of support that can be accessed by individuals in relation to child support matters. Whilst the Child Support Agency calculates, collects and transfers child support, specialist legal advice is available through private lawyers and other services.

² s13C, s65LA *Family Law Act 1975*.

20. The Child Support Scheme Legal Services Program operates nationally across the community legal services. The legal aid commissions also provide specialist child support legal services in each state. These services operate independently of the Child Support Agency. They provide information and legal advice about an individual's rights and responsibilities in relation to child support. Assistance can be provided in negotiation with the Child Support Agency or the other party.
21. There seem to be many services available to assist with child support. However, knowing where to go and understanding the differences between these types of assistance is likely to be difficult for clients.

Question 30: How can access to child support programs be streamlined?

22. A report and discussion paper on improvements to the delivery of family law services were released on 20 November 2008. The report, *Future Governance Options for Federal Family Law Courts in Australia*, recommends the creation of a single federal family law court by combining the Family Court and the Federal Magistrates Court. The discussion paper seeks public comment on the report's recommendations, with submissions invited by 6 February 2009.

ATTACHMENT G – Family violence discussion paper

Background

1. The Attorney-General has asked the Department to consult with key stakeholders as part of the development of a broad strategy to assist families affected by family violence needing to make decisions about their children after a separation.
2. Departmental officers conducted consultations during 2008 with stakeholders including the Family Court of Australia, Family Court of Western Australia, Federal Magistrates Court, Office for Women, Legal Aid Commissions, Community Legal Services, State and Territory domestic violence program managers, Women's Legal Services, Family Law Council, National Alternative Dispute Resolution Advisory Council, family relationship services, National Council for Single Mothers and Their Children, Lone Fathers Association, Domestic and Family Violence Clearinghouse, and the Australian Institute of Family Studies.
3. In addition to the consultations being undertaken by the Department in relation to the family law system, there are other broader initiatives being undertaken across government by to address family violence including:
 - The Family Law Council has been asked to consider ways to improve coordination of the family law system and State and Territory systems in relation to family violence. The Family Law Council is currently preparing this report which is expected to be completed by March 2009.
 - The National Council to Reduce Violence against Women and their Children has consulted with, or received submissions from around 2000 stakeholders to develop a National Plan to Reduce Violence Against Women and their Children. The Council is due to report to the Government in mid-February 2009.
 - The development of a new national child protection framework also has some overlaps with family violence and child abuse in the family law system. The Department is represented on the Interdepartmental Committee working with the Department of Families, Housing, Community Services and Indigenous Affairs.
 - The Department has commenced a tender process to identify an appropriate researcher to conduct research on the impact of family violence during relationship breakdown. A final report is due by February 2010.
 - The Department is leading the development of a draft National Indigenous Law and Justice Framework through a Standing Committee of Attorneys-General working group. The draft framework includes reference to prevention of and responses to family violence. Working group members have indicated agreement to incorporating issues relating to family law within the Framework.

Purpose

4. The purpose of this paper is to provide a summary of the common themes and suggestions which have been made to improve the family law system's response to family violence. The content of this paper will form the basis for discussions during the working group session.

The Family Law System

5. For the purposes of this paper, the family law system includes the Family Courts of Australia and Western Australia, the Federal Magistrates Court, Legal Aid Commissions, Community Legal Services, private legal practitioners practicing family law, Indigenous legal services, family dispute resolution practitioners, family counsellors, and services funded under the Family Relationship Services Program (FRSP) (including Family Relationship Centres and specialised family violence services).
6. Other important institutions that work with clients on family law or family law related matters include State courts, domestic violence services including crisis services, Centrelink, the Child Support Agency, child protection and family violence agencies and other (non- FRSP) funded family services.

Themes and ideas for further discussion

System issues

7. Stakeholders frequently raised concerns about the unsatisfactory disconnect between the family law system and the state/territory family violence and child protection systems, at both policy and service delivery levels.
8. The lack of information sharing across the family law system was raised generally, and also specifically in relation to the sharing of information between child protection authorities and the courts. The barriers to information sharing appear in part to be due to a lack of understanding about when information is confidential and when it can or must be disclosed to other agencies and the court. There are also limitations on disclosure in the *Family Law Act 1975*. For example, at present information provided to a family dispute resolution practitioner or a professional to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, is not admissible. There is an exception to this where the disclosure indicates that a child is at risk of abuse and that information is not available from any other source.
9. Stakeholders regarded the Family Court Magellan case-management approach for cases involving allegations of sexual abuse or serious physical abuse of a child as a good example of integration. The Magellan list does not include cases where there are allegations of family violence but not child abuse. Child protection agencies also limit their involvement in family court proceedings. Allegations of family violence are also made in a large proportion of Federal Magistrates Court matters. There was limited appreciation of the family law courts powers to require departmental intervention (section 91B) and the preparation of reports (section 69ZW.)

10. Stakeholders also felt that cases involving family violence may not be identified or flagged throughout the system as families need to self-identify these issues. For example, a party to a court application must file a Notice of Child Abuse or Family Violence if they are making an allegation of family violence in order for the court to deal with the matter expeditiously. We were told that this does not always happen because the notice requires an affidavit to be filed specifying the allegations and the evidence which exists. This process can be costly and evidence is often unavailable due to the nature of family violence. It was considered easier and cheaper for people to obtain a certificate saying the matter was inappropriate for family dispute resolution. It was also reported to us that some people are unwilling to make allegations of family violence where they do not have sufficient evidence for the court's requirements as they are fearful of having an adverse costs order made against them. This was despite the obligations imposed on the family law courts to deal with allegations of family violence expeditiously and the processes put in place by the Family Court to do so.¹
11. While the consultations were focussed on change within the current legislation and family law system, more sweeping reform was suggested. This included:
- Establishment of integrated courts where the one court deals with criminal proceedings, protection orders, child protection and family law issues, with this jurisdiction vested in the Family Court/Federal Magistrates' Court.
 - A presumption of no contact with the perpetrator of the abuse where there's been family violence as currently happens in New Zealand family law.
 - Roll back of the costs for false allegations provisions. There was general concern about the impact upon victims of family violence of the potential for costs orders for false allegations. Some stakeholders reported that the victims were encouraged not to raise allegations and to participate in dispute resolution despite safety concerns.
 - The need for a review mechanism about how court orders or parenting plans were working for children, along with easier (and less litigious) entry points back into the system for such reviews.

¹ s60K *Family Law Act 1975*.

Ideas for further discussion

Input from attendees is sought on the following suggestions to improve the family law system:

Examine whether the Western Australian case management approach could be used by the wider family court system including how the relationship between the family courts and child protection agencies should operate. Consider whether the Magellan approach could be expanded to family violence matters.

The consultation process identified existing information sharing pilots or programs in most states and territories which Commonwealth services could join.

The Attorney-General's Department to provide guidelines and training to funded family pathways networks to assist them to facilitate discussions across the family law, family violence and child protection systems at a local level.

Provide further education to Commonwealth services including family relationship centres about confidentiality and admissibility provisions so they understand the circumstances in which they are able to share information.

Training

12. Stakeholders agreed that it is important for all professionals working in the family law system to have a high level of knowledge and skills in dealing with family violence. In particular, it was suggested that:

- Legal practitioners and judicial officers would benefit from training about how family violence and abuse impacts upon children and post separation parenting, and how different approaches of state and territory child protection and family violence systems interact with family law.
- Community service providers, both working directly in the family law system and on the periphery eg women's refuges would benefit from training about the family law system, including recent changes. This would assist to dispel misunderstandings about the legislation, such as 'compulsory' mediation and 50:50 shared care.

Ideas for further discussion

Input from attendees is sought on the following suggestions to improve training for people working in the family law system:

The Attorney-General's Department to commission the development of a training package on family violence for lawyers. This training package could then be made available to organisations including legal professional bodies to train lawyers across Australia.

Pursue opportunities for training with the National Judicial College of Australia and the Australian Institute of Judicial Administration.

Support Services

13. Stakeholders advised that there are currently no specific support services for families experiencing family violence during relationship breakdown even though there is a heightened risk of violence after separation, with more than half of the cases going to the courts involving allegations of violence and abuse.
14. Existing programs for perpetrators are often focused on anger management though family violence is typically not about anger but about gender-based power and control. Stakeholders have indicated a need for programs for perpetrators, survivors of violence and children which are:
 - Focused on behavioural change.
 - Focused on the impact of family violence on children.
 - Linked to ensure a consistency of message.
 - Operating within a broader, co-ordinated service system response.
 - Have the capacity to report back to the court about the family.
15. Stakeholders also indicated there is a need for support services that assist survivors of violence navigate and use the family law system and provide support during court proceedings.

Ideas for further discussion

Input from attendees is sought on the following suggestions to improve support services in the family law system:

Consideration should be given to the establishment of 'joined up' services to support victims, their children and address perpetrator behaviour. The National Council to Reduce Violence against Women and their Children is currently looking at the issue of perpetrators. The Department is liaising with the Council about these issues.

Support services that assist survivors of violence navigate and use the family law system and provide support during court proceedings may need to be established. The Family Relationship Services Program funds organisations to provide specialised family violence services, but many stakeholders appear not to be aware of these.

Family Dispute Resolution

16. There is concern that excluding lawyers from family dispute resolution processes conducted in Family Relationship Centres, may be disadvantaging clients where there is family violence. There is particular interest in developing models of legally assisted mediation as an alternative in family violence cases, particularly along the lines of that provided by the Legal Aid Commissions.

Ideas for further discussion

Input from attendees is sought on the following suggestions to improve family dispute resolution in the family law system:

A number of organisations indicated their willingness to be part of a pilot to expand legally assisted family dispute resolution. Further consideration needs to be given to the most appropriate and cost effective way of providing such a service.

ATTACHMENT H – Common terms used in the family law system

1. In July 2008 the Attorney-General convened a roundtable of representatives of key organisations in the family law system. Participants at the roundtable were asked to focus on what was needed to build collaboration for the early resolution of family disputes and improve the management of entrenched family law cases. One recommendation from the roundtable was that a single glossary of common terms be developed to assist in creating a cohesive, integrated family law system.
2. This attachment collates current common terms and multiple descriptions used throughout the family law system.

| TERM | ENTITY | DEFINITION | SOURCE |
|--|--|---|--|
| Abuse | Australian Government | Abuse in relation to a child means: (a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the state or territory in which the act constituting the assault occurs; or (b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person. | s4(1) Family Law Act 1975 |
| Accreditation Accreditation Rules | Australian Government Australian Government | Compliance with a set of nationally consistent standards by people providing family dispute resolution under the <i>Family Law Act 1975</i> . These are rules relating to: (a) the accreditation of persons as family counsellors; and (b) the accreditation of persons as family dispute resolution practitioners; and (c) the accreditation of persons to perform other roles prescribed by regulations made for the purposes of this paragraph. | www.ag.gov.au s10A Family Law Act 1975 Family Law Regulations 57, 58(1) and (2), 58A(1-2), 58B(1-4), 58C(1-4) |
| Accreditation (as it relates to the provision of services funded under the Family Relationship Services Program). | Department of Families, Housing, Community Services and Indigenous Affairs | A process to externally assess individual service performance against a common set of service delivery standards. | Family Relationship Services Program Performance Framework 2005-2008 |
| Adviser | Australian Government | Adviser means a person who is: (a) a legal practitioner; or (b) a family counsellor; or (c) a family dispute resolution practitioner; or (d) a family consultant. | s63DA(5) Family Law Act 1975 |
| Alternative Dispute Resolution | | See dispute resolution | |

| TERM | ENTITY | DEFINITION | SOURCE |
|---|--|--|--|
| Arbitration | Australian Government | Arbitration is a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute. | s10L Family Law Act 1975 |
| | Family Court of Australia | Arbitration is a process in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute. | Family Law Courts brochure, <i>Marriage, families & separation</i> |
| | Family Court of Western Australia | Arbitration is a process where the parties choose a private arbitrator to decide how their property is to be divided, or whether spousal or de facto partner maintenance is payable. The parties may choose the process involved. They have control over the process and the choice of arbitrator. Arbitration is only conducted with the agreement of both parties. It can not be forced upon people. | Family Court of WA <i>Arbitration</i> brochure |
| | Family Law Section, Law Council of Australia | Arbitration is the process in which separating couples agree to refer the claim to an independent third party and accept the decision. It is a formal process in which the arbitrator assesses the facts presented by each party and determines the dispute according to law. | <i>Best practice guidelines for lawyers doing family law work</i> (2004) |
| | National Alternative Dispute Resolution Advisory Council (NADRAC) | Arbitration is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. | <i>Dispute resolution terms: The use of terms in (alternative) dispute resolution</i> , (September 2003) |
| Arbitrator | Australian Government | An arbitrator is a person who meets the requirements prescribed in the regulations to be an arbitrator. | s10M Family Law Act 1975 |
| Breach (also known as Contravention) | Federal Magistrates Court | When a court finds a party has not complied with (followed) a court order, that party is in contravention of (or has breached) the order. | www.familylawcourts.gov.au |
| Case | Family Court of Australia | Case is the matter before a court. | Family Court of Australia Annual Report 2007 - 2008 |
| | Department of Families, Housing, Community Services and Indigenous Affairs | The case entity is a sub-type of the service activity. A case is an activity that involves the participation of clients (who all have some kind of relationship to each other) in individually targeted counselling, mediation or contact activities. | Family Relationship Services Program Online (Data Dictionary) |

| TERM | ENTITY | DEFINITION | SOURCE |
|--|-----------------------------------|--|---|
| Case Coordinator | Family Court of Western Australia | A person's point of contact with the Court for questions concerning their case. | www.familycourt.wa.gov.au |
| Child | Australian Government | (a) in Part VII, includes an adopted child and a stillborn child; and (b) in Subdivision E of Division 6 of that Part, means a person who is under 18 (including a person who is an adopted child). | s4(1) Family Law Act 1975 |
| Child abuse (see abuse) | | | |
| Child-focused Dispute Resolution (also known as "child focused practice") | | See Dispute Resolution | |
| Child-inclusive Dispute Resolution (also known as "child inclusive practice") | | See Dispute Resolution | |
| Child Mediation (also known as family dispute resolution) | | See Dispute Resolution | |
| Child Responsive Program | Family Court of Australia | The Child Responsive Program involves a series of meetings between a family consultant, the parents (or other carers), and the children. The meetings focus on the children's needs and the aim is to assist parents and the Court to achieve the best outcomes for the children. What is said and any admissions made at all the meetings is admissible in any Court proceedings under the Family Law Act 1975. | Family Court of Australia Child Responsive program (Brochure) www.familycourt.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
|---|---|--|--|
| <p>Children’s Contact Services (CCS)</p> <p>Supervised changeover (transfer)</p> <p>Supervised contact visit</p> | <p>Attorney-General’s Department</p> | <p>Government funded community-based services that, where parents are unable to manage their own contact arrangements, provide a safe, neutral venue for the transfer of children between separated parents. The services also provide supervised contact between a child and their parent in cases where there is a perceived or actual risk to the child.</p> <p>When a Children’s Contact Service worker supervises the “handing over” of a child to the other parent or family member.</p> | <p>A guideline for Family Law Courts and Children’s Contact Services, January 2007</p> <p>Children’s Contact Services – supervised change-overs and visits (brochure).</p> |
| | <p>Australian Government</p> | <p>When a Children’s Contact Service worker supervises a parent or other family member spending time with a child in a safe, and controlled environment. Children’s Contact Services enable children of separated parents to have safe contact with the parent that they do not live with in circumstances where parents are unable to manage their own contact arrangements. Where parents are not able to meet without conflict, children’s contact services provide a safe, neutral venue for the transfer of children between separated parents. Where there is a perceived or actual risk to the child, they provide supervised contact between a child and their parent or other family member. Parents may be ordered to attend a CCS by a court to facilitate change over or have supervised visits with their children.</p> | <p>Family Relationship Services Program Guidelines, September 2008</p> |
| | <p>Family Court of Western Australia</p> | <p>Services that provide a safe environment for children to maintain contact with their non-resident parent by offering a neutral location for contact, handovers or supervised contact visits. These services are offered in centres that are safe locations for handovers 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, where appropriate.</p> | <p>www.familycourt.wa.gov.au</p> |
| | <p>Family Law Section, Law Council of Australia</p> | <p>Children’s Contact Services (CCSs) are child-focused services which promote safe and positive contact arrangements for children and their parents.</p> | <p>Best practice guidelines for lawyers doing family law work (2004)</p> |

| TERM | ENTITY | DEFINITION | SOURCE |
|--|---|--|--|
| Clients | National Alternative Dispute Resolution Advisory Council (NADRAC) | Clients are individuals or organisations that engage with dispute resolution service providers in a professional capacity. A client may not necessarily be a party to a dispute, but may engage a dispute resolution service provider to assist the resolution of a dispute between others. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Columbus Project | Family Court of Western Australia | Individual case management of cases involving the welfare of children with the assistance of a Court Counsellor and Registrar and a separate legal representative to ensure the welfare of the child(ren). | www.familycourt.wa.gov.au |
| Co-mediation | | See Dispute Resolution | |
| Community Legal Centres | Australian Government | Community legal centres are independent and community managed non-profit services which provide a range of assistance on legal and related matters to people on low incomes and those with special needs. They provide services which complement and extend the services provided by legal aid commissions and the private profession. Services may include information and referral, legal advice & ongoing legal assistance. | www.ag.gov.au |
| Conciliation | | See Dispute Resolution | |
| Conciliation Counselling | | See Dispute Resolution | |
| Conferencing | | See Dispute Resolution | |
| Consent Order (also see order) | Family Court of Australia Federal Magistrates Court Family Court of Western Australia | A consent order is a written agreement that is approved by the Court. A consent order can cover parenting arrangements for children as well as financial arrangements (for married couples who are separated or divorced) such as property and spousal maintenance. Consent orders have the same legal force as if they had been made by a judicial officer after a court hearing. | Family Law Courts brochure, <i>Marriage, families & separation</i> |
| | Family Court of Western Australia | An order that may be made where both (parties) come to an agreement and lodge that agreement in writing (usually called “Terms of Settlement”) for approval by the Court. These orders are as binding as any other order made by the Court. | www.familycourt.wa.gov.au |
| | Federal Magistrates Court | An agreement between the parties that is approved by the court and then becomes a court order. | www.familylawcourts.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
|--|--|--|--|
| Contravention | | See Breach | |
| Counselling (also known as family counselling) | Department of Families, Housing, Community Services and Indigenous Affairs | Professional therapeutic services from a qualified counsellor to assist people to identify and analyse family relationship and related problems, adjust to changed circumstances and reach solutions that overcome their problems. | Family Relationship Services Program Guidelines, September 2008 |
| | Family Law Section, Law Council of Australia | Counselling is a process in which separating couples and other family members attempt with the help of a counsellor to discuss both the practical and emotional issues to do with their relationship. | Best practice guidelines for lawyers doing family law work (2004) |
| | National Alternative Dispute Resolution Advisory Council (NADRAC) | Counselling refers to a wide range of processes designed to assist people to solve personal and interpersonal issues and problems. Counselling has a specific meaning under the Family Law Act, where it is included as a <i>Primary Dispute Resolution</i> process. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Family Counselling | Australian Government | Family Counselling is a process in which a family counsellor helps: (a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or (b) one or more persons (including children) who are affected, or likely to be affected by separation or divorce to deal with either or both of the following: (i) personal and interpersonal issues; (ii) issues relating to the care of children. | s10B Family Law Act 1975 |
| | Family Court of Australia & Family Court of Western Australia | A process in which a family counsellor helps people deal with personal and interpersonal issues relating to families, relationships, marriage, separation and divorce. | Family Law Courts brochure, <i>Marriage, families & separation</i> |
| Dispute Resolution | Australian Government | Dispute resolution processes means procedures and services for the resolution of disputes otherwise than by way of the exercise of the judicial power of the Commonwealth, and includes: (a) counselling; and (b) mediation; and (c) arbitration; and (d) neutral evaluation; and (e) case appraisal; and (f) conciliation. | s21 Federal Magistrates Act 1999 |

| TERM | ENTITY | DEFINITION | SOURCE |
|---|--|--|---|
| Dispute Resolution (cont'd) | Department of Families, Housing, Community Services and Indigenous Affairs | Assists families and others with the help of neutral third party to identify and explore issues in dispute, develop options, consider alternatives, reconcile conflict, and reach agreements. | Family Relationship Services Program Guidelines, September 2008 |
| | National Alternative Dispute Resolution Advisory Council (NADRAC) | Dispute resolution refers to all processes that are used to resolve disputes, whether within or outside court proceedings. Dispute resolution processes may be <i>facilitative</i> , <i>advisory</i> or <i>determinative</i> . Dispute resolution processes other than judicial determination are often referred to as ADR. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Alternative Dispute Resolution | National Alternative Dispute Resolution Advisory Council (NADRAC) | Alternative Dispute Resolution is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution. Some also use the term ADR to include approaches that enable parties to prevent or manage their own disputes without outside assistance. | <i>Dispute resolution terms: The use of terms in (alternative) dispute resolution,</i> (September 2003) |
| Child Mediation (also known as family dispute resolution) | National Legal Aid (NLA) | This occurs outside the Court system and involves discussing difficulties experienced (as an individual or as parents) regarding the arrangements for children during or after separation. The goal is to achieve an agreement which is in the best interests of children. | Guidelines for Independent Children's Lawyers (6 December 2007) |
| Child-focused Dispute Resolution (also known as child focused practice) | Attorney General's Department (La Trobe University and Family Transitions) | Promotes parental reflection on the core needs of their children and facilitates improved parental alliances and conflict management, resulting in parenting plans. Interventions are educative and therapeutic, exclusively targeted at each parent, and do not include consultation with, or involvement of, the children. | McIntosh J., Long C. Children Beyond Dispute: A prospective study of outcomes from child focused and child inclusive post-separation family dispute resolution, final report. October 2006. (p. 16) |
| Child-inclusive Dispute Resolution (also known as child inclusive practice) | | Promotes parental reflection on the core needs of their children and facilitates improved parental alliances and conflict management, resulting in parenting plans. Interventions are educative and therapeutic, exclusively targeted at each parent, and does include consultation with, or involvement of, the children and associated discussion of this with parents. | McIntosh J., Long C. Children Beyond Dispute: A prospective study of outcomes from child focused and child inclusive post-separation family dispute resolution, final report. October 2006. (p. 17) |

| TERM | ENTITY | DEFINITION | SOURCE |
|------------------------------------|---|--|--|
| Dispute Resolution (cont'd) | | | |
| Co-mediation | National Alternative Dispute Resolution Advisory Council (NADRAC) | Co-mediation is a process in which the parties to a dispute, with the assistance of two dispute resolution practitioners (the mediators), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role on the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Conciliation | Australian Government | Is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, 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, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement. | The Attorney-General's Department, <i>Family Dispute Resolution Services in Legal Aid Commissions – Final evaluation report</i> , September 2008 |
| | National Alternative Dispute Resolution Advisory Council (NADRAC) | Conciliation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, 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, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement. Note: There are wide variations in meanings for ‘conciliation’, which may be used to refer to a range of processes used to resolve complaints and disputes including: – Informal discussions held between the parties and an external agency in an endeavour to avoid, resolve or manage a dispute Combined processes in which, for example, an impartial party facilitates discussion between the parties, provides advice on the substance of the dispute, makes proposals for settlement or actively contributes to the terms of any agreement’. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |

| TERM | ENTITY | DEFINITION | SOURCE |
|---|--|--|--|
| Dispute Resolution (cont'd) | | | |
| Conciliation Counselling | National Alternative Dispute Resolution Advisory Council (NADRAC) | Conciliation counselling is a term used previously to describe some of the processes used by counsellors in the Family Court of Australia to assist parties to settle disputes concerning children. The Court now uses the term <i>mediation</i> to describe these processes. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Conferencing (see also legally assisted dispute resolution) | Family Court of Western Australia | 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. | Family Court of Western Australia website glossary at www.familycourt.wa.gov.au |
| | Legal Aid Commissions | Family law conferencing is a meeting between the people involved in a family law dispute, arranged by Legal Aid. | www.legalaid.nsw.gov.au |
| | National Alternative Dispute Resolution Advisory Council (NADRAC) | Conference/Conferencing is a general term, which refers to meetings in which the parties and/or their advocates and/or third parties discuss issues in dispute. Conferencing may have a variety of goals and may combine facilitative and advisory dispute resolution processes. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Family Dispute Resolution | Australian Government | Family dispute resolution is a process (other than a judicial process): (a) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and (b) in which the practitioner is independent of all parties involved in the process. | s10F Family Law Act 1975 |
| | Department of Families, Housing, Community Services and Indigenous Affairs | Defined under the Family Law Act, Family Dispute Resolution assists people affected by separation or divorce to resolve disputes (includes making post separation agreements). | Family Relationship Services Program Guidelines |

| TERM | ENTITY | DEFINITION | SOURCE |
|-------------------------------------|---|---|--|
| Dispute Resolution (cont'd) | | | |
| | Attorney-General's Department | A process (other than a judicial process) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to solve some or all of their disputes with each other; and in which the practitioner is independent of all the parties involved in the process. A family dispute resolution practitioner, who is independent and impartial, adopts mediation techniques to assist the parties to resolve disputes relating to the living arrangements of children. The practitioner assists the parties to identify disputed issues, develop options and try to reach an agreement. | The Attorney-General's Department, <i>Family Dispute Resolution Services in Legal Aid Commissions – Final evaluation report</i> , September 2008 |
| | Family Court of Australia/Family Court of Western Australia/Federal Magistrates Court | A process in which a family dispute resolution practitioner, independent of all the parties, helps people resolve some or all of their disputes with each other during and after separation and divorce. | Family Law Courts brochure, <i>Marriage, Families & Separation</i> |
| Facilitation | National Alternative Dispute Resolution Advisory Council (NADRAC) | Facilitation is a process in which the parties (usually a group), with the assistance of a dispute resolution practitioner (the facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Legally Assisted Dispute Resolution | | Lawyers can play a variety of roles in family dispute resolution, including: <ul style="list-style-type: none"> - providing legal advice before and after family dispute resolution sessions - attending family dispute resolution sessions at specified stages (for example at the introductory session and/or when drafting an agreement) - being present as a support within all sessions (but not speaking for the client) - speaking for the client where needed but with the client taking the lead - formally representing and speaking for the client, with the client present and contributing, and - appearing on behalf of the client (ie when the client does not or cannot attend in person) | |

| TERM | ENTITY | DEFINITION | SOURCE |
|--|---|--|---|
| Dispute Resolution (cont'd) | | | |
| On-line Dispute Resolution (ODR, eADR, cyber-ADR) | National Alternative Dispute Resolution Advisory Council (NADRAC) | On-line dispute resolution, ODR, eADR, cyber-ADR are processes where a substantial part, or all, of the communication in the dispute resolution process takes place electronically, especially via e-mail. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Shuttle Mediation (see Family Dispute Resolution) | National Alternative Dispute Resolution Advisory Council (NADRAC) | Shuttle mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement without being brought together. The mediator has no advisory or determinative role on the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. The mediator may move between parties who are located in different rooms, or meet different parties at different times for all or part of the process. | Dispute resolution terms: The use of terms in (alternative) dispute resolution, September 2003 |
| Dispute Resolution Practitioner (see also family dispute resolution practitioner) | National Alternative Dispute Resolution Advisory Council (NADRAC) | Dispute Resolution Practitioner is an impartial person who assists those in dispute to resolve the issues between them. A practitioner may work privately as a statutory officer or through engagement by a dispute resolution organisation. A sole practitioner is a sole trader or other individual operating alone and directly engaged by clients. | Dispute resolution terms: the use of terms in (alternative) dispute resolution, September 2003. |
| Divorce | Australian Government | The marriage has broken down irretrievably. Divorce means the termination of a marriage otherwise than by the death of a party to the marriage. | s48(1) Family Law Act 1975 |
| Domestic Violence | Australian Government | Domestic violence has also been defined as an abuse of power perpetrated mainly (but not only) by men against women both in a relationship and after separation, It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line. |
| Facilitation | | See Dispute Resolution | |

| TERM | ENTITY | DEFINITION | SOURCE |
|---------------------------|--|---|---|
| Family | Department of Families, Housing, Community Services and Indigenous Affairs | For the purpose of the Family Relationship Services Program a family relates to any group of two or more people who perceive themselves as a family. | Family Relationship Services Program Performance Framework 2005-2008 |
| Family Consultant | Australian Government | A family consultant is a person who is: (a) Appointed as a family consultant under section 38N; or (b) Appointed as a family consultant in relation to the Federal Magistrates Court under the <i>Federal Magistrates Act 1999</i> ; or (c) Appointed as a family consultant under the regulations; or (d) Appointed under a law of a State as a family consultant in relation to a Family Court of that State. | s11B Family Law Act 1975 |
| | National Legal Aid (NLA) | Family Consultants have qualifications in psychology or social work and work within the court to assist and advise people involved in the proceedings, to assist and advise courts, to give evidence about the proceedings, to help people involved in the proceedings to resolve their disputes, to provide reports to the court and to advise the court about appropriate family counsellors, family dispute resolution practitioners and courses, programs and services to which people involved in proceedings can be referred. | Guidelines for Independent Children’s Lawyers (6 December 2007) |
| | Family Court of Western Australia | Qualified psychologist or social worker with specialist experience in working with families experiencing separation. | Evaluation of Child-related Proceedings Model – Final Report, December 2007 |
| | Family Court of Australia | Family consultants are psychologists and/or social workers who specialise in child and family issues after separation and divorce. | Family Law Courts brochure, <i>Marriage, families & separation</i> |
| | Federal Magistrates Court | A psychologist and/or social worker who specialises in child and family issues that may occur after separation and divorce. | www.familylawcourts.gov.au |
| | Law Council of Australia Family Law Section | A court counsellor/mediator. Communications are neither confidential nor privileged. | National Seminar Series 2006, <i>The New Family Law Parenting System Handbook</i> |
| Family Counselling | | See counselling | |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Family Counsellor | Australian Government | A family counsellor is: (a) a person who is accredited as a family counsellor under the Accreditation Rules; or (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purposes of this paragraph; or (c) a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family counsellor; or (d) a person who is authorised to act under section 93D of the <i>Federal Magistrates Act 1999</i> , or engaged under subsection 115(1A) of that Act, as a family counsellor; or (e) a person who is authorised by a Family Court of a State to act as a family counsellor. | s10C Family Law Act 1975 |
| Court | Australian Government | In relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of the Family Law Act 1975. | s4 Family Law Act 1975 |
| Family Court of Australia | Australian Government | The Family Court of Australia is a superior court of record established by Parliament in 1975 under Chapter 3 of the Constitution. It commenced operations on 5 January 1976 and consists of a Chief Justice, Deputy Chief Justice and other judges. The Court maintains registries in all Australian states and territories except Western Australia. The Family Court of Australia is a superior court of record and deals with the most complex family law matters. | www.familycourt.gov.au |
| Family Court of Western Australia | Australian Government | The Family Court of Western Australia was established in 1976 as a State court under the Family Court Act 1975. The court is presided over by judges, magistrates and registrars. It is vested with State and Federal jurisdiction in matters of family law and deals with divorce, property of a marriage or defacto relationship, matters relating to children, maintenance and adoptions. | www.familycourt.wa.gov.au |
| Federal Magistrates Court | Australian Government | The Federal Magistrates Court of Australia was established by the Commonwealth Parliament at the end of 1999. The objective of the Federal Magistrates Court is to provide a simpler and more accessible alternative to litigation in the superior courts and to relieve the workload of those courts. The establishment of the Federal Magistrates Court complemented the federal government's initiatives aimed at encouraging people to resolve disputes through dispute resolution. | www.fmc.gov.au |
| Family Dispute Resolution | | See Dispute Resolution | |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Family Dispute Resolution Practitioner | Australian Government | A family dispute resolution practitioner is: (a) a person who is accredited as a family dispute resolution practitioner under the Accreditation Rules; or (b) a person who is authorised to act on behalf of an organisation designated by the Minister for the purpose of this paragraph; or (c) a person who is authorised to act under section 38BD, or engaged under subsection 38R(1A), as a family dispute resolution practitioner; or (d) a person who is authorised to act under section 93D of the <i>Federal Magistrates Act 1999</i> , or engaged under subsection 115(1A) of that Act, as a family dispute resolution practitioner; or (e) a person who is authorised by a Family Court of a State to act as a family dispute resolution practitioner. | s10G Family Law Act 1975 |
| Family Dispute Resolution Services | Attorney-General's Department | These services help separating parents to agree on parenting arrangements, finances and property, while ensuring the safety of all family members and maintaining the best interests of children. These services can be an alternative to going to court. If you live in a rural or regional community, you can access Regional Family Dispute Resolution Services. | Family Dispute Resolution brochure |
| Family Relationship Advice Line | Attorney-General's Department | A free national telephone service that provides assistance with relationship or separation issues. The Advice Line also provides advice on parenting arrangements after separation and information about, and referral to, national and local services that can help. | Family Relationship Advice Line brochure |
| Family Relationship Centre | Attorney General's Department | Family Relationship Centres provide information and advice about relationship and separation issues. The Centres can also provide dispute resolution to help parents reach agreement on arrangements for their children without going to court. The Centres can also refer to a range of services that can help improve family relationships. | Family Relationship Centre brochure |
| Family Relationship Services Program (FRSP) | Department of Families, Housing, Community Services and Indigenous Affairs | The Family Relationship Services Program (FRSP) is jointly funded by the Attorney-General's Department and the Department of Families, Housing, Community Services, and Indigenous Affairs. The FRSP is the Commonwealth Government's key response to supporting family relationships, and has been funded since the early 1960s. The services delivered under the FRSP include information, referral, advice, education and skills training, counselling, changeover and supervised contact, problem solving and family dispute resolution. | Family Relationship Services Program Guidelines, September 2008 |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Family Relationship Services Program (FRSP) Fees Policy | Department of Families, Housing, Community Services and Indigenous Affairs | Fees may be charged for services delivered under the FRSP, except where they are explicitly excluded or restricted by Service Type or type of client. Where fees are charged, a fees policy must be maintained and include: a) a schedule with a fees scale that reflects the client's capacity to pay. This can include a set fee that ensures clients on low incomes or with special needs have access to services; and b) procedures to ensure that clients without the capacity to pay are not turned away or refused access to a service. | Family Relationship Services Program Long Form Funding Agreement 2008 |
| Family Relationships Online | Attorney-General's Department | A website providing information about family relationship issues ranging from building better relationships to dispute resolution. The site lists a range of services that help people manage their relationship issues, including agreeing on appropriate arrangements for children after separation. | Family Relationship Services Program Guidelines September 2008 |
| Family Report | Australian Government | A behavioural science assessment of a family from a non-legal and non-partisan perspective, independent of the case presented by either party to a dispute. This is a comprehensive and impartial behavioural science perspective. Family reports are prepared following the behavioural science assessment by family and child counsellors (which include court mediators) and welfare officers appointed under the Family Law Regulations. | Family Court of Australia Case Management Directions. No 3 of 2004. |
| | Family Court of Australia | A family report is a behavioural science assessment report that focuses on the best interests of children from a non-legal, independent perspective. Family reports are ordered by judicial officers and provided by Court-employed family consultants or approved private professionals | Family Court of Australia Annual Report 2007 - 2008 |
| | Federal Magistrates Court | A written assessment of a family by a family consultant. A report is prepared to assist a court to make a decision in a case about children. | www.familylawcourts.gov.au |
| | Family Court of Western Australia | A behavioural science assessment of a family from a non-legal and non-partisan perspective, independent of the case presented by either party to a dispute. | www.familycourt.wa.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Family Violence (also refer domestic violence) | Australian Government | Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety. Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety. | s4 Family Law Act 1975 |
| | Law Council of Australia Family Law Section | Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or to be apprehensive about, his or her personal well-being or safety. Family violence may be a single act or a number of acts forming a pattern of behaviour, even though some or all of these acts when viewed in isolation may appear to be minor or trivial. Other dynamics of family violence can include: <ul style="list-style-type: none"> (a) sexual abuse; or (b) psychological abuse, including intimidation, harassment, social isolation (eg, not permitting contact with family or friend), financial deprivation, or litigation abuse; or (c) damage to property; or (d) threats of physical, sexual or psychological abuse. In relation to a child, family violence may include causing the child to witness or putting the child at risk of witnessing the abuse of a person with whom they have a domestic relationship. | Best practice guidelines for lawyers doing family law work (2004) |
| Final Order | | See Orders | |
| Independent Children's Lawyer (previously known as a Child's representative) | Australian Government | A lawyer who represents a child's interests in proceedings under an appointment made under a court order. | s4 Family Law Act 1975 |
| | Family Law Courts | A lawyer appointed by the court to represent a child's interests in a case. | www.familylawcourts.gov.au |
| Interim Order | | See Orders | |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Legal Aid/ Legal Aid Commissions | Australian Government | <p>Legal aid commissions provide a wide range of services in criminal, family and civil law matters arising under their own laws in each State or Territory and the laws of the Commonwealth.</p> <p>Legal aid services provided by legal aid commissions include:</p> <ul style="list-style-type: none"> • information and referral, including by telephone or at the reception counter of the commission • community legal education and publication • legal advice and minor assistance, including preparation of simple documents • duty lawyer services at courts and tribunals • family dispute resolution—where at least one of the parties to a family law dispute has received a grant of legal assistance, and • grants of legal assistance for legal representation before a court or tribunal. <p>Legal aid is a system of public funding to enable people who would otherwise not be able to afford legal services to obtain those services.</p> | www.ag.gov.au |
| Legally Assisted Dispute Resolution | | See Dispute Resolution | |
| Less Adversarial Trial | Family Court of Australia | <p>A Less Adversarial Trial proceeding is:</p> <ul style="list-style-type: none"> • directed by the presiding judge with evidence limited to an agreed set of issues in dispute, • focused on the children and their future, • likely to be less expensive when compared to traditional trials, • potentially less formal, • staggered over a period of time instead of on consecutive days, • less adversarial and less formal than is usually the case in a court, and • fair, transparent and reflective of the rules of natural justice. | www.familycourt.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Magellan Program (also known as Magellan) | Family Court of Australia | The Magellan program is designed to improve the management of cases involving allegations of sexual child abuse or serious physical abuse of a child. The Magellan approach is based on the principles of: <ul style="list-style-type: none"> • an inter-organisational approach to case management including state welfare authorities, • a focus on the children in the dispute, • judge-led and managed proceedings from the beginning with a tightly managed and time limited approach, • the Court is able to order expert investigations and assessments from the respective state/territory child protection agency and/or a court family consultant, • a court-ordered independent children’s lawyer is designated for every child, funded by legal aid. | www.familycourt.gov.au |
| Mediation | | See Dispute Resolution | |
| Negotiation | Australian Government | The process where each party sets out what he/she wants and tries to reach agreement. This can be done in writing or by talking to each other at any time. | Family Court of Australia Case Management Directions. No 3 of 2004. |
| On-line Dispute Resolution | | See Dispute Resolution | |
| Orders Includes: Final orders Interim orders Consent orders | Family law courts | There are three main types of orders: <ul style="list-style-type: none"> • Final orders bring a matter to a close. • Interim orders are usually made in urgent cases and last until other orders or final orders are made. Generally, you cannot file an application for interim orders unless you have filed an application for final orders. • Consent orders are orders that you and the other party agree on. You and the other party can apply for consent orders to be made without going to court. Consent orders have the same legal effect as if they had been made by a judicial officer after a court hearing. | www.familylawcourts.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Parenting Order | Australian Government | <p>A parenting order may deal with one or more of the following:</p> <ul style="list-style-type: none"> (a) the person or persons with whom a child is to live; (b) the time a child is to spend with another person or other persons; (c) the allocation of parental responsibility for a child; (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility; (e) the communication a child is to have with another person or other persons; (f) maintenance of a child; (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of: <ul style="list-style-type: none"> (i) a child to whom the order relates; or (ii) the parties to the proceedings in which the order is made; (h) the process to be used for resolving disputes about the terms or operation of the order; <ul style="list-style-type: none"> (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child. <p>Note: Paragraph (f)—a parenting order cannot deal with the maintenance of a child if the <i>Child Support (Assessment) Act 1989</i> applies.</p> | s64B(2) Family Law Act 1975 |
| Parenting Orders Program | Attorney-General's Department | <p>These services can help resolve disputes about arrangements for seeing children. These services can also help if separated parents cannot make parenting orders work. A Parenting Orders Program may include seminars, education groups, counselling, dispute resolution.</p> | Parenting Orders Program brochure |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Parenting Plan | Australian Government | <p>A parenting plan is an agreement that:</p> <ul style="list-style-type: none"> (a) is in writing; and (b) is or was made between the parents of a child; and (ba) is signed by the parents of the child; and (bb) is dated; and (c) deals with a matter or matters mentioned in subsection (2). <p>An agreement is not a parenting plan for the purposes of this Act unless it is made free from any threat, duress or coercion.</p> <p>A parenting plan may deal with one or more of the following:</p> <ul style="list-style-type: none"> (a) the person or persons with whom a child is to live; (b) the time a child is to spend with another person or other persons; (c) the allocation of parental responsibility for a child; (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility; (e) the communication a child is to have with another person or other persons; (f) maintenance of a child; (g) the process to be used for resolving disputes about the terms or operation of the plan; (h) the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan; (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child. | s63C(1)(1A)(2) Family Law Act 1975 |
| | Family Law Courts | A written agreement between the parties setting out parenting arrangements for children. It is not approved by or filed with a court. | www.familylawcourts.gov.au |
| Parental Responsibility | Australian Government | In relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children. | s61B Family Law Act 1975 |
| | Family Law Courts | The responsibility of each parent to make decisions about the care, welfare and development of their children. These responsibilities may be varied by agreement or by a court order. | www.familylawcourts.gov.au |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Parental Responsibility (cont'd) | | | |
| Equal Shared Parental Responsibility (Presumption) (not equal time) | Australian Government | <p>When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.</p> <p>This presumption relates solely to the allocation of parental responsibility for a child as defined in s61B. It does not provide for a presumption about the amount of time the child spends with each of the parents.</p> | s61DA(1) Family Law Act 1975 |
| Substantial and significant time | Australian Government | <p>a child will be taken to spend <i>substantial and significant time</i> with a parent only if:</p> <p>(a) the time the child spends with the parent includes both:</p> <p>(i) days that fall on weekends and holidays; and</p> <p>(ii) days that do not fall on weekends or holidays; and</p> <p>(b) the time the child spends with the parent allows the parent to be involved in:</p> <p>(i) the child's daily routine; and</p> <p>(ii) occasions and events that are of particular significance to the child; and</p> <p>(c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.</p> | s65DAA(3) Family Law Act 1975 |
| Post Separation Cooperative Parenting Program | Department of Families, Housing, Community Services and Indigenous Affairs | These services are provided in regional areas to help separated parents in high conflict to understand the effect of conflict on their children, and why they need to be supportive of their children's relationship with the other parent. Service providers offer short, intensive educational activities, counselling and other assistance. | Family Relationship Services Program Guidelines, September 2008 |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Post-Separation Parenting Program | Australian Government | Means a program: <ul style="list-style-type: none"> (a) that is designed to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities (including providing counselling services or by teaching techniques to resolve disputes), and (b) that consists of lectures, discussions (including group discussions) or other activities, and (c) that is provided by an organisation that meets the conditions in section 65LB of the <i>Family Law Act 1975</i>. | s4(1) Family Law Act 1975 |
| Presumption of Equal Shared Parental Responsibility | | See Parental Responsibility | |
| Primary Dispute Resolution (replaced by Family Dispute Resolution) | | See Dispute Resolution | |
| Referral Passive referral | Attorney-General's Department | Information about appropriate services is provided to a client, who left to make her/his own contact at a time that best suits the client. This process gives responsibility to the client to take action on their own behalf. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |
| Facilitated referral | Attorney-General's Department | The client is helped to access another service. For example, the referring organisation makes an appointment with another service on the client's behalf and asks the other service to make contact with the client/s. Alternatively, a caller is transferred to the other service. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |
| Active referral | Attorney-General's Department | The referring organisation, with the client's consent, provides the organisation to which it is referring the client with information that it has collected about the client or with its professional assessment of the client's needs. The client does not need to repeat all of their story and the agency to which the client is referred has relevant information about the client. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Referral (cont'd) Cold referral | Attorney-General's Department | The client is transferred to another service, without any immediate communication between the referring service and the receiving service. The client may be frustrated that they have to re-tell their story or may not communicate their needs in a way that allows the new service to see why the client was referred. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |
| Warm referral | Attorney-General's Department | A 'live' three-way conversation in the presence of the client (whether face-to-face or by telephone) in which the referring organisation introduces the client, explains what has already been done to assist the client and why the client is being referred. If done through a telephone, this may be referred to as a 'warm transfer'. This provides an open and transparent process in which information can be exchanged between the Centre or Advice Line, the client and the other service. Issues can be clarified immediately. The client does not need to repeat all of their story. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |
| Regional Family Dispute Resolution Service | Department of Families, Housing, Community Services and Indigenous Affairs | Regional Family Dispute Resolution Services assist clients to reach agreements and to resolve their disputes related to family law issues. Regional Family Dispute Resolution Services provide early resolution of parenting arrangements post separation. It also includes provision of counselling and community development services. | Family Relationship Services Program Guidelines, September 2008 |
| Registrar | Family Law Courts | A court lawyer who has been delegated power to perform certain tasks; for example, grant divorces, sign consent orders and decide the next step in a case. | www.familylawcourts.gov.au |
| Screening and Assessment | Attorney-General's Department | Screening is the ability to assess a person's level of risk to predict the likelihood of experiencing future adverse events. Assessment is the ability to sensitively navigate through questions about risk factors within the broader context of people's lives to identify the level of risk, the services required to assist them, the suitability of joint interview or dispute resolution strategies and the importance or otherwise of putting safety plans in place. | Framework for Screening, Assessment and Referrals in Family Relationship Centres and the Family Relationship Advice Line (August 2008) |
| Shared Parental Responsibility | | See Parental Responsibility | |
| Shuttle Mediation | | See Dispute Resolution | |
| Supporting Children after Separation Program | Department of Families, Housing, Community Services and Indigenous Affairs | These services help children from separating families deal with issues arising from the breakdown in their parent's relationship and to participate in decisions that impact on them. These services support children within the context of their family to manage and enhance their relationships during and after separation. | Family Relationship Services Program Guidelines September 2008 |

| TERM | ENTITY | DEFINITION | SOURCE |
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| Telephone Dispute Resolution Service | Australian Government | The Telephone Dispute Resolution Service (TDRS) is a component of the Family Relationship Advice Line. It provides telephone based family dispute resolution services as part of the Family Relationship Services Program (FRSP). | Service provider factsheet, <i>Referring Clients to the Family Relationship Advice Line Telephone Dispute Resolution Service</i> , Attorney-General's Department |