



INQUIRY INTO A BETTER FAMILY LAW SYSTEM

Submission prepared by Interrelate Limited:

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The Committee will inquire into and report on how the federal family law system should be improved to better protect people affected by family violence. The inquiry will consider:

- 1. how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:
 - a. facilitating the early identification of and response to family violence; and*
 - b. considering the legal and non-legal support services required to support the early identification of and response to family violence;**
- 2. the making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures;*
- 3. the effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self represented, and where there are allegations or findings of family violence;*
- 4. how the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders;*
- 5. how the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence; and*
- 6. the potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.*

Q5)

As part of the changes to the Family Law Act (FLA) in 2006, the process of Family Dispute Resolution (FDR) was introduced and Family Relationship Centres (FRCs) were established. These initiatives were introduced with the intention to provide workable alternative processes to the Family Court as research had shown that adversarial processes within the Family Court were not, for many cases, the most appropriate mechanism for the resolution of parenting issues after family separation. Therefore, it could be predicted (and hoped) that the vast majority of cases where parents could not agree on the parenting arrangements for their children would be resolved by FDR in FRCs.

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The reality has been very different. In current research (completed, not yet published¹) co-funded by Interrelate Ltd and the Attorney-General's Department, Interrelate's internal data reveals that almost three quarters of cases (72%)² who present at Interrelate's FRCs for the resolution of parenting issues after separation do not successfully complete the process of FDR. In these cases the parents involved receive a Section 60I Certificate, which is a gateway into the Family Court, an institution with processes acknowledged as not being suitable for the resolution of parenting arrangement disputes in the majority of cases.

Family Dispute Resolution Practitioners (FDRPs) are employed in FRCs to deliver the process of FDR and they are responsible for the assessment of cases and, as appropriate, the issuance of Section 60I Certificates. In the above mentioned research, which covers Interrelate from 2011/12 to 2014/15, there has been a significant increase in the issuance of *Inappropriate* Section 60I Certificates from 29% of all certificates issues to 43% of all certificates issued. In the vast majority of cases, these certificates are issued because there is or has been a significant history of family violence (FV) for the parents who have presented at the FRC. As community awareness of FV has grown, it is believed that, generally, more parents are disposed to disclose FV, and consequently this could account for the greater incidence of assessing cases as *Inappropriate*. Additionally, FDRPs consistently attribute the greater number of *Inappropriate* certificates to the higher numbers of clients with multiple and complex issues including abuse/violence, AOD, mental health problems, housing instability, and so on. Sometimes the decision to issue the certificate is clear – one or both parties are clearly unable to participate in the process (or an individual session) or there is an ADVO in place [although some FDRPs will proceed if there are safety measures in place and an ADVO does not prohibit FDR from occurring]). Other factors, though, complicate the decision. For instance, whether the family has the financial resources to support going to court, or whether the family – and particularly the children – are going to be worse off if mediation isn't at least attempted. Findings from our study of former FDR clients demonstrate that an important minority of clients (46% overall and 41% of clients issued with an 'inappropriate' certificate) wanted the mediation process to continue.

¹ Interrelate provides services in nine regions of NSW: Sydney South, Rouse Hill, Central Coast, Newcastle, Orange, Dubbo, Lismore, Coffs Harbour, and Port Macquarie. The study interviewed 777 former Interrelate FDR clients from across these regions about aspects of their FDR experience and outcomes, specifically in relation to the Section 60(I) certificate they were issued and their accessing of services post-FDR. We also interviewed 27 Interrelate FDRPs about the factors and circumstances influencing their issuing of certificates.

² It's important to note that this figure includes cases for which a 'genuine effort' certificate was issued and the parties also reached a full or partial parenting agreement.

FDRPs may become aware of family violence issues at any stage of the FDR process, thus their capacity to respond is determined by the information they receive throughout the process. Although clients are asked directly about family violence as part of the intake process, unless a client discloses the violence (or other forms of abuse) the FDRP cannot support the client or intervene in regard to the violence. When violence or abuse is disclosed, FDRPs have a narrow range of choices in how to respond. These include:

- Issue an 'Inappropriate for FDR' or a 'Inappropriate to continue FDR' certificate
- Continue the mediation whilst continuing to assess levels of conflict and violence whilst referring to support services
- Refer the victim client to a specialised family violence service for support
- Refer the perpetrator to a relevant program
- Refer one or both parties to counselling

It is relevant to also mention that FV may be a factor in the issuance of another category of Section 60I Certificate, the *Refusal/Failure to attend* certificate. In the circumstances which lead to the issuance of this type of certificate, there is substantial anecdotal evidence that some parents refuse or fail to participate in FDR because of fears or reticence related to FV. This assertion is not supported by any relevant data of disclosures by parents, however, anecdotally, there is a widely held view of the validity of this reason within the sector which operates FRCs.

Therefore, a picture emerges which shows that, in the system introduced by the 2006 amendments to the FLA, that is FDR and FRCs, perhaps 50% of cases (or more) who attend at FRCs for FDR relating to parenting matters are issued Section 60I Certificates so that these cases can make application to the Family Court. The vast majority these cases have been issued with certificates due to FV.

At present, the FDRP can have little influence and can only provide a limited range of assistance to parents who present with a history of FV because:

- Under the FLA, the FDRP must assess each case, and in accordance with FLA Regulations, that assessment is to determine whether or not it is appropriate for the case to proceed, with FV being a contra-indicator to assess a case as appropriate;
- Interrelate uses uniform tools to assess FV, which are under regular review, and although there may be some variation between individual FDRPs, it could be expected that the assessment of individual cases is consistent across FRC locations;

- Under the FLA there is a small range of possible Section 60I Certificates which can be issued by an FDRP. It is a rigid process whereby, if a certificate is to be issued, it must be one of the five available categories;
- It is recognised that in some cases where FV is present FDR can safely proceed if the accompanying resources are available, e.g., legal support services, support services for FV perpetrators and victims. In general terms, the funding of FRCs does not provide for the provision of these support services;
- FDRPs have no vested authority to, for instance, exercise some power or influence so that FDR takes place or that parents behave in a particular manner to facilitate FDR. In the above mentioned research, some parents (16%) made mention of frustration with the FDR process as FDRPs have no authority to insist upon attendance and meaningful involvement of the other parent.

To strengthen the capacity of FDRPs, it is suggested that a number of initiatives are possible:

1. Systems and Processes Enhancement for Clients— Clearly, if a system was established with the intent of providing an alternative to the Family Court, and, possibly as many as three quarters of those accessing the system end up in a situation where they are re-directed towards the Family Court, the system is not fully serving its intended purpose. The process of FDR and the embedded system of Section 60I Certificates as set down in the FLA requires review, updating and modification so that the system can better deliver its intended outcome.

Of those who are issued with a Section 60I Certificate that provides a gateway to the Family Court, our research has revealed that 45% do not access the Family Court. For cases assessed as inappropriate for FDR because of FV, there is no clear pathway for them to proceed and many do not seek any assistance. Presumably FV is continuing and, as such, there is a need for available support services to which parents can be referred. Information is required to explain to parents the available pathways, whether through the Family Court or not, and how supportive services can be accessed.

Further, across the FRC sector, greater consistency of assessment of FV could be brought about by the introduction of common tools for assessment of FV (possibly mandated for use across the sector).

2. Availability of Services and Resources - FDRPs are generally well-trained and skilful to be able to work with clients in situations of high conflict/FV. This was demonstrated by the AGD Coordinated FDR Pilot (2011/13), which developed processes to work with cases that otherwise would be assessed as inappropriate. In the above commentary, it has been shown that there is a high incidence of FV (present or historical, and approximately 60% of cases in Interrelate) in cases where parents present for FDR at FRCs. Without access to a range of supportive services, FDRPs are limited as to the level of service they are in a position to provide and a substantial number of cases will return to the community without any resolution. Further funding which would enable FRCs to engage support services (e.g., legal and FV victim and perpetrator support services) could build upon the work of the Coordinated FDR Pilot to establish and embed processes and protocols for FDRPs to work with clients where there has been a history of FV. Using an enhanced model of FDR where victim and perpetrator support services and legal supports are embedded within the model, it is envisaged that FDRPs would be equipped to deliver better outcomes for some and there would be a reduction in the numbers of cases to potentially seek access to the Family Court after receiving a Section 60I Certificate.