

31 October 2013

By email: access.justice@pc.gov.au

Dear Sir/Madam

I am writing to you to provide the Productivity Commission with the views of Family & Relationship Services Australia (FRSA) on access to justice arrangements.

As the national peak body providing leadership and representation for services that work to strengthen the wellbeing, safety and resilience of families, children and communities, we are well placed to understand the need for a well-functioning justice system that delivers fair, equitable outcomes which are not dependent on the capacity of litigants to pay.

There are a number of issues which we believe impact on access to justice arrangements, some of which have been covered by FRSA in previous responses to Government inquiries. These include a submission arguing that [federal court fee increases](#) are inconsistent with a commitment to access to justice, and a submission highlighting the value of [partnerships between legal and non-legal services](#) in providing access to justice within the scope of family support services.

Given the commitment of FRSA and our membership to providing access to justice for separated/separating families, and the obligation to support outcomes that are in the best interests of children through this process, we focus in this submission on the need to increase access to alternative dispute resolution mechanisms. This is particularly important in improving access to justice for vulnerable and disadvantaged groups. It also creates significant costs savings for Government and the taxpayer.

FRSA member organisations operate in all nine streams of the Family Support Program (FSP) Family Law Services including:

- Family Relationship Centres (FRCs)
- Family Dispute Resolution (FDR) services
- Regional Family Dispute Resolution (RFDR) services
- Children's Contact Services (CCS)
- Parenting Orders Program (POP)
- Post Separation Cooperative Parenting (PSCP) services
- Supporting Children after Separation Program (SCASP)
- Counselling (Family Law)
- Family Relationship Advice Line (FRAL), including Information and Advice component, Telephone and Online Dispute Resolution Service (TODRS), and Legal Advice Service (LAS) – non-face to face service, and
- Family Relationships Online (FRO) – non-face to face service.

One of the main aims of Family Support Program family law services provided by FRSA members is to provide separated/separating families with access to a less adversarial alternative to the courts. The purpose of this alternative process is to empower families to better manage their family relationships and parenting arrangements during and post-separation in order to improve outcomes for children and families over the long term.

In 2009 the Government adopted recommendations from a report of the Access to Justice Taskforce to guide the consideration of justice reforms. The need for community engagement, and collaboration between both legal and non-legal services, was evident in the report, which highlighted the importance of making legal information accessible and meaningful to people's particular circumstances. Outreach to a community, it noted, is important both in relation to information about legal issues and information about broader, non-legal issues in which legal issues have their foundation. Outreach enables information to be provided in community members' language and by people who are sensitive and respectful of cultural difference. In this context, we wish to draw the attention of the Productivity Commission to FRSA's 2012 report, commissioned by the Attorney-General's Department, [*Community Engagement in Post Separation Services: An Exploratory Study*](#) in which recommendations are made about the role of community collaboration and engagement in increasing access to justice.

In a more recently released report, FRSA has highlighted considerable evidence pointing to the economic and social value of providing less adversarial alternatives to the courts. [*'Value for Everyone: Understanding the Social and Economic Benefits of Family Support Services'*](#) draws on Australian and international evidence to demonstrate that supporting families contributes to both a socially just, inclusive society, and a productive economy. It was launched by Dr John Hewson at the recent FRSA National Conference 2013, and has been endorsed by Professor Peter Shergold, Chancellor of the University of Western Sydney; Dr Deborah Daro of the Chapin Hall Centre for Children in Chicago; and Rosemary Addis of the International Social Investment Taskforce and the International Policy Collaborative.

We would particularly like to bring to the Productivity Commission's attention the example (also mentioned within the above report) of Family Relationship Centres (FRCs). FRCs were established by the Coalition Government between 2006 and 2008 to help strengthen Australian families, provide referral and support services and to assist families who separate to sort out parenting arrangements in the best interests of children without going to court. This included access to three free hours of mediation, or Family Dispute Resolution (FDR).

Evidence from the Australian Institute of Family Studies (AIFS) evaluation of the 2006 law reforms and from court system reports has shown that FRCs have been effective in the first five years of operation with overall parenting applications to the courts dropping by approximately 32%, and public use of mediation and counselling services increasing (Kaspiew, 2009: 304-5). According to Professor Patrick Parkinson AM from the University of Sydney, the significant decline in court applications since the introduction of FRCs shows how 'a well-organised and funded system of mediation and other family support, away from the court system, can have collateral benefits to the courts' (Parkinson, 2013: 209) During the

rollout period the Australian Government spent \$150 million, including establishment costs. Thus FRCs represent 'a modest level of expenditure to address issues that [if unsolved] will create other costs for government in one way or another' (Parkinson, 2013: 211).

Despite this arguable success, in 2011-12 the former Labor Government cut funding to the family support sector by over \$4 million and forced FRCs to impose a charge beyond the first hour of mediation to parents over a certain income to recover the reduction. As many vulnerable and disadvantaged families do not have the capacity to pay for these services, the cuts have had an impact of reducing the ability of Australian families to access justice in a timely manner.

Indeed FRSA recently surveyed all 65 FRCs about the impact of these funding cuts and received a response rate of almost 80%. Questions were both quantitative and qualitative. Key points from the survey data are:

- Over 60% of respondent FRCs reported that fewer than 10% of their clients have the capacity to pay for family dispute resolution (as per the government's 'fee for service' policy).
- 70% reported that the funding cuts have impacted on service delivery in their centre.
- Around 57% have had to reduce staffing by between 1 and 5 Full Time Equivalent.
- 42% have reported clients now experience longer waiting times.
- 55% have had to reduce the capacity of programs provided at the centre.

Arguably these statistics amount to reduced access to justice for the high numbers of families that experience separation and family breakdown each year.

During times of fiscal constraint, it is especially critical to understand the social value and economic savings of investment in alternative dispute resolution and other non-adversarial avenues for justice. Recognition and support for services for separating parents such as those provided by FRSA member organisations is vital in order to provide lower-cost, non-adversarial access to justice for vulnerable and disadvantaged families.

Thank you for the opportunity to comment on this issue. For more information about FRSA's views, please feel free to contact me.

Yours sincerely

Steve Hackett
Executive Director