

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 1.1**

**Question No. 25**

**Senator Crossin asked the following question at the hearing on 31 October 2006:**

- (a) Are there any guidelines for when Family Relationship Centres should refer clients to legal advice?
- (b) Are clients explicitly made aware of their rights to obtain legal advice at any time?
- (c) How is this achieved?

**The answer to the honourable senator's question is as follows:**

- (a) Yes. Guidelines on referral to legal advice have been provided to Family Relationship Centres (copy attached).
- (b) and (c) As the Guidelines make clear staff at Family Relationship Centres are expected to use their discretion and professional judgment as to when a client should be encouraged to seek legal advice. The Guidelines make clear that the need for legal advice may arise at any point during a client's contact with a Centre including before, during or after dispute resolution.

## **GUIDELINES FOR REFERRALS TO LEGAL ADVICE BY STAFF IN FAMILY RELATIONSHIP CENTRES**

The Government wants separating parents to sit down, focus on their children and agree on parenting arrangements rather than going to court. An aim of the Government's family law reforms is to change the culture of family breakdown so that parenting issues after separation are seen primarily as relationship rather than legal issues. However, the Government recognises that legal issues arise in this context.

The Family Relationship Centres (Centres) are not intended to work alone but as an integral part of a much wider system. As the legal profession and legal services are an important part of that system, the Government expects the new Centres to work collaboratively with them to ensure the best outcomes for clients.

In developing appropriate referral arrangements, Centres are expected to liaise with the local legal profession and legal services and to be aware of issues that affect referrals. For example, there may be resource implications for the legal service receiving referrals, or conflict of interest policies and means and merits tests might apply.

This document is intended to provide guidelines only and staff will use their discretion and professional judgment as to the most appropriate referral pathway for each client. Any referrals to legal advice need to be considered within the context of also providing referrals to other appropriate services.

It is important to emphasise that clients may also need to be provided with **legal information** whilst at a Centre or referred externally to obtain legal information. **Legal information** is information of general application such as information about what the law says. **Legal advice** is information that is specific to a person's individual circumstances, such as an explanation of the legal consequences of pursuing a particular option of course of action. Centres are not to provide legal advice but it is appropriate for them to provide legal information (an example being legal information contained in fact sheets). When provided with this information some clients may then ask how this information applies specifically to them. However, this would be legal advice. Centre staff should reiterate that they cannot give such advice but can offer the client a referral to a legal service if needed.

The Family Relationship Advice Line is a resource that can also provide legal information and advice to staff of Centres. Centre staff are encouraged to contact the Advice Line and talk to a Legal Adviser should they require further information or guidance as to whether a particular client needs to be referred for legal advice.

Set out below are examples of circumstances and issues where it may be appropriate to refer a client for legal advice. These indicators are intended to help staff at Centres identify when a client might need legal advice. These issues may arise at any point during a client's contact with a Centre including before, during or after dispute resolution and as such the guidelines are for general use by all staff. The indicators are not intended to be relied on as an exhaustive list covering all fact scenarios or issues that might arise during a client's contact with a Centre.

### **Urgent situations**

A client may need to be referred for urgent legal advice if they raise the following issues at any point during their contact with a Family Relationship Centre:

- Issues relating to child abduction/retention of a child including prevention:
  - International (clients should be referred to the Australian Central Authority on 1800 400 180 during business hours).
  - Domestic including recovery/location of children (eg where other parent has abducted child or retained the child after contact visit).
  - Prevention of child abduction – domestic and international (for international matters clients should be referred to the Australian Central Authority during business hours) *In emergency situations, where there is an imminent risk that the child will be removed or is in the process of being removed from Australia, clients should also be referred to a legal advice provider and / or the after hours court service for assistance to secure an urgent court order prohibiting removal from Australia. The Australian Federal Police can then include the child's name on the airport watchlist or take other appropriate action.*
- Where issues of family violence are raised or identified during the screening and assessment process that require legal advice or assistance – primary referral may be to a domestic violence service (or other services provided by the Centre) but staff also need to consider referrals where urgent legal advice/assistance would be appropriate. For example, where it is necessary to secure a family violence order (such as a restraining order or an AVO) or an urgent interim parenting order if the child is at risk of violence etc).
- Where issues of child abuse/child protection are raised or identified during the screening and assessment process that require legal advice or assistance – primary referral may be to child protection services but staff also need to consider referrals where legal advice/assistance may be required, for example where the client needs to secure an urgent interim parenting order, a recovery order or family violence order.
- Urgent legal issues relating to property – including where the other party is disposing of assets, where there is a threat of foreclosure on a mortgage or a demand for payment of a mortgage.
- Urgent legal issues relating to spousal maintenance, child support or child maintenance. In considering appropriate referrals, Centres should be aware that more immediate financial assistance may be available for financial problems such as crisis or income support services.

### **Other referrals to legal advice**

In addition to the urgent situations outlined above, clients may need to be referred to legal advice if the following arises:

- Where the client(s) have been assessed as not suitable for dispute resolution by the Family Relationship Centre or other services. Note that clients assessed as not suitable for dispute resolution at a Centre may be suitable for specialist dispute resolution elsewhere or lawyer assisted dispute resolution services (such as conferencing offered by Legal Aid Commissions).
- Where the client has a question about the meaning of the law, the family law reforms, the application of the law to their particular circumstances or the legal options available to them (where this cannot be addressed by legal information such as that contained in fact sheets).
- Where advice is required in relation to court proceedings currently on foot
- Where the client seeks advice in relation to legal or other documents (court orders, letter from lawyers etc).
- Where the client raises issues relating to property, (including defacto property issues) or wishes to include property in any agreement reached. (Note that, where property and

children are both issues in dispute, Centres can include the property in the dispute resolution process, if they have the skills to do so, or they can refer the clients to another dispute resolution service that has that expertise.)

- Where the client raises issues about the legal remedies available to secure sole use/occupancy of the family home.
- Where either party seeks paternity testing.
- Where the client is seeking legal advice on the impact of entering into a parenting plan or requires advice prior to signing a parenting plan. Centres should not assume that every client seeking to make a parenting plan should be referred for legal advice. However, a variety of circumstances exist where it might be considered appropriate to suggest a client get legal advice – for example, prior to signing a parenting plan where existing parenting orders are in place that may be varied by the terms of the parenting plan.
- Where the clients requires advice on entering into consent orders in the terms of a parenting plan. In some situations, parents may wish to have some key aspects that they have agreed upon in their parenting plan reflected in a legally enforceable court order. These clients should be referred for legal advice on the drafting and filing of consent orders if appropriate.
- Where the client raises legal issues in relation to child maintenance or spousal maintenance.
- Where the client requires advice on complex child support issues (which have not been addressed after a primary referral to the Child Support Agency including by three-way conversation between the client, Centre Staff and the Child Support Agency). Complex child support issues may include variations, change of assessments, departure applications, drafting court applications etc.
- Where the client raises issues that fall under State/Territory legislation (child is in care etc).
- Where the client raises issues about legal matters outside the family law jurisdiction (for example criminal or civil law proceedings, debt, immigration etc).
- Where dispute resolution has been unsuccessful, or terminated, and the client requires legal advice on their options.