Attorney-General’s Department

Family dispute resolution services in legal aid commissions

Evaluation report
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Disclaimer

Inherent limitations

This report has been prepared as outlined in the methodology of this report. The procedures outlined in Chapter 1 do not constitute a comprehensive review of operations.

The findings in this report are based on a qualitative study and the reported results reflect a perception of the Attorney-General’s Department and associated stakeholders but only to the extent of the sample interviewed, being the Attorney-General’s Department’s approved sample of stakeholders. No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, stakeholders consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis.

Third party reliance

This report has been prepared at the request of the Attorney-General’s Department in accordance with the terms of KPMG’s contract. Other than our responsibility to the Attorney-General’s Department, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party’s sole responsibility.
1 Executive summary

The Attorney-General’s Department engaged KPMG to evaluate family dispute resolution (FDR) services in legal aid commissions (commissions) throughout Australia.

The evaluation set out to

- examine the effectiveness of the FDR programs operating in each commission, including the relative cost effectiveness of these programs compared to litigation
- make recommendations on a framework to facilitate ongoing FDR program development and continuous improvement into the future.

KPMG conducted a range of surveys, interviews and focus groups across all the commissions using nine ‘evaluation dimensions’ as a basis. Based on these evaluation dimensions and general observations that arose during the evaluation, a range of overall findings and a list of recommendations were developed.

The evaluation dimensions

The effectiveness of FDR services in commissions was examined according to the following evaluation dimensions

1. the role of commissions in the new family law context
2. screening and intake processes
3. focus on the needs of children
4. inclusion of extended family (including grandparents) where appropriate
5. strategies to manage intersecting issues, such as family violence, child protection concerns, power imbalances, between the parties and other support issues
6. availability of appropriate FDR services for people with special needs including Indigenous people, people with a disability, people with substance abuse issues, people with mental health needs and people from culturally and linguistically diverse backgrounds
7. satisfaction with the services on the part of clients, lawyers and family dispute resolution practitioners (FDR practitioners), including narrowing of issues in dispute and filing of final consent orders
8. the extent to which quality processes exist, including the provision of training and accreditation of FDR practitioners
9. the cost effectiveness of FDR compared to litigation.
Data to inform each of these evaluation dimensions was collected through a series of interviews with key FDR staff in each commission as well as a survey of a sample of clients and FDR practitioners. A review of Legal Aid Reporting Initiative (LARI) data and court data was also used to inform the cost effectiveness analysis.

Chapters five to 13 report the detailed findings against each evaluation dimension. Opportunities for improvement within each evaluation dimension are also outlined in these chapters.

**Findings for each commission**

The surveys, interviews and focus groups conducted with a range of people involved in FDR formed the basis of the evaluation. Following is an outline of the strengths of and opportunities for each commission. Despite some overlap, no two commissions are the same. This is apparent throughout the report, and particularly in Appendix D, which gives full details of each commission.

<table>
<thead>
<tr>
<th>Commission</th>
<th>Strengths</th>
<th>Opportunities for improvement</th>
</tr>
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| **Qld**    | Cost effectiveness  
Combined legal and clinical approach  
Post conference support  
Screening, eg family violence  
Monitoring and continuous improvement  
Training and development | Develop culturally competent models  
Clarify focus on the child |
| **NSW**    | Cost effectiveness  
Combined legal and clinical approach  
Screening  
Experience of FDR practitioners | Develop culturally competent models  
Provide training development  
Clarify focus on the child  
Promote continuous improvement |
| **Vic**    | Combined legal and clinical approach  
Screening and preparation  
Guidelines for child focus  
Training and development | Increase cost effectiveness and efficiency  
Develop culturally competent models  
Promote continuous improvement |
| **SA**     | Cost effectiveness  
Lawyer assisted mediation  
Screening  
Experience of FDR practitioners  
Relationships with external providers | Develop culturally competent models  
Provide training and development  
Clarify focus on the child  
Promote continuous improvement |
## Overall findings

The evaluation identified a series of areas in which FDR services in commissions in Australia is operating particularly effectively:

**Role in family law reforms** – FDR services play an important role in the family law reforms as they provide a form of alternative dispute resolution which sits between mediation and litigation.

**Low cost and less adversarial** – FDR provides economically disadvantaged people access to a timely and low to no cost option for resolving family law disputes.

**Referrals to other services** – Screening and intake processes provide the opportunity to assess the suitability of a matter for FDR or referral to other services.

**Screening and intake** – Screening and intake processes have increased in their sophistication since the 2000 evaluation. These processes now collect valuable information on family violence and other power imbalances in families.
Skill of FDR practitioners – These practitioners play an important role in assisting parties to reach an agreement through conferencing. The majority of FDR practitioners are highly skilled and qualified, and have chaired many conferences.

Compliance with guidelines – While commissions differ in their FDR models and procedures, all are child focused and comply with the legal aid requirements for reporting, accreditation and acceptance of matters for FDR.

Cost benefit – At the national level, and in the majority of jurisdictions, FDR is cheaper than litigation. The most cost efficient FDR services in commissions (which also have higher rates of full settlement) are those that conference a large volume of matters (ie 80-90 per cent of matters where appropriate).

Characteristics of effective FDR services

The evaluation identified a number of characteristics which make FDR services in commissions more effective. These are evident within some, but not all, FDR services in commissions operating in Australia

- experienced intake officers
- interviewing all parties
- providing a summary of the issues in dispute to all parties
- finding an appropriate matching of parties to FDR practitioners
- legal representation of all parties
- awareness and understanding of FDR and the current family law context
- a multidisciplinary approach to FDR, involving lawyers, social scientists and others
- professional development by peer review and professional networking.

Recommendations

The principal recommendations for the continuous improvement of the FDR program in commissions are as follows. Some of these relate directly to the evaluation dimensions, while others are more general in nature. For details see chapter 16.

1. Develop and implement a national risk assessment and management approach to screening and intake for FDR.
2. Improve pre conferencing preparation of parties.
3. Strengthen referral pathways and relationships with Family Relationship Centres.
4 Develop protocols for working competently with people with special needs including people with mental health or drug and alcohol concerns, Indigenous clients and clients from culturally and linguistically diverse backgrounds.

5 Provide additional practice guidance to FDR practitioners and lawyers to supplement the meaning of best interests of the child as outlined in the Family Law Act.

6 Develop and implement ongoing training and professional development opportunities for FDR practitioners, intake officers and lawyers through a national training and professional development framework.

7 Develop an objective, outcomes based performance measurement framework.

8 Collect robust (ie accurate, complete and reliable) data regarding the cost of FDR and the cost of litigation.

**Conclusion**

It is clear from this evaluation that FDR services in commissions have progressed considerably since the 2000 evaluation, and that FDR is now an important part of the family law system, particularly so since recent legislative changes to the Family Law Act. The findings and recommendations in this report have been developed to foster still further improvement of FDR in commissions in Australia.
Part I – Background
1 Introduction

The Attorney-General’s Department engaged KPMG to evaluate family dispute resolution (FDR) services in legal aid commissions (commissions) throughout Australia.

1.1 Scope of the evaluation

The scope of this evaluation is to examine the effectiveness of the FDR services operating in each commission across Australia, including their cost effectiveness compared to litigation, to make recommendations on a framework to facilitate ongoing development and continuous improvement of the FDR program.

The evaluation was conducted in each state and territory, surveying responses from FDR practitioners, lawyers, clients and commission FDR staff. A range of methods were used including surveys, focus groups and interviews (see chapter 3). The evaluation was based around nine evaluation dimensions:

1. the role of the commissions in the new family law context
2. screening and intake processes
3. a focus on the needs of children
4. mechanisms for inclusion of extended family (including grandparents)
5. strategies to manage family violence, child protection, and power imbalances between the parties
6. the availability of appropriate FDR services for people with special needs, including Indigenous people, people with a disability, and people from culturally and linguistically diverse backgrounds
7. satisfaction with the services on the part of clients, lawyers and FDR practitioners
8. quality improvement through training and accreditation
9. the cost effectiveness of FDR compared to litigation.

While not the core focus of this evaluation, the examination of commissions FDR services may also provide useful information for the broader evaluation of the Australian Government family law reforms and the progressive implementation of new services.

1.2 Purpose and structure of this report

This report outlines the findings of the evaluation and makes recommendations regarding the continuous improvement of the FDR program in commissions.
The report is structured as follows:

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<th>Provides an overview of FDR, the evaluation methodology used, and key characteristics of FDR services</th>
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<td>Presents specific findings for each of the nine evaluation dimensions, including a cost benefit analysis</td>
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<td>Part III - Overall findings and recommendations (Chapters 14-16)</td>
<td>Outlines overall findings and provides recommendations for continuous improvement of FDR</td>
</tr>
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<td>Part IV - Appendices (A-G)</td>
<td>Presents the evaluation methods and tools used (A-C), detailed findings on each state and territory commission (D), other materials (E, F) and glossary (G)</td>
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2 Overview of family dispute resolution

Family dispute resolution (FDR) is a key component of the new family law context in which commissions operate. This chapter describes the legislative and policy context for FDR services, the FDR program itself, and the key findings and recommendations from a preliminary evaluation of FDR services conducted in 2000.

2.1 Legislative and policy context

Australian family law is primarily administered through the

- **Family Law Act 1975** (Commonwealth) (‘the Act’)
- **Family Law Regulations 1984** (Commonwealth)
- **Marriage Act 1961** (Commonwealth)
- **Family Law Amendment (Shared Responsibility) Act 2006** (Commonwealth) (‘the Amendment Act’).

The practice of family law consists of counselling, mediation, conciliation, and arbitration. The Family Law Council defines these dispute resolution processes as

- counselling — consists of the discussion of the practical and emotional issues surrounding the break down of a relationship
- mediation — a process in which an impartial third party assists separating couples to negotiate their issues. The mediator does not have an advisory role and does not provide legal advice
- conciliation — a process similar to mediation, however, the conciliator may provide expert advice on likely legal outcomes, and may have an advisory role
- arbitration — a property claim is referred to an independent third party, who assesses the facts presented and determines the dispute according to law.

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1 The Family Court of Western Australia is empowered to have jurisdiction of federal family court. There is a range of other legislation that the courts with family law jurisdiction administer, however, the most relevant to FDR are listed above.
3 *Ibid.* Under the Family Law Act only property matters can be referred to arbitration.
Recent reforms

The commencement of the Amendment Act on 1 July 2006 resulted in significant reforms to the Australian family law system. The reforms reaffirmed the best interests of the child, and represented an ideological shift from an adversarial system to a system “that will help families to deal cooperatively and practically with relationship difficulties and separations”.

Concurrent reforms to the Act are based on four principles

1. all children have a right to know both their parents
2. all children have a right to be protected from harm
3. parenting is a responsibility that should be equally shared, provided this does not put children at risk
4. parents and children benefit when parenting arrangements after separation are resolved outside the court system.

An important tool for achieving these aims is FDR. The Act defines FDR as

“a process (other than a judicial process) in which an FDR 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.”

Central to the family law reforms is the establishment of 65 Family Relationship Centres, which are designed to be a single entry point to the family law system. These centres will provide up to three hours free FDR. FDR services are also currently provided by non-Government organisations funded under the Family Relationships Services Program, and by commissions.

From 1 July 2007, attendance at FDR was made compulsory for all new parenting cases before the parenting issue can be taken to court, and since 1 July 2008, FDR has

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5  Attorney-General’s Department. *Public campaign to promote new family law system*. Media Release, 4 June 2006
7  Section 10F *Family Law Act 1975* (Cth).
8  Attorney-General’s Department Civil Justice Division, (2006) *A new accreditation system for family dispute resolution practitioners*.
been compulsory for all parenting cases.\textsuperscript{10} There are exceptions to the compulsory requirement for FDR, such as where there is family violence or child abuse or the risk of these, matters of urgency, and cases where there are reasonable grounds for fear or apprehension of violence.\textsuperscript{11}

Now that these reforms have taken effect, it is compulsory for parties to a family law matter to include in their applications to the court a certificate from an FDR service stating that one of several outcomes has occurred (ranging from non attendance by a party to making a genuine effort to reach an agreement).

**Rationale for FDR**

FDR is underpinned by the assumption that separating and divorcing couples, with the help of a neutral third party experienced in mediation or conciliation, can voluntarily reach an agreement that is fair to both parties by negotiating between them.

The benefits of using FDR may include a reduction in tension and hostility between parties, a focus on the best interests of the children, an increase in pre court settlement, and a reduction in costs for all parties.\textsuperscript{12}

It is anticipated that an increase in the provision of FDR services may serve to relieve the current backlog of family law cases experienced in the Family Court of Australia and the Federal Magistrates Court.\textsuperscript{13}

### 2.2 Provision of FDR services in legal aid commissions

The Australian Government under Commonwealth Legal Aid Agreements funds the provision of legal aid for family law matters by commissions. Each state and territory government funds legal aid services for cases arising under its own laws (eg criminal law).

Before making a grant of legal aid for litigation in a family law matter, commissions are required to consider whether or not a matter could be settled through dispute resolution such as FDR. If the commission considers that dispute resolution is appropriate, a grant


\textsuperscript{13} In the Family Court of Australia, it took 17 months (from filing to finalisation either by settlement or judicial decision) to finalise three out of four (75\%) cases, and 26 months to finalise 90\% of cases in 2006-07. In the Federal Magistrates Court, 89 per cent of all family law matters filed with the Court were finalised within six months, and 97 per cent were finalised within 12 months. Source: *Family Court of Australia, Annual Report 2006-2007*, p.51 and *Federal Magistrates Court, Annual Report 2006-2007*, p.52.
of assistance will be made for a conference where a lawyer can represent the assisted party.\ref{footnote}

In order to provide FDR services, commissions draw on a pool of trained and qualified FDR practitioners (otherwise known as conference chairpersons). They chair the conference and assist the parties to negotiate an agreement. Upon the completion of the conference, the FDR practitioner prepares a report and certificate confirming that the parties have participated in conferencing. This certificate permits initiation of court proceedings if required.

FDR is not, however, a linear process, as figure 2.1 illustrates. The figure shows the different stages that a legal aid client may go through to resolve a family law dispute such as a parenting dispute and/or property dispute.

In the first instance, all people requiring assistance with their family law dispute are encouraged to seek the services of an FDR provider including Family Relationship Centres, commissions and external providers. Family Relationship Centres provide a non litigious, non lawyer assisted form of mediation. In some instances, commissions will refer clients to a Family Relationship Centre where they do not have legal representation and they have not previously attempted dispute resolution.

The further along the continuum parties travel, the more expensive and time consuming the process becomes. Stages two to six represent the stages of litigation funded by legal aid. As these stages involve court time, the parties require lawyers and sometimes barristers. In parenting disputes, courts may also require the preparation of a family report.

As illustrated in figure 2.1, the legally assisted FDR offered by commissions occupies an important place between mediation provided by Family Relationship Centres and the involuntary, formal process of court. As the process is not linear, matters referred to litigation can be referred back to FDR by the court before commencing or proceeding with the next stage of litigation.

The outcomes of each step in the process can include:

- **Resolution** – at the Family Relationship Centre and FDR stages, resolution is by agreement. That is, both parties agree to a plan for parenting and/or the division of property. At litigation, resolution can also be by agreement, but it can also be by determination, where the judge or federal magistrate makes an order by which all the parties must abide.

\ref{footnote} Applicants for legal aid must also meet the merit and means test to be eligible for a grant of aid.
No resolution – this means that the parties to the dispute could not negotiate an agreement at any of the steps. Where no resolution is reached at stage six, the judge or federal magistrate will make a determination.
Figure 2.1: Family law process for legal aid clients

Non litigious options
94-95% of family law matters resolve here

Litigious options through the Family Court of Australia, Federal Magistrates Court or Family Court of WA
5-6% of family law matters proceed to court

Outcomes

<table>
<thead>
<tr>
<th>FRC</th>
<th>FDR</th>
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<tbody>
<tr>
<td>Resolution</td>
<td>Resolution</td>
</tr>
<tr>
<td>No resolution</td>
<td>No resolution (including partially resolved)</td>
</tr>
</tbody>
</table>

Stage 2
Litigation resolution

Stage 3
Family Report

Stage 4
Trial preparation

Stage 5
Trial

Stage 6
Appeal

Resolution
No resolution
Resolution
No resolution
Resolution
No resolution
Resolution – either agreement or court order
2.2 Key findings and recommendations from the 2000 evaluation

A preliminary survey of commission dispute resolution services was conducted in late 1998. An evaluation was then conducted in 2000 with the aim of describing each commission’s dispute resolution service (such as FDR), producing some initial evaluations of the commission’s services, commencing an examination of the cost effectiveness of in house dispute resolution programs, identifying areas for improvement, and suggesting suitable methodologies and measuring tools for continued improvement.15

Key findings from the 2000 evaluation include the following

- the modes of service delivery were diverse, with various in house services adopting a conciliation approach, a mediation approach, a mixture of the two, or counselling
- the objectives of dispute resolution differed markedly between the commissions
- the use of screening criteria and formal intake processes was inconsistent
- clients were generally satisfied with the mediation process16
- settlement rates were broadly consistent, in the order of 60 per cent
- the cost effectiveness of in house dispute resolution programs could not be established.

Recommendations relevant to FDR and the current evaluation

Importantly, at the time of the 2000 evaluation, FDR was not mandatory, and therefore the evaluation design included an assessment of the appropriateness of FDR in family law matters, opinions of mandatory attendance, and appropriate circumstances for the use of FDR.

The main recommendations were as follows

- a range of options should be available to commissions in response to an initial application (eg legal aid conference, referral to an external service)
- the best interests of the child, and the safety of women and children exposed to violence, should be incorporated into the goals of conferencing programs

16 Ibid, pp. 55-56, note surveys were only conducted in Queensland and New South Wales, and Queensland was the only commission for which a sufficient sample was obtained to draw reliable conclusions.
matters where child protection concerns are being investigated are not appropriate for conferencing

intake and screening guidelines need to be improved

clear and measurable goals that focus on client outcomes, rather than the number of matters conferenced and rates of settlement, should be developed

FDR services should be subject to ongoing monitoring and evaluation

there should be a gender balance in chairing conferences

conference procedures should be inclusive of Indigenous and culturally and linguistically diverse people

training should be provided for FDR practitioners, lawyers and intake staff

improved data collection will inform monitoring and evaluation.

The current evaluation comments on the progress towards implementing these recommendations.
3 Evaluation methodology and limitations

This chapter presents an overview of the methodology used in this evaluation and the limitations on its validity due to varying response rates across commissions.

3.1 Data collection methods

The following methods were used to collect qualitative and quantitative data to inform the evaluation:

- interviews with commission FDR management (including the FDR manager, family law coordinator and commission director)
- focus groups with commission FDR conference organisers/intake officers
- focus groups with FDR practitioners
- interviews with lawyers
- interviews with commission finance managers/grants managers
- survey of a sample of FDR clients from each jurisdiction
- survey of a sample of FDR practitioners from each jurisdiction.

A detailed description of these data collection methods is at Appendix A. The client and FDR practitioner surveys is at Appendix B. The interview guides for the interviews and focus groups is at Appendix C.

3.2 Data limitations and interpretation of findings

Limitations in the data and the interpretation of associated findings exist within the client survey and the economic analysis.

Economic analysis

The economic evaluation considered the costs and benefits of FDR services in commissions in each jurisdiction and for the program as a whole where

- the costs are represented by the financial costs of FDR to the Australian Government
the benefits are represented by the value of court event\textsuperscript{17} hours that are avoided as a result of successful FDR outcomes.

The avoidance of court time is only one of the benefits of successful FDR interventions. The economic evaluation does not on its own capture the many intangible benefits associated with successful FDR outcomes such as the avoided stress, anxiety and time for clients and their families that may be associated with adversarial, formal litigation proceedings.

For this reason, the economic analysis, and its findings, should be considered as decision informing rather than decision making. These findings should also be interpreted alongside the identified intangible benefits of FDR (as outlined in chapters five to 12). For example, jurisdictions with a comparatively high cost, relative to the estimated value of avoided court time, are not necessarily reflective of program efficiency if there is evidence of intangible benefits which are beyond the scope of this analysis.

Little quantitative data exists to support anecdotal reports that alternative dispute resolution in the justice setting saves court time.\textsuperscript{18} As such, in the development of the assumptions that underpin the analysis, reliance has been placed on

- data and information provided by the Attorney-General’s Department
- data and information collected during consultations with legal and FDR practitioners and administrators
- other publicly available information.

**Client survey**

A total client feedback sample size of 407 was achieved. This makes the client survey response data statistically representative at the national level but, due to the variation of response rates at the state and territory levels, individual jurisdiction responses are not statistically representative. As a result, the national data has an 80 per cent desired confidence in the level of accuracy of the responses.

The break down of total client responses by jurisdiction is presented in table 3.1.

\textsuperscript{17} Court event hours include interim proceedings, directions hearings, case conferences, appointments with family consultant (lawyer may or may not be present), conciliation conference, hearings (i.e. before a magistrate), appearances before a registrar, and appeals and procedural hearings.

\textsuperscript{18} The Australian Law Reform Commission’s review of the federal civil justice system (1999, p89) noted the limited evidence about how much alternative dispute resolution costs and whether it is always a more cost effective alternative to litigation.
### Table 3.1 Client survey response rate by jurisdiction

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Total responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>16</td>
</tr>
<tr>
<td>New South Wales</td>
<td>42</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>29</td>
</tr>
<tr>
<td>Queensland</td>
<td>130</td>
</tr>
<tr>
<td>South Australia</td>
<td>24</td>
</tr>
<tr>
<td>Tasmania</td>
<td>68</td>
</tr>
<tr>
<td>Victoria</td>
<td>65</td>
</tr>
<tr>
<td>Western Australia</td>
<td>33</td>
</tr>
<tr>
<td><strong>National</strong></td>
<td><strong>407</strong></td>
</tr>
</tbody>
</table>

The lower number of responses for the Australian Capital Territory, South Australia and New South Wales resulted from the delayed provision of client consents and contact details within the surveying period leading to a smaller response than was ideal.

Therefore, the interpretation of the client survey data at the individual commission level should be treated with caution and should not be considered representative.
4 Characteristics of FDR services in commissions

This chapter summarises the key characteristics of each commission's FDR service, including the model of alternative dispute resolution used, the background and qualifications of FDR practitioners, the types of issues conferenced, and settlement rates.

As summarised in table 4.1, each commission has developed its own form of FDR – no two programs are the same. The major differences in the models are in:

- the form of alternative dispute resolution provided, with FDR being provided variously through mediation, conciliation and combined models

- legal representation of parties – all commissions require at least one (ie the legally aided) party to be represented. In the Northern Territory and Western Australia, however, all parties must be legally represented (with one party eligible for legal aid)

- types of issues conferenced – most commissions conference both parenting and property issues, but Victoria and the Northern Territory only conference parenting disputes

- the background and qualifications of FDR practitioners – four of the commissions (South Australia, Northern Territory, Australian Capital Territory and Tasmania) only recruit registered family lawyers to the FDR practitioner panel, while the others (Queensland, Victoria, New South Wales and Western Australia) recruit a combination of registered family lawyers and social scientists, including social workers and psychologists.

Table 4.1 summarises the characteristics of FDR services in commissions by state and territory. A full description of each commission's FDR program is contained in Appendix D.
Table 4.1 Summary of the key characteristics of commission FDR services

<table>
<thead>
<tr>
<th>State</th>
<th>Form of alternative dispute resolution</th>
<th>Qualification of FDR practitioners</th>
<th>Number of FDR practitioners</th>
<th>Legal representation</th>
<th>Issues conferenced</th>
<th>Conferencing modes</th>
<th>Conferences held (2007-2008)</th>
<th>Number settled(^\text{19})</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Queensland</strong></td>
<td>Mediation</td>
<td>Registered lawyers and social scientists</td>
<td>120</td>
<td>One party must be legally represented (therefore eligible for legal aid)</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>2,391</td>
<td>1,846</td>
</tr>
<tr>
<td><strong>Victoria</strong></td>
<td>Conferencing</td>
<td>Registered family lawyers and social scientists</td>
<td>10</td>
<td>One party must be legally represented</td>
<td>Parenting only</td>
<td>All modes available</td>
<td>925</td>
<td>772</td>
</tr>
<tr>
<td><strong>New South Wales</strong></td>
<td>Mediation-conciliation</td>
<td>Registered family lawyers and social scientists with a minimum of five years mediation experience</td>
<td>108</td>
<td>One party must be legally represented</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>2,449</td>
<td>1,962</td>
</tr>
<tr>
<td><strong>South Australia</strong></td>
<td>Mediation-conciliation</td>
<td>Registered family lawyers</td>
<td>9</td>
<td>One party must be legally represented</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>370</td>
<td>304</td>
</tr>
</tbody>
</table>

\(^{19}\) Settlement rate is defined as those matters recorded by commissions as being 'fully' and 'partially' settled. This data has been obtained from Attorney-General's Department, LARI data 2007/08, Settlement rates which is derived from activity data provided to Attorney-General's Department by commissions.
<table>
<thead>
<tr>
<th></th>
<th>Form of alternative dispute resolution</th>
<th>Qualification of FDR practitioners</th>
<th>Number of FDR practitioners</th>
<th>Legal representation</th>
<th>Issues conferenced</th>
<th>Conferencing modes</th>
<th>Conferences held (2007-2008)</th>
<th>Number settled 19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australia</td>
<td>Mediation</td>
<td>Registered family lawyers and social scientists</td>
<td>41</td>
<td>All parties must be legally represented</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>349</td>
<td>283</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Conciliation</td>
<td>Registered family lawyers only</td>
<td>7</td>
<td>Prefer that both parties be legally represented</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>491</td>
<td>395</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Mediation-conciliation</td>
<td>Registered family lawyers currently. But looking to recruit social scientists</td>
<td>11</td>
<td>All parties must be legally represented</td>
<td>Parenting only</td>
<td>Face to face available in Darwin and Alice Springs. Teleconference and video conference available outside these locations</td>
<td>102</td>
<td>80</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>Conciliation</td>
<td>Registered family lawyers only</td>
<td>11</td>
<td>One party must be legally represented</td>
<td>Parenting and property</td>
<td>All modes available</td>
<td>102</td>
<td>83</td>
</tr>
</tbody>
</table>
Part II – Findings on the evaluation dimensions
5 The role of commissions in the new family law context

As noted in chapter two, the family law environment has undergone significant reform since 2002. In addition to strengthening FDR, the family law reforms involved the establishment of Family Relationship Centres, the Family Relationship Advice Line and website, and early intervention and prevention services. Underlying each of these services is a reaffirmation of the best interests of the child and mandatory dispute resolution before pursuing the more costly and time intensive option of litigation.

With this in mind, this evaluation examined

- the commissions’ engagement with the broader services system (in particular how FDR is positioned amongst the family law options), and the existence of agreed working arrangements with Family Relationship Centres and other services
- the appropriateness of pathways to accessing commission FDR services
- the role played by the commissions within the context of FDR.

Interviews with FDR management in commissions were used to collect data to inform this aspect of the evaluation.

5.1 Engagement with the broader service system and agreed working arrangements

Commissions engage in varying ways with Family Relationship Centres, local family law networks, external FDR providers and external support services. The broad purpose of engagement with these services is to ensure that parties have access to the most appropriate dispute resolution service for their needs.

Consistent across all commissions, the primary reason for referring parties to Family Relationship Centres is where neither party is eligible for a grant of aid. Other reasons for referral include

- parties may be seeking child inclusive practice where that may be offered and when it is appropriate rather than lawyer assisted, child focused FDR
- one party prefers to undertake mediation through a Family Relationship Centre
- one party, or all parties, prefers not to be legally represented (applicable to those commissions that require at least one party be legally represented)
- where a matter does not require legally assisted FDR.
Similarities and differences for each state and territory

All commissions participate in local family law networks, which are comprised of family law practitioners (e.g., lawyers, judges, magistrates, mediators/conciliators, and community support services). The purpose of these networks is to educate and inform the local family law fraternity about new developments in the area and to build professional relationships. FDR managers and FDR practitioners in the Australian Capital Territory, Victoria, Western Australia, and Queensland advised that such networks benefit FDR as all the professionals involved in conferencing have a shared understanding of the purpose of FDR and its intended outcomes.

Participation in family law networks also provide participants with an opportunity to learn more about issues such as family violence and the best interests of the child and how this impacts on conferencing. For example, Victoria participates in a local family law network with family lawyers and judges. This participation facilitates relationships and builds a shared understanding of FDR, which ultimately benefits the clients.

Engagement between commissions and other support services (e.g., counselling, drug and alcohol services, and mental health services) occurs through referrals of parties to such services by FDR intake staff or FDR practitioners. The primary purpose of engaging with other support services is to refer parties to any non-legal support that they require to assist them to participate in conferencing or to implement their agreement.

However, the basis of these working arrangements does vary between commissions, as illustrated by the following examples:

- development of formal referral and information sharing protocols - commissions such as Victoria and Tasmania are in the process of developing formal referral protocols between the commissions and Family Relationship Centres as well as protocols for sharing information about joint clients
- a memorandum of understanding between the South Australian commission and the peak Family Relationship Centre provider, Relationships Australia — this outlines the roles and responsibilities of the commission’s FDR services and the Family Relationship Centre
- participation in Family Relationship Centre steering committees — currently, staff in Queensland and New South Wales participate in local steering committees, which aim to guide and improve Family Relationship Centre mediation services.

5.2 Appropriate navigational pathways

Individuals with family law disputes can access a range of services, including FDR, legal representation, Family Relationship Centre dispute resolution, and services for other support needs. A commission’s screening and intake process is used to assist parties to access this range of services as well as to assess the appropriateness of FDR for their dispute.

At least one party seeking resolution of family law disputes (through a commission’s FDR services) must be eligible for legal aid. Applications for legal aid are received
either from lawyers or directly from parties. Upon receiving an application for legal aid for a family law dispute, the grants section/FDR coordinator assesses the suitability of FDR for the client. At this point, the commission decides if FDR is the most appropriate option.

In the case of a lawyer assisted application for aid, the lawyer directly seeks FDR services through a grant of aid. In the case of direct client applications, the commission will assist clients to determine the most appropriate service for them.

FDR management across all commissions reported referring more matters to Family Relationship Centres than receiving referrals from Family Relationship Centres.

Difficulties arise when one party is lawyer assisted and wants to attempt FDR, while the other party is not lawyer assisted and wants to attempt Family Relationship Centre mediation. While most commissions are developing formal protocols to manage this, informally, commissions will refer the client seeking FDR to the Family Relationship Centre with an option to return to the commission, should the Family Relationship Centre mediation fail.

In regards to referrals to other support services such as counselling, drug and alcohol or mental health services, all commissions have identified agencies which they actively refer clients to on a regular basis.

**Similarities and differences for each state and territory**

There are two stages at which referrals to other support services occur

- screening and intake — if particular support needs are identified by the intake officer, they may provide information to the client about the support services available and how to access them

- conferencing — if the FDR practitioner identifies support needs for clients during the conference, they may provide clients with brochures and information about relevant support services.

Both points of referral are informal and are based on individual commission intake officers and FDR practitioners’ knowledge of the local service system and available supports. Some commissions (such as Australian Capital Territory, South Australia, Western Australia, New South Wales and Victoria) keep an up to date list of support services and contacts in their state which intake officers and FDR practitioners can access.

The South Australian commission has a formal referral framework. Used to assess the most appropriate alternative dispute resolution option for families, the Family Dispute Resolution Service Framework details the target groups, locations, contact details, features and costs of the commission’s FDR services and mediation services provided by external organisations including Family Relationship Centres.
The Queensland commission has developed an internal policy for assisting applicants to determine which form of alternative dispute resolution and, therefore, which provider is best for them.

5.3 FDR and related arrangements in each commission

The following is a brief description of the types of FDR and related arrangements offered by each commission. For full details see Appendix D.

**Queensland** – the commission provides a lawyer assisted form of mediation for parenting and property disputes, engaging with Family Relationship Centres, external FDR providers and other support services as needed. These relationships are not underpinned by any formal working arrangements; rather, they have been developed organically and are implemented informally. There are plans to establish an FDR managers’ forum to improve coordination and collaboration amongst providers.

**New South Wales** - the commission provides lawyer assisted combined mediation-conciliation for parenting and property disputes, engaging with Family Relationship Centres, external FDR providers and other support services as needed. An increasing number of family law disputes are initially accessing Family Relationship Centres. The commission has developed an information module for Family Relationship Centres and community providers about the role of the commission’s FDR services.

**Victoria** - the commission provides a conferencing model of FDR and may refer parties to a Family Relationship Centre or other services, such as Parenting Orders Programs, if they have attempted FDR without a successful resolution. Victoria also has a collaborative relationship with the Domestic Violence and Incest Resource Centre and No To Violence (a men’s behaviour change program) where FDR staff can access training regarding the identification and management of family violence in conferences. Case managers will also refer clients to external support services where required. Victoria also participates in the local family law network.

**South Australia** - the commission provides a lawyer chaired combined mediation-conciliation model of FDR, engaging with Family Relationship Centres, the family pathways network and external support providers. The commission has developed a Family Dispute Resolution Service Framework to assess the most appropriate alternative dispute resolution option for families, and developed a memorandum of understanding to guide engagement with the Family Relationship Centre.

**Western Australia** - the commission works closely with the family law fraternity, including the Family Court, family consultants and lawyers. The model of FDR provided targets more complex matters, therefore making the FDR services provided by the commission distinct to those services provided by the Family Relationship Centre. Where required, intake officers will refer clients to external support services.

**Northern Territory** – the commission interacts with the Family Relationship Centre in that the commission will refer clients where they are seeking child inclusive practice where this may be offered and appropriate or if they do not wish to be legally represented. The commission assesses the appropriateness of FDR and other services against the needs of the applicant. The commission is working on developing a
memorandum of understanding to guide the relationship and referrals between the Family Relationship Centre and FDR services.

**Tasmania** - the commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission refers few matters to Family Relationship Centres. The commission’s relationship with the Family Relationship Centre is informal, and there are no written referral guidelines although these are in development. The commission leverages its informal relationships and networks with local community providers and the family pathways network to refer FDR clients.

**Australian Capital Territory** - the commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission will refer applicants to a Family Relationship Centre or an external provider where the parties are seeking child inclusive practice (where this is available and appropriate) or if they are not (or choose not to be) legally represented. Very few, if any, referrals are received by the commission from the Family Relationship Centre.

### 5.4 Summary

Consistent across all jurisdictions, the commissions’ FDR services play an important and unique role in family law in that they offer a solution that sits between the non legal dispute resolution services of Family Relationship Centres and the adversarial/litigious option of court. As such, current commission FDR services provide a legally represented, non adversarial option for legally aided parties to resolve both parenting and property disputes in a timely, low cost manner.

However, variations do exist in how commissions engage with the broader family law service system. Modes of engagement include

- participation in local family law networks (family pathways networks) of legal practitioners including lawyers, judges and magistrates (ie all commissions)
- development of formal relationships through referral frameworks, memoranda of understanding or advisory group/steering committee participation (ie Queensland and South Australia)
- development of informal relationships through networking events or ad hoc referrals on a case by case basis with Family Relationship Centres, other FDR providers and support services to ensure parties are referred to the most appropriate service (all commissions)
- development of criteria for determining when FDR is appropriate and when other alternative dispute resolution services are appropriate (all commissions except Tasmania)
- have established lists of support services to which they can refer parties to (ie all commissions).
Opportunities for improvement

Formalise the nature of relationships with external service providers (including Family Relationship Centres and support services) through the development of working arrangements with Family Relationship Centres by way of memoranda of understanding or joint service agreements.

Promote FDR services in commissions in the context of other family law options and develop a referral framework between Family Relationship Centres, external FDR providers and commissions.
6 Screening and intake

A key recommendation of the 2000 evaluation was the establishment of formal intake and screening processes for FDR within commissions. Since that evaluation, all commissions have improved their intake and screening procedures.

In relation to these screening and intake procedures, this current evaluation measured

- the appropriateness of screening and intake procedures in commissions
- the involvement of parties and their lawyers in the screening process
- identification of power imbalances between parties and support needs
- accessibility of commission FDR services for clients from diverse backgrounds
- the particular procedures followed in each state or territory.

A review of commission intake forms and interviews with FDR management, FDR coordinators/intake officers, and lawyers were used to inform this evaluation dimension. Detailed findings for screening and intake for each commission can be found in Appendix D.

6.1 Appropriateness of screening and intake procedures

The purpose of all FDR screening and intake processes is to assess the suitability of a matter and clients for FDR. In all commissions, once legal aid is granted, the matter is referred to the FDR manager or grants manager for assessment for suitability for FDR.

Yet every commission has developed its own screening and intake process, with procedures including completing a client and/or lawyer checklist, interviewing client(s) and/or consulting with clients’ lawyers, and accessing secondary consultation from an experienced, in house family lawyer and/or social scientist.

Time spent on intake and screening

The time spent on screening and intake depends on the time to assess eligibility for legal aid, as well as the processes used to screen applications. Negotiations regarding options for settlement are often explored during this stage.

For example, Tasmania has a lower average time for screening and intake as it relies on lawyers representing the parties to assess the suitability for FDR, leaving the purely administrative aspects of organising a conference to the commission.

In contrast, Victoria employs a case management approach which drives up the actual time (and cost) spent on intake, screening and preparation. Under this model, case managers who are trained clinicians assess the suitability of parties for FDR through a series of meetings and sessions with each client. These meetings are used to assess
issues of power imbalance including family violence. Children’s views are also obtained through the Kids Talk Program (discussed in further detail in chapter 7). The number of actual hours spent on intake as a result is approximately six hours.

Screening and intake processes in other commissions involve the assessment of suitability of a matter for FDR by an intake officer. This person generally uses a checklist which obtains all the required information about the issues in dispute, the outcomes the parties are hoping to achieve and whether family violence or child protection concerns exist. The average actual time spent on screening across other commissions is approximately one to three hours.

**Risk assessment at intake**

Evident from the review of screening checklists is the collection of a large volume of information. However, how the assessment process (if any) is used to weigh up different factors to determine the suitability of conferencing for a particular situation is unclear.

Intake officers are generally not formally trained in identifying and assessing risk and protective factors and the impact these factors will have on conferencing. Rather, they have developed these skills on the job.

In some jurisdictions, commission intake officers consult an experienced family lawyer (usually the FDR manager) or clinical supervisor to assist in this assessment. However, there is a general lack of an overarching framework (and related skills development) in the area of assessing the risks of different presenting issues and their potential impacts on conferencing.

**Narrowing the issues in dispute**

While the primary purpose of screening and intake is to assess the suitability of the matter for conferencing, some commissions (eg Victoria, Western Australia and the Northern Territory) also use this stage to assist parties to narrow the issues in dispute. For example, in the Northern Territory, once a matter is deemed suitable, the lawyers for each party exchange the intake form and commence discussions to determine the key issues to be conferenced.

Once screening is complete, the information obtained through screening and intake is provided to FDR practitioners prior to conferencing. This information is provided in different forms including a summary report of all the information collected during intake, or an intake checklist and screening tools plus copies of apprehended violence orders and other orders if relevant.

FDR practitioners commented that they generally receive this information on the day of the conference. Many commission FDR practitioners commented that this was inappropriate (especially in complex property and child disputes) as they do not have enough time to thoroughly consider all the material. While this was a common issue raised across all jurisdictions, FDR practitioners in Victoria commented that they are provided with relevant and useful information well in advance of the conference.
6.2 Involvement of clients and lawyers in screening and intake

All jurisdictions seek information by way of a screening checklist from either the client and/or their legal representative as part of the screening process. This information is obtained as follows:

- the Northern Territory, Queensland, New South Wales, South Australia and the Australian Capital Territory distribute assessment checklists to parties and their lawyers, which are to be returned to the commissions
- Western Australia, South Australia and Victoria collect the required information through telephone interviews with clients and/or lawyers
- Tasmania distributes assessment checklists to lawyers only.

In the evaluation, lawyers stated that they were appropriately involved in the screening process. It is interesting to note that Tasmania relies on the lawyers’ assessment of suitability for conferencing rather than conducting that assessment itself.

The benefits of interviewing clients and seeking written information from lawyers include:

- collection of detailed and accurate information to inform assessment of suitability for conferencing (especially information regarding family violence and child abuse)
- the opportunity to provide clients with information about the conferencing process and what to expect
- the opportunity to narrow the issues and focus on the core issues in dispute
- the ability to appropriately match FDR practitioners to the matter.

FDR practitioners across all jurisdictions commented that, where information (especially copies of apprehended violence orders and allegations of child abuse) is not collected during screening, it can derail the conferencing process. FDR practitioners commented on examples where parties presented to conference and, during the conference, child abuse allegations or the existence of an apprehended violence order was revealed, requiring the FDR practitioner to discontinue the conference.

6.3 Identification of power imbalances and support needs

All commissions use the screening process to identify power imbalances between the parties as well as child protection issues. However, the types and sources of information used vary, and therefore their effectiveness varies.

Commissions such as South Australia, the Northern Territory, New South Wales, Western Australia, Queensland and Victoria ask a range of questions to identify imbalances. Examples are...
Findings on the evaluation dimensions
Chapter 6 — Screening and intake

• Is there a history of physical violence in this relationship?

• Have there been any recent physical violence, threats or intimidation?

Some commissions also seek information regarding the emotional and psychological aspects of a power imbalance, such as

• Can you speak freely in front of the other person?

• Are you able to speak to the other party without feeling fearful or intimidated?

The majority of screening tends to focus on the physical aspect of family violence rather than the emotional/psychological dimensions of family violence. Understanding the full breadth of family violence and its different dimensions is arguably critical to the appropriate assessment of suitability of matters for conferencing. As emotional and psychological factors influence power, it is equally important that these also be screened in addition to the physical dimensions of power imbalance and violence.

The Queensland commission uses a best practice guide for understanding and defining family violence. This framework provides a broad definition of family violence to include emotional, financial and psychological aspects. This framework then informs the questions asked during the screening and intake process.

Child protection and other support needs

All commissions seek information regarding child abuse or protection concerns. Examples of questions asked to screen for child abuse include

• Is there any current or past child welfare authority involvement?

• Do you have any concerns about your child being with the other person?

Where these questions reveal allegations of child abuse, the matter is not referred to conferencing. FDR practitioners, intake officers and FDR management were clear that, if child protection or abuse concerns are raised, the matter would not proceed along the commissions’ FDR pathway.

The commissions in South Australia, New South Wales and Western Australia enquire about other support needs. Examples of questions asked to screen for other support needs include

• Are there any health issues that would affect your ability to fully participate in a conference?

• Is there anything (such as use of drugs, alcohol, medication) that would affect your ability to participate?
6.4 Accessibility for people from diverse backgrounds

People from diverse backgrounds must be able to access FDR in the same manner as other clients. Voluntary identification of a client’s cultural background occurs at the initial application for legal aid. Once referred to FDR, treatment of this identification is not consistent across commissions. That is, some intake forms reviewed do not ask parties to identify their cultural background, while others do.

For example, the New South Wales, Queensland and South Australia intake forms ask the following questions

- Do you have any special needs (interpreter, cultural support, support worker, physical health or disability requirements)? If yes, please provide details.
- Are you Aboriginal or a Torres Strait Islander?

However, no questions are asked to establish other important cultural or religious factors or other support requirements such as mental health needs.

There does not seem to be any targeting of people from diverse backgrounds for FDR services. People from diverse backgrounds access FDR services in the same way that all other applicants do. Commissions identified that they could improve this.

6.5 Screening and intake by commissions

The following is a brief description of survey findings on screening and intake procedures in each state and territory commission (for full details see Appendix D).

**Queensland**: Conference organisers stated that the processes for identifying family violence, child protection issues, cultural background and other support needs are effective. However, this process is only as effective as the information provided, and the process can break down when lawyers fail to return the assessment sheets for their clients.

**New South Wales**: Conference organisers stated that there are clear policies and procedures in place for identifying and managing power imbalances, child abuse and support needs. Conference organisers stated that these processes are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients. Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, but it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.
Victoria: Case managers invest a significant amount of time prior to the conference with parties to understand the issues in dispute. As a result, a high number of clients withdraw from FDR or settle before the conference. Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, but it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

South Australia: FDR practitioners and FDR management advised that the facilities at the commission are not ideal for conferencing, and families are present in areas of the building where staff are located. Alternate sites are available in Adelaide but rarely used because of safety concerns (no support or staff available to chairperson).

Western Australia: Conference organisers stated that there are clear policies and procedures in place for identifying and managing power imbalances, child abuse and support needs. Where matters are particularly complex, conference organisers will consult with the clinical manager for additional guidance and advice. Conference organisers stated that these processes are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients.

Northern Territory: Conference organisers stated that these processes for identifying issues were effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients. Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, but it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

Tasmania: The FDR coordinator stated that processes for identifying issues were effective. Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, however, it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

Australian Capital Territory: Conference organisers stated that the processes for identifying family violence and child protection issues are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients. Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, but it does need to explore models of FDR for Indigenous and culturally and linguistically diverse groups.

6.6 Summary

Since the 2000 evaluation, screening and intake processes in commissions have been strengthened overall and now screen for family violence and child protection issues. All commissions, except Tasmania, have also developed a range of tools to assist in the screening process, such as checklists, secondary consultation mechanisms and client interviews. The findings highlight the different screening and intake processes that are employed across jurisdictions. These differences include the level and type of information obtained, the level of involvement of clients and lawyers, the length of time taken, and the skill and knowledge of intake officers to assess risk.
Screening processes are appropriate where the following information is collected

- legal issues in dispute
- identities of the children involved (for parenting disputes)
- additional support requirements such as use of interpreters, support people, and mental health issues
- details of any family violence (in all forms) including copies of apprehended violence orders and child abuse allegations
- cultural, religious and ethnic background of parties.

Screening processes are also appropriate where they collect information from

- clients by working through the assessment checklist in interview style (either face to face or by telephone)
- lawyers to confirm and expand on the information provided by the client(s).

Consistent across all jurisdictions is the limited targeting of FDR services in commissions to people from diverse backgrounds.

Most commissions collect information on family violence and child protection issues, but this information is used in different ways. That is, the existence of family violence will not affect the mode of conferencing in one jurisdiction while in others it will be a serious consideration, determining suitability and the mode of conferencing. Additionally, most questions which screen for violence only focus on the physical dimensions of family violence rather than its emotional and psychological dimensions.

**Opportunities for improvement**

Enhance screening for family violence to include all dimensions of family violence (ie emotional, psychological and sexual violence), not just physical violence.

Increase the experience and knowledge of intake officers in commissions in assessment of complex issues, and how to use the information they collect. This may require the development of practice guidance and tools to assist the assessment of risk and protective factors. One proposed strategy includes the development of a risk assessment and management framework with practice guidelines for intake officers which underpins all commissions’ FDR screening and intake processes.

Provide the information collected during screening, including the assessment, to FDR practitioners at least 24 hours prior to a conference.
7 Focus on the best interests of the child

The Act has always focused on the best interests of the child. To reaffirm this focus, the Amendment Act included the following principles to guide the legislation’s implementation

- all children have a right to know both their parents
- all children have a right to be protected from harm
- parenting is a responsibility that should be equally shared, provided this does not put children at risk
- parents and children benefit when parenting arrangements after separation are resolved outside the court system.21

This evaluation measured the appropriateness of mechanisms to ensure the best interests of the child. This included exploration of the strategies used by FDR practitioners to focus parties on the child and whether parties, lawyers and FDR practitioners were satisfied that outcomes were child focused.

Information collected through a survey of FDR practitioners and interviews with intake officers has been used to inform the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

7.1 Mechanisms to support good practice

Commissions use the Act (s60B) as the legislative framework to focus FDR on the best interests of the child. However, few commissions have developed practice guidance to assist FDR practitioners to interpret, assess and balance each of the underlying legislative elements of best interests of the child. Some commissions, however, provide internal training (delivered by social workers) on the best interests of the child and what this means for chairing FDR conferences and developing agreements.

All FDR services in commissions are child focused rather than child inclusive. That is, children’s views in child focused practice are not directly represented. Child focused practice includes approaches such as placing a photograph of the child in the room to draw the attention of the parents or the use of a video to demonstrate the impact of conflict on children. Where a matter requires a child inclusive process, commissions will refer clients to a Family Relationship Centre for child inclusive practice where this is offered and considered appropriate. Alternatively, where an independent child lawyer has been engaged, they will be invited to participate in the conference on the child’s behalf.

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FDR practitioners

Most FDR practitioners in commissions have child focused strategies for ensuring that parties focus on the best interests of the child which they have developed over time through practice, such as placing photographs of the child on the conference table, or using feedback contained in reports prepared by child psychologists (e.g. in Western Australia, South Australia, Victoria).

An example of a child inclusive practice is in Victoria. Victoria has developed a Kids Talk program which is specifically designed to obtain the views of a child for inclusion in a conference. Through Kids Talk, the FDR manager interviews all children involved in the dispute to seek their views about potential parenting arrangements. These views are compiled in a report which is then used in conferencing by the FDR practitioner.

The FDR practitioner focus groups highlighted a difference in approach between FDR practitioners who are social scientists and those who are lawyers. That is, social scientists more readily report their level of understanding of the best interests of the child and tools they use to ensure this focus is maintained during the conference.

Overall, lawyers and FDR practitioners stated that, in most instances, appropriate mechanisms are in place to ensure the best interests of the child. In particular, the FDR practitioner survey results show that

- 89 per cent of FDR practitioners agreed (either ‘somewhat’ or ‘strongly’) that appropriate systems are in place to ensure the best interests of the child
- 94 per cent agreed that settlements arising out of FDR conferencing are child focused.

Lawyers and clients

The interviews with lawyers highlighted a different level of understanding of the best interests of the child. Compared to FDR practitioners and commission management, lawyers tended to define the best interests of the child in terms of shared parenting arrangements rather than holistically taking into account the developmental, age, cultural and safety considerations for the child.

FDR practitioner focus groups revealed that not all parties and lawyers come to conferencing with an understanding that the conference is intended to focus on the best interests of the child. Reasons for this include

- information not being provided to parties beforehand about the purpose of conferencing and its focus on the best interests of the child

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22 For mediation to be considered child inclusive, it must include the child’s views, either through a report or relayed by a child psychologist (or the like), and mediators are specifically trained in child inclusive mediation.
Findings on the evaluation dimensions
Chapter 7 — Best interests of the child

- lawyers are not adequately trained to understand what focusing on the best interests of the child means
- existence of conflicting views of the best interest of the child which is often defined as shared parenting and therefore a 50/50 split in parenting arrangements.

The client survey results show that 73 per cent agreed that the conference helped them to focus on the interests of their child, while 22 per cent disagreed (either ‘agreed’ or ‘strongly agreed’) with this statement (figure 7.1 shows the number of responses). Responses by gender showed an identical distribution.

Figure 7.1: The conference helped me to understand/focus on the interests of our children

Figure 7.2 indicates that a further break down of this question by state and territory revealed some differences in level of agreement with the statement. Clients from Western Australia and the Northern Territory had a greater level of disagreement than the national average (38 and 34 per cent disagreed or strongly disagreed), while 86 per cent of clients from South Australia agreed or strongly agreed with the statement.
7.2 Treatment of the interests of the child by commissions

The following is a brief description of survey findings on mechanisms for ensuring a focus on the best interests of the child in each state and territory commission. For full details, see Appendix D.

Queensland – FDR practitioners advised that the concept is often interpreted by lawyers in the context of the courts’ tendency towards shared parenting arrangements (ie a 50/50 split). Seventy one per cent of FDR practitioners agreed that current mechanisms to ensure the focus on the best interests of the child are appropriate, and 70 per cent of clients agreed the conference helped them focus on the interests of their children.

New South Wales – Survey results suggest that FDR mechanisms to ensure the best interests of the child are appropriate. Seventy three per cent of FDR practitioners agreed that such mechanisms were appropriate, and 83 per cent of clients agreed that the conference helped them to focus on the interests of their children.

Victoria – All FDR practitioners surveyed agreed that existing mechanisms for focusing on the best interests of the child are appropriate.

South Australia - All FDR practitioners surveyed agreed that existing mechanisms for focusing on the best interests of the child are appropriate.

Western Australia – All FDR practitioners surveyed agreed that existing mechanisms for focusing on the best interests of the child are appropriate.
Northern Territory - Seventy five per cent of FDR practitioners surveyed agreed that existing mechanisms for focusing on the best interests of the child are appropriate.

Tasmania - All FDR practitioners surveyed agreed that existing mechanisms for focusing on the best interests of the child are appropriate.

Australian Capital Territory - All FDR practitioners agreed that existing mechanisms for focusing on the best interests of the child are appropriate, and 75 per cent of clients agreed that conferencing helped them to understand or focus on the interests of their children.

7.3 Summary

Commissions provide child focused, rather than child inclusive, FDR. Overall, there is an extremely high level of agreement that the current mechanisms are appropriate for ensuring FDR focuses on the best interests of the child. This is evidenced by the high level of satisfaction expressed in the lawyer interviews, FDR practitioner surveys and focus groups.

FDR practitioners have adopted strategies to ensure the conferencing process focuses on the interests of the children which lead to agreements which are child focused.

Despite this high level of agreement, situations do arise where lawyers and parties do not participate with a focus on the best interests of the child.

Opportunities for improvement

Clarify the definition of child focused and the best interests of the child by providing detailed practice guidance which complements the current legislative framework – currently, lawyers tend to define best interests of the child as a 50/50 split in parenting responsibilities while commissions have a broader definition. This can pose barriers in reaching agreements through conferencing.

Improve the knowledge of lawyers on the FDR process – agreement making and the conferencing process can be derailed when lawyers are not aware of how FDR works and its underlying intention.

Prepare parties on the FDR process and its underlying intention before the conference.
8 Inclusion of extended family

The amendments to the Act include an increased focus on extended family (in particular grandparents) in parenting disputes. Such inclusion can occur in a variety of ways including recognition of extended family as a party to a dispute and the inclusion of extended family in parenting plans/agreements.

This evaluation measured the appropriateness of mechanisms to include extended family in conferencing, including the types of mechanisms used, the nature and extent of involvement of extended family, and FDR practitioner satisfaction with mechanisms to involve extended family.

Information collected through a survey of FDR practitioners and interviews with intake officers in commissions was used to inform the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

8.1 Mechanisms to include extended family

The findings regarding the inclusion of extended family in FDR are consistent across most commissions. All those interviewed stated that the procedures in place were appropriate. The procedures employed by the different commissions are:

- All commissions – where an extended family member (including grandparent) is a party to the matter, they will be included in the FDR process. The level of inclusion is the same afforded to all parties to a dispute.

- Western Australia, Queensland, New South Wales, Australian Capital Territory, South Australia and the Northern Territory – where an extended family member is not a party (ie they are a support person), they will not be involved in the joint session of the conference. The exception to this is when Indigenous families are involved.

- Victoria and Tasmania – where they play a significant role in implementing the agreement, extended family members may be included in the conference, even if they are not parties to the dispute.

In most commissions, the extent of extended family members’ involvement – where they are a support person – is limited to supporting the party in the breakout room or from the waiting room. The rationale for this is that extended family and new partners as support people can disrupt the conference proceedings resulting in the parties not being able to reach an agreement.

The exceptions to this are in cases involving Indigenous parties which may require the more active inclusion of extended family members. For example, the commissions in Queensland and the Northern Territory have held conferences involving Indigenous parties which included extended family who have not been a party to the dispute because it was culturally appropriate to do so. FDR practitioners in the Northern Territory provided the example of inviting the party’s whole extended family to the conference to negotiate a culturally appropriate agreement.
The FDR practitioner survey shows a slightly different picture. When asked for their level of agreement regarding the statement 'where appropriate, extended family (including grandparents) are being included in the FDR process', 30.5 per cent either somewhat or strongly disagreed. Figure 8.1 shows the actual number of responses received for each response type (eg 22 FDR practitioners disagreed or strongly disagreed).

Figure 8.1: Where appropriate, extended family are involved in FDR

As seen in figure 8.2, a further break down of this question by state revealed a differential distribution to the statement. That is, FDR practitioners that disagreed were from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and Western Australia, whilst all FDR practitioners from South Australia, Tasmania and Victoria either strongly or somewhat agreed with the statement.

Figure 8.2: Where appropriate extended family involved in the FDR process – by state
8.2 Involving extended family in conferences in each commission

The following is a brief description of survey findings on the mechanisms for involving extended family in FDR in commissions in each state and territory. For full details see Appendix D.

Queensland – The majority of FDR practitioners (62.5 per cent) agreed that the above mechanisms for including extended family are appropriate. Lawyers also agreed that the current arrangements are appropriate.

New South Wales – Fifty seven per cent of FDR practitioners agreed that the current mechanisms for including extended family are appropriate. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family to participate in conferences as support people are often not appropriate as their inclusion can disrupt the agreement making process.

Victoria – All FDR practitioners agreed that these mechanisms are appropriate.

South Australia – All FDR practitioners agreed that the current mechanisms for including extended family are appropriate.

Western Australia – Fifty eight per cent of FDR practitioners agreed that appropriate mechanisms are in place to include extended family. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family to participate in conferences as support people is often not appropriate as their inclusion can disrupt the agreement making process.

Northern Territory – Fifty per cent of FDR practitioners disagreed that appropriate mechanisms are in place to include extended family. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family to participate in conferences as support people is often not appropriate as their inclusion can disrupt the agreement making process.

Tasmania – All FDR practitioners surveyed agreed that appropriate mechanisms were in place to include extended family.

Australian Capital Territory – Fifty five per cent of FDR practitioners agreed that appropriate mechanisms were in place to include extended family. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family to participate in conferences as support people is often not appropriate as their inclusion can disrupt the agreement making process.

23 This figure is not representative of the FDR practitioner population in Queensland.

24 This figure is not representative of the FDR practitioner population in Western Australia.
8.3 Summary

The current arrangements for including (and excluding) extended family are generally appropriate in that, where there is the potential for any person who is not a party to the conference to derail the process (and inhibit parties from reaching an agreement), they should be excluded.

The mechanisms to include extended family as support people in the periphery of the conference (ie in the waiting room or break out room) are appropriate in most cases. However, even this level of inclusion can result in the conference breaking down.

FDR services need to accommodate the requirements of Indigenous families, and this may require the inclusion of extended family even though they are not a party to the dispute.

Opportunities for improvement

Commissions should continue to monitor how their approach to including/excluding extended families is appropriate for Indigenous families and people from culturally and linguistically diverse backgrounds.
9 Management of family violence, child protection and power imbalance

The funding guidelines for FDR require commissions to assess issues of family violence and child protection. Where these issues exist, a matter is excepted from the mandatory requirement to undergo FDR. As discussed earlier, all commissions screen these issues at intake.

The findings discussed in this chapter focus on those matters in which a power imbalance (e.g., family violence) and child protection have been screened, and how the conferencing process accommodates these issues. This evaluation measured the overall effectiveness and appropriateness of responses to these issues, as well as the survey responses to these issues in each commission.

Information collected through a survey of FDR practitioners, client survey and interviews with intake officers and lawyers informs the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

9.1 Effectiveness of responses

Current responses for managing the following situations include:

- Family violence – most commissions will conference by shuttle (either in person or by telephone). Where family violence is an issue, most lawyers will advise the intake officer and request a shuttle conference. The Western Australian commission will determine the mode of conference in consultation with the parties and will offer face to face conferencing on the basis that all parties are legally represented.

- Child protection – as discussed in the screening and intake findings, all commissions will not conference matters involving child protection allegations.

Client survey data supports the finding that the current responses are effective. In particular:

- Ninety three per cent of clients reported feeling very safe or safe during the conference. The reported level of safety decreased only marginally after the conference, with 89.5 per cent of respondents indicating that they felt very safe or safe after the conference (figure 9.1 shows actual numbers of responses). In general, female clients were more likely to feel unsafe after the conference compared to male clients (figure 9.2), while respondents from the Northern Territory and the Australian Capital Territory reported a decreased level of safety after the conference.
Findings on the evaluation dimensions
Ch 9 — Family violence and child protection

Figure 9.1: Client safety during and after FDR conference

Figure 9.2: Client safety after the conference — by gender

Ninety two per cent of FDR practitioner survey respondents agreed that there are appropriate protocols and procedures in place in the commissions to allow chairpersons to effectively respond to clients who are victims of family violence.
9.2 Management of these issues by commissions

The following is a brief description of survey findings concerning the management of family violence, child protection and power imbalance by FDR services in each state and territory commission. For full details, see Appendix D.

Queensland - Eighty eight per cent of FDR practitioners agreed that appropriate protocols are in place for responding to family violence, and 69 per cent agreed that appropriate mechanisms are in place for responding to family support needs. However, only 56 per cent agreed that appropriate protocols were in place to respond to the emotional wellbeing needs of clients.

New South Wales – Eighty seven per cent of FDR practitioners agreed that appropriate protocols are in place for responding to family violence, and 80 per cent agreed that appropriate mechanisms are in place for responding to additional support needs. However, only 57 per cent agreed that appropriate protocols were in place to respond to the emotional wellbeing needs of clients.

Victoria – All FDR practitioners surveyed agreed that the Victoria has in place appropriate protocols to manage family violence, child abuse and other support needs.

South Australia – All FDR practitioners agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.

Western Australia - Ninety two per cent of FDR practitioners agreed that appropriate protocols are in place for responding to family violence, and 78 per cent agreed that appropriate mechanisms are in place for responding to family support needs. However, only 64 per cent agreed that appropriate protocols were in place to respond to the emotional wellbeing needs of clients.

Northern Territory - All FDR practitioners surveyed agreed that appropriate protocols are in place for responding to family violence, and 75 per cent agreed that appropriate mechanisms are in place for responding to family support needs. However, only 50 per cent agreed that appropriate protocols were in place to respond to the emotional wellbeing needs of clients.

Tasmania – All FDR practitioners surveyed agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.

Australian Capital Territory – All FDR practitioners surveyed agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.

9.3 Summary

The general consensus across commissions is that the FDR client group has multiple and complex needs that go beyond the legal dispute but impact on their ability to make and implement an agreement.
Most FDR services in commissions have effective responses for managing family violence, child protection concerns and other support needs. This is based on the view that FDR

- cannot provide additional support services to clients, but can refer them to appropriate support services
- can provide a safe environment for parties to resolve their disputes without fear of violence
- can uphold the best interests of the child by not conferencing matters where allegations of child abuse exist.

However, FDR practitioners noted that their practice would benefit from ongoing training and professional development to better understand how such issues impact on conferencing and the additional tools they can use to manage those issues effectively and appropriately.

**Opportunities for improvement**

Draw on techniques and tools used in Queensland, Victoria and Western Australia to increase clients’ feelings of safety to

- provide training for FDR practitioners, intake officers/conference organisers, and lawyers on support issues and how these may impact on FDR (the issue of training and professional development is further explored in chapter 11)
- examine strategies for improving referral pathways between commissions and other support services (as discussed in chapter 5)
- develop nationally consistent practice standards for appropriately managing these issues in the context of FDR.

*Note:* The purpose of addressing these issues is not for commissions to provide a clinical response, rather they are designed to assist FDR practitioners and intake officers to appropriately manage these issues should they arise in the context of FDR.
10 Availability of appropriate FDR services for people with special needs

An increasing number of people from diverse backgrounds are accessing FDR services in commissions. Such diversity includes Indigenous people, people from culturally and linguistically diverse backgrounds, and people with a disability.

This evaluation measured the appropriateness of FDR services in commissions for clients from diverse backgrounds (including the level of satisfaction of services for clients from diverse backgrounds and the types of services provided), and for clients with other support needs, such as those with hearing difficulties or those who speak a language other than English.

As discussed in chapter 5, most commissions (either at intake or through the FDR practitioner) refer clients to external services for other support needs such as mental health and drug and alcohol services.

Information collected through a client survey, chairpersons’ survey and interviews with intake officers and FDR practitioners was used to inform the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

10.1 Appropriateness and effectiveness of mechanisms

As with accessing FDR, people from diverse backgrounds have access to the same FDR service that is available to all clients. That is, very few mechanisms, policies or protocols exist within commissions’ FDR services which take into account the different needs of people from diverse backgrounds, including Indigenous people and people from culturally and linguistically diverse backgrounds.

Overwhelmingly, the commissions’ approach to working with people from diverse backgrounds is ad hoc and determined on a case by case basis. For example, the inclusion of extended family in a conference involving Indigenous parties may be a key consideration when arranging a conference. Similarly, when arranging a conference with parties from the Muslim faith, New South Wales FDR management offered that the conference organiser may ensure a male FDR practitioner chairs the conference rather than a female due to perceptions of authority.

Queensland is the only commission which has established a formal Indigenous mediation program where the commission works with elders and the Aboriginal and Torres Strait Islander Legal Service to mediate family law disputes in a culturally competent manner.

Appropriateness of protocols and procedures

While commissions take an ad hoc approach to this, 81 per cent of FDR practitioner respondents strongly or somewhat agreed that there are appropriate protocols and procedures in place to allow FDR to accommodate the needs of people from diverse backgrounds. Figure 10.1 shows that the Australian Capital Territory, Queensland, New
South Wales and Western Australia were the states where FDR practitioners strongly or somewhat disagreed.

**Figure 10.1: There are appropriate protocols and procedures in place to allow FDR to accommodate the needs of people from diverse backgrounds – by state**

All commissions agreed that this is an area in which they could improve and one which requires formal culturally and religiously competent protocols to ensure FDR services are appropriate and effective for people from diverse backgrounds.

**Effectiveness of current responses**

Client survey data supports the finding that the current responses are effective. In particular

- 25 per cent of clients (n=101) utilised an interpreter during their conference; 76 per cent of those clients requiring an interpreter were very satisfied or satisfied with the assistance they received
- 36 per cent of clients (n=147) had access to a support person during their conference; 81 per cent of those clients were satisfied with their access to a support person during their conference
- 3 per cent of clients (n=11) surveyed required other assistance to participate in the conference; 91 per cent of these respondents were satisfied or very satisfied with the additional assistance received during their conference.

Most FDR managers, intake officers and FDR practitioners in commissions acknowledge the importance of understanding these issues. However, intake officers and FDR practitioners from legal or non clinical backgrounds have limited experience in managing these issues.
A range of issues

FDR practitioner survey respondents noted the issues that clients present with at conference include child protection, family violence, drug and alcohol issues, health, mental health, and housing and homelessness. In the focus groups, FDR practitioners recognised the need to better understand how these issues impact on the conferencing process and the sustainability of agreements.

Eighty six per cent of FDR practitioners either strongly or somewhat agreed that there are appropriate protocols and procedures in place in commissions to allow chairpersons to effectively respond to clients who require additional support.

When it came to appropriate supports for clients with emotional wellbeing issues, FDR practitioners were mixed in their responses as to their level of agreement that supports were effective.

Whilst the majority of FDR practitioner respondents (72.5 per cent) strongly or somewhat agreed that there are appropriate protocols and procedures in place in commissions to allow FDR practitioners to effectively respond to clients who present with emotional wellbeing issues, a large proportion did not agree with this statement. The actual response numbers are shown in figure 10.2.

Figure 10.2: There are appropriate protocols and procedures in place in commissions to allow FDR practitioners to effectively respond to clients who present with emotional wellbeing issues

As illustrated in figure 10.3, further investigation revealed that those FDR practitioners that disagreed were from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and Western Australia. All FDR practitioners from South Australia, Tasmania and Victoria either strongly or somewhat agreed.

The high level of agreement from South Australia and Victoria may be attributable to South Australia’s referral framework and Victoria’s case management approach of which referrals to other support services is a component. The high level of agreement
from Tasmania is interesting given the commission has no real process for managing such issues.

**Figure 10.3:** There are appropriate protocols and procedures in place in commissions to allow FDR practitioners to effectively respond to clients who present with emotional wellbeing issues – by state

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10.2 Meeting diverse needs by state and territory commissions

The following is a brief description of survey findings on the availability of services for people from diverse backgrounds in each state and territory commission. For full details, see Appendix D.

**Queensland** – Seventy three per cent of FDR practitioners surveyed agreed that FDR in Queensland accommodates the needs of people from diverse backgrounds, though FDR practitioners noted that very few, if any, of their conferences involve Indigenous or culturally and linguistically diverse parties.

**New South Wales** – When at conference, New South Wales attempts to allocate lawyers experienced in working with Indigenous people to the matter. FDR management agreed that it could improve the delivery of FDR services for Indigenous clients.

**Victoria** – All FDR practitioners surveyed agreed that FDR services accommodate the needs of people from diverse backgrounds.

**South Australia** – Lawyers agreed that the current processes to support people from diverse backgrounds (predominantly people from culturally and linguistically diverse backgrounds) are appropriate.

**Western Australia** – Recognition of the work required in this area is reflected in the FDR practitioner survey responses; only 58 per cent of FDR practitioners agreed that FDR services accommodate the needs of people from diverse backgrounds.
Northern Territory – All FDR practitioners surveyed agreed that FDR accommodates the needs of people from diverse backgrounds.

Tasmania – All FDR practitioners surveyed agreed that FDR accommodates the needs of people from diverse backgrounds.

Australian Capital Territory – All FDR practitioners surveyed agreed that FDR accommodates the needs of people from diverse backgrounds.

All commissions advised that their FDR services would benefit from more information and training in regards to understanding the needs of people with mental health and drug and alcohol concerns. Increasing numbers of FDR clients are presenting with such issues, and commission staff and FDR practitioners acknowledge the requirements to be skilled in managing such issues in the context of FDR.

10.3 Summary

The commissions’ responses to people from diverse backgrounds are largely ad hoc and are not framed by formal protocols for delivering culturally and religiously competent FDR services.

Opportunities for improvement

Explore appropriate matching of FDR practitioners and parties based on cultural and religious need.

Assess relevant dynamics as a result of different cultural, religious and support needs.

Examine different requirements for including/excluding family members and community networks.

Find appropriate modes of conferencing for different cultural and religious groups.

Provide culturally and religiously competent professional development for FDR practitioners and intake officers.
11 Satisfaction with FDR services

A key measure of success of FDR is the level of satisfaction held by clients, FDR practitioners, lawyers and commission staff and management with FDR services. This evaluation measured

- the implementation of FDR services in accordance with legal aid agreements
- satisfaction with the FDR process among key stakeholders
- satisfaction with the settlement arising out of FDR
- overall satisfaction with the operation of the FDR program
- specific findings for each state and territory commission.

Information collected through a survey of FDR practitioners, the client survey and interviews with intake officers, FDR practitioners, FDR management and lawyers was used to inform the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

11.1 Implementation of legal aid agreements

While no one FDR service is the same, all commissions are implementing these services in accordance with the legal aid agreements. All commissions comply by

- ensuring all parties (seeking legal aid) undergo a means and merit test
- applying the eligibility guidelines for FDR
- providing the Attorney-General’s Department with quarterly reports on service utilisation and settlement rates.

11.2 Key stakeholder satisfaction with FDR process

Client, lawyer and FDR practitioner views were sought to determine their satisfaction with the FDR process in commissions, including

- the information provided about the conferencing process
- the time taken to conduct the conference.

Information provided

Eighty four per cent of clients were very satisfied or satisfied with the information provided to them prior to the conference. The level of satisfaction ranged from 94 per cent in the Australian Capital Territory to 74 per cent in South Australia.
The FDR practitioners commented in the focus groups that, on occasion, some parties come to conference without a full understanding about the conferencing process. FDR practitioners offered that this may be due to information about conferencing not being provided to parties beforehand (either by their legal representative or the intake officer). As a result, FDR practitioners can spend up to 30 minutes at the beginning of a conference explaining the conferencing process to the parties. This then impacts on the total time available for negotiation and agreement making.

**Time taken to conduct the conference**

Each commission structures its grant of aid for FDR differently. Within this structure, each commission predetermines the time allocated for lawyers to take instructions (generally one hour), conferencing (up to four hours) and lodging the conference certificate (generally one hour). Commissions may grant an extension of time for conferencing if the circumstances warrant it.

Eighty nine per cent of FDR practitioner survey responses showed that, across all commissions, the average time for conferences is between two to four hours; 66 per cent of conferences last for three to four hours. The same survey responses showed that conferences in Queensland, Western Australia and New South Wales are most likely to run for three to four hours on average.

Of FDR practitioner respondents, 77.5 per cent strongly or somewhat agreed that the time budgeted for conferences is adequate. Figure 11.1 shows the actual number of responses for each response type.

**Figure 11.1: The time budgeted for conferences is adequate**

![Figure 11.1: The time budgeted for conferences is adequate](image)

Figure 11.2 shows that the FDR practitioners that disagreed were from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and Western
Australia. All FDR practitioners from South Australia, Tasmania and Victoria either strongly or somewhat agreed.

Figure 11.2: The time budgeted for conferences is adequate – by state

Settlement satisfaction

Ninety nine per cent of FDR practitioner respondents strongly or somewhat agreed that, in general, settlements arising out of FDR conferencing are workable given the circumstances of the parties in any given matter.

While FDR practitioner survey results show a high degree of satisfaction with FDR agreements, FDR practitioners in the focus groups raised concerns about the longevity and sustainability of agreements. In particular, FDR practitioners noted that mechanisms do not exist to ‘check in’ with parties after the agreement is made to monitor its implementation. Some FDR practitioners may encourage parties to enter into an interim agreement which they agree to finalise at a later stage once the agreement has been tested, however many parties do not return to conference. Lawyers, who also queried the longevity and sustainability of agreements, echoed this concern.

In response to this, the commission in Queensland has developed a post-conferencing support service, where a panel of external and internal social workers assist parties for up to six weeks after the agreement by referring them to support organisations and helping them troubleshoot any issues with implementing the agreement.

FDR practitioners, in general, will also use reality testing during the conference to ensure agreements are realistic and able to be implemented. For some FDR practitioners, this has involved contacting family members or support services during the conference to check that they are available to assist in implementing parts of the agreement (e.g., grandmother can pick up the children from school three days per week,
or the childcare arrangements have facilities and trained staff to care for a child with a disability).

Client opinion of the outcome of conferencing differed markedly to the views of FDR practitioners. Nationally, 64 per cent of clients were satisfied or very satisfied with the outcome of their FDR conference, however, a large proportion (29 per cent) reported being dissatisfied or very dissatisfied (figure 11.3 shows the actual number of responses).

**Figure 11.3: Overall, I was satisfied with the outcome of conferencing**

![Figure 11.3: Overall, I was satisfied with the outcome of conferencing](chart.png)

Figure 11.4 shows that there was variation across the states, with clients from South Australia and the Australian Capital Territory reporting the greatest levels of satisfaction (86 and 75 per cent respectively), while only 45 per cent of the Western Australian clients were very satisfied or satisfied with the outcome of their conference. Further analysis revealed no difference in response by gender.
Findings on the evaluation dimensions
Chapter 11 — Satisfaction with FDR services

11.3 Satisfaction with the settlement arising from FDR

Overall, satisfaction with FDR services provided by commissions is high. Ninety four per cent of FDR practitioners and all lawyers were satisfied with FDR services. Both FDR practitioners and lawyers referred to FDR as an appropriate, timely and low cost option to litigation.

FDR practitioners and lawyers stated that FDR provided a range of benefits outside of reducing time and cost. These other benefits include

- active participation of parties in resolving their dispute
- narrowing of legal issues (96 per cent of FDR practitioners agreed)
- assisting the parties to better understand each other’s main issues (96 per cent of FDR practitioners agreed)
- assisting the parties to focus on the best interests of the child(ren).

Sixty six per cent of clients agreed that conferencing helped them to better understand the relevant issues in their dispute (figure 11.5 shows the actual number of responses). The same distribution was apparent by gender. Many clients surveyed reported that they already knew the relevant issues prior to attending the conference.
Figure 11.5: Conferencing helped me better understand the relevant issues

An analysis of client satisfaction by state indicates that Western Australian legal aid clients had the lowest level of agreement, with only 50 per cent of clients agreeing or strongly agreeing that conferencing helped them to better understand the relevant issues in their dispute (figure 11.6).

Figure 11.6: Conferencing helped me better understand the relevant issues – by state
Figure 11.7 demonstrates that, regarding the statement ‘conferencing gave the other party and I a chance to talk through our problems and issues’, 57 per cent of clients agreed or strongly agreed (actual response numbers are shown). Just over 50 per cent of respondents from South Australia and Queensland disagreed or strongly disagreed, while the Australian Capital Territory had the highest level of satisfaction with 66 per cent of clients agreeing or strongly agreeing (figure not shown). There was no difference in the distribution of responses by gender. Qualitative responses indicate that some parties thought that telephone or shuttle conferences hindered their ability to talk with the other party, while some parties also indicated that the lawyers exerted too much control over the process.

Figure 11.7: Conferencing gave the other party and I a chance to talk through our problems and issues

Clients generally disagreed that they would be able to resolve future issues with the other party without outside help, with 56 per cent disagreeing or strongly disagreeing and 13 per cent indicating that they were unsure (figure 11.8). Males indicated a greater level of agreement compared to females (40 per cent versus 27 per cent).
Figure 11.8: I believe that I will now be better able to resolve future disputes with the other party without outside help

Analysis by state (figure 11.9) indicated that clients from the Australian Capital Territory were least likely to feel that they could resolve future disputes without outside help, with only seven per cent of respondents agreeing to the statement.

Figure 11.9: I believe that I will now be better able to resolve future disputes with the other party without outside help – by state
Clients were also divided over whether they required further legal advice before coming to an agreement. Fifty per cent agreed or strongly agreed, while 44 per cent disagreed or strongly disagreed (figure 11.10 shows actual response numbers).

**Figure 11.10: I needed more legal advice before coming to an agreement**

![Bar chart showing responses](chart)

Figure 11.11 indicates that female clients were more likely to require further legal advice than their male counterparts (54 per cent compared to 44 per cent).
Figure 11.11: I needed more legal advice before coming to an agreement – by gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Percentage responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>Strongly agree / Agree</td>
</tr>
<tr>
<td>Male</td>
<td>101</td>
</tr>
<tr>
<td>Transgender</td>
<td>131</td>
</tr>
<tr>
<td>Total</td>
<td>188</td>
</tr>
</tbody>
</table>

11.4 State and territory commissions’ satisfaction with FDR

The following provides an outline of survey findings on the level of satisfaction with FDR in each state and territory commission. For full details, see Appendix D.

Queensland – Sixty two per cent of clients agreed they were satisfied with the outcome of conferencing, and 94 per cent of FDR practitioners strongly or somewhat agreed that settlements arising out of FDR are workable. However, a range of improvements were suggested in areas such as reducing the time between application for legal aid and conferencing.

New South Wales – Sixty per cent of clients agreed they were satisfied with the outcome of conferencing. All FDR practitioners surveyed agreed that settlements arising out of FDR are workable. FDR practitioners noted several areas for improvement, such as ensuring all lawyers who participate in FDR are trained in alternative dispute resolution.

Victoria – Sixty seven per cent of clients agreed they were satisfied with the outcome of conferencing, and all FDR practitioners surveyed agreed that settlements arising out of FDR are workable and that they were satisfied with the FDR program. FDR practitioners noted several areas for improvement, such as improving the conferencing infrastructure for regional areas.

South Australia – Eighty six per cent of clients agreed they were satisfied with the outcome of conferencing, and all FDR practitioners surveyed agreed that settlements arising out of FDR are workable and that they were satisfied with the FDR program.
FDR practitioners noted several areas for improvement, such as reducing the use of teleconferencing.

**Western Australia** — Only 45 per cent of clients agreed they were satisfied with the outcome of conferencing. All FDR practitioners agreed that settlements arising out of FDR are workable, and all were satisfied with the FDR program. They noted several areas for improvement, such as the development of a peer support program for FDR practitioners.

**Northern Territory** — Sixty three per cent of clients agreed that they were satisfied with the outcome of conferencing. All FDR practitioners surveyed agreed that settlements arising out of FDR are workable, and 75 per cent agreed that they were satisfied with the FDR program. They noted several areas for improvement, such as ensuring all lawyers who participate in FDR are trained in alternative dispute resolution.

**Tasmania** — Sixty six per cent of clients agreed that they were satisfied with the outcome of conferencing. All FDR practitioners surveyed agreed that settlements arising out of FDR are workable, and all agreed that they were satisfied with the FDR program.

**Australian Capital Territory** — Seventy five per cent of clients agreed that they were satisfied with the outcome of conferencing. Eighty nine per cent of FDR practitioners agreed that settlements arising out of FDR are workable, and 55.5 per cent agreed that they were satisfied with the FDR program. They noted several areas for improvement, such as ensuring all lawyers take thorough instructions from their clients well before the conference.

### 11.5 Summary

Overall, there is a high level of satisfaction with FDR, its outcomes and processes. Not only is FDR a timely and low cost option to litigation, but it also allows parties to narrow the issues in dispute, to voluntarily participate in the process and determine the outcome and focus on the best interests of the child(ren).

#### Opportunities for improvement

Support the longevity and sustainability of agreements by providing post conference support to parties to implement the agreement, and by monitoring agreements during the post support period to determine the number of agreements which succeed, change, or break down and the reasons for each.
12 Quality improvement

The 2000 evaluation of FDR services provided by commissions made a series of recommendations regarding the continuous improvement of the program. In particular, the evaluation found there was an overall lack of training and professional development and that this was a key area that needed to be addressed. There was little monitoring of outcomes and processes and recommendations were also made in this regard.

This evaluation measured

- compliance with accreditation requirements under the Act
- provision of relevant training, peer support and ongoing professional development and application of new learning for FDR practitioners, lawyers and intake officers
- the level of confidence in conference chairpersons, including their experience and qualifications
- implementation of internal processes to monitor and improve services
- quality improvement across each state and territory commission.

Information collected through a client survey, survey of FDR practitioners and interviews with intake officers, FDR practitioners, FDR management and lawyers was used to inform the findings for this evaluation dimension. Detailed findings for each commission can be found in Appendix D.

12.1 Compliance with the Act

Family dispute resolution practitioners will need to meet new accreditation standards by July 2009 under changes introduced by the new Family Law (Family Dispute Resolution Practitioner) Regulations 2008. FDR practitioners will be able to meet the new accreditation standards from 1 January 2009. The current registration system will also continue until 30 June 2009. The new accreditation system has been introduced to ensure that those providing FDR meet a set of nationally consistent standards. The new standards include specific competencies for all FDR practitioners.

Section 10A of the Act provides for the development of accreditation rules for FDR practitioners. The intention of the accreditation system is to promote quality service provision in line with FDR practitioners’ responsibilities under the Act. At the time of the evaluation, FDR practitioners were required to meet interim accreditation

requirements set out in regulation 83 of the *Family Law Regulations 1984*.\(^{26}\) Regulation 83 requires FDR practitioners to

- have an appropriate degree, diploma or other qualification (e.g., law, social work)
- have completed at least 10 hours of supervised family dispute resolution
- have completed five days training in family dispute resolution, including at least one course of at least three days’ duration
- undertake at least 12 hours of education or training in family dispute resolution each calendar year (with no more than 12 months elapsing between periods of training).\(^{27} 28\)

The requirements were a transitional measure while the new rules based on national competency standards were being developed. The transitional period of interim accreditation runs from 1 July 2006 to 30 June 2009.\(^{29}\)

FDR management reported compliance with Attorney-General’s Department accreditation requirements. The FDR practitioner focus groups confirmed FDR practitioners’ completion of the required supervision and total hours of conferencing. The FDR practitioner survey confirmed that FDR practitioners are appropriately qualified.

Ninety per cent of FDR practitioner respondents agreed that good practice standards in FDR have been implemented and are continually monitored.

### 12.2 Training and professional development

Beyond the required ongoing supervision and training required to comply with the Family Law Act Regulation requirements, most FDR practitioners across all jurisdictions indicated during focus groups that the level and type of training and professional development offered could be improved.

Training and professional development opportunities within each commission are as follows.

**Queensland** – offers three day orientation training for new employees. New FDR practitioners must also co-facilitate three conferences before chairing alone. Ongoing training is provided to commission staff (including lawyers, call centre staff, grants officers) and FDR practitioners (in Brisbane metro and in regional areas) regarding Act

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\(^{26}\) It is noted that family dispute resolution services funded through the Family Relationship Services Program are required to ensure that the practitioners they employ meet certain requirements as to qualifications, skills and experience. As such, these practitioners currently do not have to demonstrate that they meet the accreditation requirements.


\(^{29}\) Regulation 82 *Family Law Regulations 1984* (Cth).
amendments, changes to FDR policy and processes, procedural issues (eg file management, data collection) and special issues (such as family violence).

Staff also have the option to participate in an annual two day conference. In addition to training, all staff participate in annual performance reviews. Peer support is also provided to FDR practitioners on an as needs basis.

**New South Wales** — provides a range of professional development opportunities to internal FDR staff including support for external courses and study through to in house and on the job training. Examples of in house training include cultural awareness, family violence awareness, client/customer service, and tools for managing aggressive clients. FDR practitioners on the other hand advised that they have access to very little training and peer review. Where they are offered training, they generally have to cover the expense to attend (eg either time or course fees).

**Victoria** — FDR practitioners and case managers advised that the commission provides a comprehensive range of professional development opportunities, both within Victoria and with other organisations such as DVIRC, men's groups and migrant resource centres. Examples of training includes child focused mediation, family violence awareness and mental health awareness.

**South Australia** — conference organisers advised that they have not undertaken any specific training in FDR or the issues related to it. FDR practitioners advised that training is provided on an informal basis and they receive an adequate level of support from the FDR manager to fulfil their duties.

**Western Australia** — provides a range of training and professional development opportunities for intake officers, FDR practitioners and lawyers (both in house and external). This includes formal, regular supervision of FDR practitioners through peer review and supervision of conferences (by an expert panel) every 12 months, assisting FDR practitioners to meet their reaccreditation requirements through the provision of three days’ training per year, and clinical training in particular issues such as child focused mediation. The commission has also trained a pool of 160-170 family lawyers in Western Australia in FDR and the Act requirements.

**Northern Territory** — provides annual training (two days for FDR practitioners and one day for lawyers) on a range of issues including issuing certificates to conferencing techniques/tools. Intake Officers can sit in on this training as well as attend the National Legal Aid Working Group.

**Tasmania** — provides mediation training opportunities. FDR practitioners are invited to attend an annual mediation conference as well as (one day) training provided to independent child lawyers. FDR practitioners in Tasmania recently completed training in child inclusive mediation.

**Australian Capital Territory** — provides limited training opportunities for FDR practitioners and FDR staff. The commission is currently exploring options for developing a training framework which matches the accreditation requirements. Seventy five per cent of FDR practitioner respondents strongly or somewhat agreed
that they are provided with opportunities to participate in training and other professional development.

Figure 12.1 shows the survey findings for FDR practitioners’ views on opportunities for training and professional development.

**Figure 12.1: The FDR service in which I operate provides opportunities for practitioners to participate in training and other professional development**

Those that either somewhat disagreed or strongly disagreed were in the Australian Capital Territory, New South Wales, Queensland and one FDR practitioner was in Western Australia (figure 12.2).
While 61 per cent of FDR practitioners strongly or somewhat agreed that an established system of peer support was in place in their jurisdiction, 39 per cent expressed disagreement. Figure 12.3 shows the number of responses in relation to peer support.

**Figure 12.2:** The FDR service in which I operate provides opportunities for practitioners to participate in training and other professional development by state

**Figure 12.3:** The FDR service in which I operate has an established system of peer support in place
Further investigation (figure 12.4) revealed that the FDR practitioners who disagreed that peer support was available were from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and Western Australia. This indicates a need to strengthen current peer support arrangements in these jurisdictions. All FDR practitioners from South Australia, Tasmania and Victoria either strongly or somewhat agreed that peer support was established in their jurisdiction.

Figure 12.4: The FDR service in which I operate has an established system of peer support in place by state

Types of training

Focus group discussions with FDR practitioners explored the different types of training required as well as the different modes of professional development that would be useful. All FDR practitioners (and intake officers) expressed the need for training in the areas of

- understanding how issues such as drug and alcohol addiction, mental health, family violence and child abuse can impact on conferencing and how to manage them
- understanding the best interests of the child and how that can be used to develop child focused conferencing.

Most FDR practitioners supported professional development through peer review, which can include

- co-conferencing (every six months) and providing each other feedback (against objective performance criteria) on each other’s performance
- observing more experienced FDR practitioners’ conferences on a regular basis
• having each FDR practitioner’s performance reviewed by a supervision panel on a regular basis

• participating in regular FDR practitioner meetings to exchange practice experience and lessons learnt.

In Western Australia, the commission provides a structured training and professional development program for its FDR practitioners, intake officers and legal practitioners. The supervision of FDR practitioners involves, in part, an annual review of conference performance by an experienced supervision panel. FDR practitioners are observed in real time by the supervision panel through a one way mirror and are provided feedback on their performance after the conference.

Other commissions use a co-mediation approach where the matter is more complex, however, this does not seem to be a regular practice.

12.3 Confidence in FDR practitioner

Generally, there is a high level of confidence in the FDR practitioners’ ability to effectively chair conferences. Lawyers noted FDR practitioners’ ability to reality test agreements, focus parties on the best interests of the child, and manage parties’ safety.

Ninety per cent of clients were very satisfied or satisfied with the way the conference chairperson explained the conference process and their role, while 80 per cent of clients were very satisfied or satisfied with the FDR practitioners’ fairness and professionalism. There was a similar distribution of responses by state and by gender.

This high level of confidence may be attributable to FDR practitioners’ level of experience in terms of time spent conferencing and number of conferences chaired.

More than half (46 of 80) of FDR practitioner survey respondents have more than five years’ experience as an FDR practitioner, while 22 of the 80 respondents have between three and five years’ experience.

As shown in Figure 12.5 below, FDR practitioners’ experience, in terms of the number of conferences they have chaired in a year, is also high (number of responses is shown). 71.25 per cent of FDR practitioners have chaired over 10 conferences in a year, and exactly 50 per cent of FDR practitioners chair more than 20 conferences per year.
12.4 Processes to monitor and improve services

Two external processes exist to monitor FDR services in commissions - monthly reporting to the Attorney-General's Department on the number of conferences held and settlement rates, and reaccreditation requirements (as discussed above). All commissions comply with these requirements.

Commissions have developed internal processes for monitoring their services including FDR. For example, New South Wales monitors utilisation of FDR on a monthly basis to inform future demand and growth of its services.

As part of their internal monitoring processes, all commissions have a formal complaints procedure where clients can complaint about legal representatives (in-house commission lawyers) and FDR practitioner performance.

Aside from these external and internal mechanisms, there is no formal process for evaluating FDR performance internally within commissions from an objective, outcomes based perspective.

Despite the lack of outcomes based monitoring and review, 92.5 per cent of FDR practitioner respondents agreed that good practice standards in FDR have been implemented and are continually monitored.

12.5 Quality improvement by each commission

The following is a brief description, including survey findings, of the measures taken for quality improvement in commissions in each state and/or territory. For full details, see Appendix D.
Queensland — Ninety one per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 75 per cent were satisfied with the FDR practitioner’s fairness and professionalism. However, 56 per cent of FDR practitioners disagreed that they are provided with training and professional development opportunities.

New South Wales — Ninety two per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 88 per cent were satisfied with the FDR practitioner’s fairness and professionalism. Only 47 per cent of FDR practitioners agreed that they are provided with professional development and training opportunities, and 53 per cent agreed that there is an established system of peer support in place.

Victoria — Ninety per cent of clients were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process, and 80 per cent were satisfied with the FDR practitioner’s fairness and professionalism. All FDR practitioners surveyed agreed that there is an established system of peer support in place and that they have access to training and professional development opportunities.

South Australia - Eighty seven and a half per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 83 per cent were satisfied with the FDR practitioner’s fairness and professionalism. All FDR practitioners agreed that there is an established system of peer support in place and that they have access to training and professional development opportunities.

Western Australia - Ninety four per cent of clients were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process, and 76 per cent were very satisfied or satisfied with the FDR practitioner’s fairness and professionalism. Eighty seven per cent of FDR practitioners agreed that they have access to training and professional development opportunities, and 93 per cent agreed that there is an established system of peer support in place.

Northern Territory — Eighty nine per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 67 per cent were satisfied with the FDR practitioner’s fairness and professionalism. Seventy five per cent of FDR practitioners agreed that they have access to training and professional development opportunities, and all agreed that there is an established system of peer support in place.

Tasmania - Ninety per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 88 per cent were satisfied with the FDR practitioner’s fairness and professionalism. All FDR practitioners agreed that they have access to appropriate training, professional development and peer support through the FDR program.

Australian Capital Territory – Eighty eight per cent of clients were satisfied with the way the FDR practitioner explained their role and the conference process, and 87.5 per cent were satisfied with the FDR practitioner’s fairness and professionalism. All FDR practitioners agreed that they have access to appropriate training and development
opportunities, and 78 per cent agreed that there is a strong system of peer support in place.

12.6 Summary

Confidence in FDR practitioners is high and the experience levels of FDR practitioners, in terms of the length of time as a chair and number of conferences chaired, supports the high level of confidence.

Commissions comply with the accreditation requirements, but there is limited additional training (in special interest areas such as drug and alcohol addiction) or professional development available to FDR practitioners and intake officers. Commissions also comply with their external reporting requirements but have few internal mechanisms, including outcomes based performance measurement, to inform the continuous improvement of their FDR services.

Both training and outcomes based performance measurement are critical to strengthening and improving FDR services in commissions.

Opportunities for improvement

Develop nationally consistent, good practice standards for the delivery of FDR services in commissions. Any standards should be linked to an outcomes based performance measurement process.

Provide ongoing training and professional development through co-conferencing, peer support and formal training.

Develop an outcomes based performance measurement framework which sets objective measures against which commissions’ FDR performance is assessed.
13 Cost effectiveness of FDR services in commissions

This chapter presents the findings of a quantitative cost benefit analysis (CBA)\(^{30}\) of the legal aid FDR program overall and for each commission.

13.1 Overview

The CBA considers the costs and benefits of the FDR program in commissions from the vantage point of the Australian Government between 2004-05 and 2007-08, both at the national program level and by jurisdiction.

The costs are represented by the Australian Government’s FDR program costs (FDR grants and screening and administration costs). The benefits are represented by the value of court event hours avoided as a result of successful\(^{31}\) FDR interventions. It is assumed that both fully settled conferences and partially settled conferences would result in avoided court event hours.

The analysis implicitly compares the costs and benefits of FDR to a ‘do nothing’ or ‘without FDR’ scenario. This is necessary because the costs and benefits of FDR are incremental, or additional, to what would have happened if FDR was not available. A worked through example of the model is provided in Appendix E and is based on the following assumptions.

Details of the assumptions are outlined below:

- **fully settled at conference** — the model applies the full benefit of avoided court costs to all of the fully resolved matters settled at conference and

- **partially settled at conference** — the model applies the full benefit of avoided court costs to 75 per cent of partially settled matters recognising the majority of these matters typically do not proceed to formal litigation. The estimate is conservative and consistent with anecdotal evidence that parties involved in partially resolved matters either are not eligible for further grants of legal aid or they choose not to proceed to formal litigation. Of the remaining 25 per cent that do proceed to litigation, a further benefit in terms of avoided court costs is attributed to half of this group due to a narrowing of the issues through FDR. This is estimated at one third of the average cost per matter. A sensitivity analysis is provided in this chapter to

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\(^{30}\) This analysis is conducted from the vantage point of the Australian government and so may technically be considered a financial evaluation which assesses the impact of a program on an organisation’s own financial performance rather than society as a whole. The analysis is termed a CBA here in order to avoid confusion with other forms of financial analysis such as accounting and cash flow analysis.

\(^{31}\) For the purposes of this analysis, ‘successful’ interventions are defined as outcomes reported as ‘fully settled at conference’ and ‘partially settled at conference’. Although it is not disputed that these are successful outcomes, KPMG note that this is a narrower definition of what might broadly be considered a successful FDR outcome by clients and practitioners.
test the robustness of results under an optimistic scenario where all matters avoid litigation and a pessimistic scenario where all matters proceed to litigation.

The summary output of the FDR CBA is presented in table 13.1. The CBA output is expressed in terms of the costs and benefits to the Australian Government over the period 2004-05 to 2007-08, the net present value (NPV)\(^{32}\) and benefit cost ratio (BCR)\(^{33}\).

Table 13.1 — CBA output for FDR — 2004-05 – 2007-08 (in 2007-08 dollars)\(^{34}\)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Benefits</th>
<th>Costs</th>
<th>Net present value</th>
<th>Benefit cost ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>$42,262,000</td>
<td>$26,118,000</td>
<td>$16,144,000</td>
<td>1.62</td>
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<tr>
<td>VIC</td>
<td>$9,507,000</td>
<td>$11,971,000</td>
<td>-$2,463,800</td>
<td>0.79</td>
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<tr>
<td>Qld</td>
<td>$39,558,000</td>
<td>$26,272,000</td>
<td>$13,286,000</td>
<td>1.51</td>
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<tr>
<td>WA</td>
<td>$9,036,000</td>
<td>$6,830,000</td>
<td>$2,206,000</td>
<td>1.32</td>
</tr>
<tr>
<td>SA</td>
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<td>$2,660,000</td>
<td>$1,968,000</td>
<td>1.74</td>
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<tr>
<td>Tas</td>
<td>$7,240,000</td>
<td>$1,867,000</td>
<td>$5,373,000</td>
<td>3.88</td>
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<tr>
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<td>$1,394,000</td>
<td>$964,000</td>
<td>$430,000</td>
<td>1.45</td>
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<td>NT</td>
<td>$1,051,000</td>
<td>$1,053,000</td>
<td>-$2,000</td>
<td>1.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$114,676,000</strong></td>
<td><strong>$77,736,000</strong></td>
<td><strong>$36,940,000</strong></td>
<td><strong>1.48</strong></td>
</tr>
</tbody>
</table>

The findings indicate that, from the vantage point of the Australian Government, the benefits of the national FDR program over the period 2004-05 to 2007-08 outweighed the costs as represented by a positive NPV of $37 million. FDR delivered a BCR of 1.48, or a return of $1.48 (BCR) for every $1 invested in FDR.

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\(^{32}\) The NPV is represented by sum of the benefits of the FDR program less the sum of its costs (in today’s dollars). In general terms, a program is desirable if this value is positive, i.e. the sum of its present day benefits exceeds the sum of its present day costs.

\(^{33}\) The BCR states the value of the benefit delivered by FDR for every $1 invested in FDR by the Australian government. For example, a value that exceeds $1 indicates that the benefits in avoided court time outweigh the costs of FDR.

\(^{34}\) Unless otherwise stated, all data is sourced from the Attorney-General’s Department.
13.2 Findings for each commission

Discussed below are the findings of the CBA for each state and territory commission. With the exception of Victoria, all state and territories exhibit a positive NPV (that is, the sum of its present day benefits outweighs its present day costs). However, there are no defining features of the individual FDR services that can be attributed to the relative size of the NPV. For example, FDR services that operate lean models with little screening or training costs do not necessarily exhibit better economic outcomes than the larger, more resource intensive models.

New South Wales

The investment of over $26 million into the FDR program is estimated to generate over $42 million of savings in court events hours. The return on investment therefore equals $1.62 for every dollar invested.

Table 13.2 presents the CBA output summary table for New South Wales in each of the four years.

Table 13.2  NSW CBA output for FDR — 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$11,699,000</td>
<td>$8,743,000</td>
<td>$10,381,000</td>
<td>$11,439,000</td>
<td>$42,262,000</td>
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<td>Costs</td>
<td>$6,059,000</td>
<td>$6,095,000</td>
<td>$6,725,000</td>
<td>$7,239,000</td>
<td>$26,118,000</td>
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<tr>
<td>NPV</td>
<td>$5,640,000</td>
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<td>$3,656,000</td>
<td>$4,200,000</td>
<td>$16,144,000</td>
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<tr>
<td>BCR</td>
<td>1.93</td>
<td>1.43</td>
<td>1.54</td>
<td>1.58</td>
<td>1.62</td>
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</tbody>
</table>

The analysis of findings indicates that the New South Wales commission is becoming more cost efficient in the delivery of its FDR program from 2005-06. Over the total period

- NPV was $16.1 million
- return on a $1 investment in FDR (BCR) ranged between $1.43 in 2005-06 to $1.93 in 2004-05.

New South Wales has reduced the number of matters fully and partially resolved from 2004-05 to 2005-06 and hence the potential benefit measured by the cost saving of matters to the Australian Government during litigation has dropped. This can be attributed towards a drop in conferences from a peak in 2004-05. Since the costs have remained relatively stable, the BCR has also dropped from a high of $1.92 in 2004-05. Despite this, the BCR remains relatively high in comparison across the other states and
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territories. While this may show a sign of relative efficiency, the commission absorbs a number of costs related to training and a lengthy screening process. The inclusion of these costs would reduce the BCR.

Victoria

The investment of $12 million into the FDR program is estimated to generate $9.5 million of savings in court events hours. The return on investment therefore equals $0.79 for every dollar invested.

Table 13.3 presents the CBA output table for Victoria in each of the four years.

Table 13.3  Victorian CBA output for FDR — 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$684,000</td>
<td>$1,661,000</td>
<td>$2,917,000</td>
<td>$4,246,000</td>
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<td>Costs</td>
<td>$1,876,000</td>
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<td>$3,441,000</td>
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<tr>
<td>NPV</td>
<td>-$1,190,000</td>
<td>-$662,000</td>
<td>-$524,000</td>
<td>-$85,000</td>
<td>-$2,464,000</td>
<td></td>
</tr>
<tr>
<td>BCR</td>
<td>0.36</td>
<td>0.71</td>
<td>0.85</td>
<td>0.98</td>
<td>0.79</td>
<td></td>
</tr>
</tbody>
</table>

The analysis of findings indicate that the Victorian commission has become more cost efficient in the delivery of its FDR program. Over the period, the NPV for the Victorian FDR program has recovered by $1.1 million. The return on a $1 investment in FDR (BCR) ranged between $0.36 in 2004-05 to almost $1 in 2007-08.

The comparatively low benefit to cost ratio in Victoria may be attributable to certain characteristics of the Victorian FDR service delivery model. Comparatively higher costs may be attributable to intensive pre conference activity (up to six hours of contact with parties) involving up to eight case managers and a team leader in the assessment of parents’ suitability for FDR. These can involve professional level social workers, psychologists, and social scientists.

The Victorian experience may also be attributable to under representation of fully settled matters at conference — the model attributes a higher benefit to fully settled, than for partially settled, matters. Recording differences for fully and partially settled matters in Victoria may result in some under representation of the benefits. For example, a matter in which the parents reach agreement, but would like an opportunity to test the agreement with a view to returning for a further conference, is recorded as a partially resolved matter even if the parents do not return to conferencing at a later date. Other jurisdictions may record this as a fully settled matter.

Queensland

The investment of $26 million into the FDR program is estimated to generate just under $40 million of savings in court events hours. The return on investment therefore equals $1.51 for every dollar invested.
Table 13.4 presents the CBA output summary table for Queensland in each of the four years under consideration.

**Table 13.4 Queensland CBA output for FDR – 2004-05 to 2007-08 (in 2007-08 dollars)**

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$9,015,000</td>
<td>$9,024,000</td>
<td>$10,766,000</td>
<td>$10,754,000</td>
<td>$39,558,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$8,035,000</td>
<td>$5,087,000</td>
<td>$6,210,000</td>
<td>$6,940,000</td>
<td>$26,272,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$979,000</td>
<td>$3,937,000</td>
<td>$4,555,000</td>
<td>$3,814,000</td>
<td>$13,286,000</td>
</tr>
<tr>
<td>BCR</td>
<td>1.12</td>
<td>1.77</td>
<td>1.73</td>
<td>1.55</td>
<td>1.51</td>
</tr>
</tbody>
</table>

The analysis of findings indicates that the Queensland commission has become more cost efficient in the delivery of its FDR program. Until 2006-07, the NPV for the Queensland FDR program increased by $3.6 million dropping back in 2007-08. The return on a $1 investment in FDR (BCR) ranged between $1.12 in 2004-05 and $1.73 in 2006-07.

Queensland has experienced improving efficiency in the FDR process. This is a result of similar outcomes being achieved across the three years with a high proportion of fully and partially settled matters combined with reduced costs since 2004-05. Despite the additional costs of the commission’s conference resolution support intervention (which is provided to eight per cent of all fully settled and partially settled matters), the proportion of partially settled matters subsequently moving on to litigation would be relatively low and would potentially increase the benefits attributed to this group.

**Western Australia**

The investment of just under $7 million into the FDR program is estimated to generate over $9 million of savings in court events hours. The return on investment therefore equals $1.32 for every dollar invested.

Table 13.5 presents the CBA output summary table for Western Australia in each of the four years under consideration.

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35 The costs savings presented for 2004-05 were derived using data sourced directly from Legal Aid Queensland. Upon clarification of a data anomaly in fully resolved matters with the commission, the actual number was higher (1,426) than the reported number in LARI (674).
Findings on the evaluation dimensions
Chapter 13 — Cost effectiveness of FDR

Table 13.5  Western Australia CBA output for FDR — 2004-05 to 2007-08 (2007-08 dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$1,865,000</td>
<td>$2,092,000</td>
<td>$3,422,000</td>
<td>$1,658,000</td>
<td>$9,036,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$1,783,000</td>
<td>$1,868,000</td>
<td>$1,749,000</td>
<td>$1,431,000</td>
<td>$6,830,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$82,000</td>
<td>$224,000</td>
<td>$1,673,000</td>
<td>$227,000</td>
<td>$2,206,000</td>
</tr>
<tr>
<td>BCR</td>
<td>1.05</td>
<td>1.12</td>
<td>1.96</td>
<td>1.16</td>
<td>1.32</td>
</tr>
</tbody>
</table>

The analysis of findings indicate that, excluding 2007-08, the Western Australian commission has become more cost efficient in the delivery of its FDR program. Over the first three years, the net benefit (NPV) for the Western Australia FDR program increased by $1.6 million. This has dropped back in 2007-08 due to lower levels of activity. The return on a $1 investment in FDR (BCR) ranged between $1.05 in 2004-05 and $1.96 in 2006-07.

The primary cost drivers in Western Australia include a strong culture of training for both representatives and practitioners. In addition, the purpose built facilities, co-chairing of conferences and the use of child psychologists all represent significant costs to their operation. However, while these represent relatively high costs for the service, these costs are stable over the course of the three years. An increasing NPV can be attributed towards a higher output per dollar spent in terms of fully resolved and partially resolved matters. The number of matters referred for litigation is proportionally smaller than any other state or territory.

South Australia

The investment of just under $3 million into the FDR program is estimated to generate just under $5 million of savings in court events hours. The return on investment therefore equals $1.74 for every dollar invested.

Table 13.6 presents the CBA output summary table for South Australia in each of the four years under consideration.

Table 13.6  South Australia CBA output for FDR — 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$545,000</td>
<td>$1,174,000</td>
<td>$1,181,000</td>
<td>$1,728,000</td>
<td>$4,628,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$408,000</td>
<td>$635,000</td>
<td>$596,000</td>
<td>$1,022,000</td>
<td>$2,660,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$138,000</td>
<td>$539,000</td>
<td>$585,000</td>
<td>$706,000</td>
<td>$1,968,000</td>
</tr>
</tbody>
</table>
The analysis of findings indicate that the South Australian commission has become more cost efficient in the delivery of its FDR program, although significant investment in 2007-08 has led to a drop in the BCR. Over the period between 2004-05 and 2006-07, the net benefit (NPV) for the South Australia FDR service has increased by $0.4 million and the return on a $1 investment in FDR (BCR) ranged between $1.34 in 2004-05 and $1.98 in 2006-07.

Since 2004-05, growth in the number of matters recording an outcome of partially resolved has increased and is the driver for greater benefits in terms of saved costs for litigation. While this output in terms of partially resolved matters has increased, FDR costs have remained stable, reflecting a relatively lean model of delivery and explaining the BCR improvement over the period.

**Tasmania**

The investment of just under $2 million into the FDR program is estimated to generate over $7 million of savings in court events hours. The return on investment therefore equals $3.88 for every dollar invested.

Table 13.7 presents the CBA output summary table for Tasmania in each of the four years under consideration.

**Table 13.7 Tasmania CBA output for FDR — 2004-05 to 2007-08 (in 2007-08 dollars)**

<table>
<thead>
<tr>
<th></th>
<th>2004-05</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$1,371,000</td>
<td>$1,888,000</td>
<td>$1,728,000</td>
<td>$2,253,000</td>
<td>$7,240,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$457,000</td>
<td>$530,000</td>
<td>$430,000</td>
<td>$450,000</td>
<td>$1,867,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$913,000</td>
<td>$1,358,000</td>
<td>$1,298,000</td>
<td>$1,803,000</td>
<td>$5,373,000</td>
</tr>
<tr>
<td>BCR</td>
<td>3.00</td>
<td>3.56</td>
<td>4.02</td>
<td>5.01</td>
<td>3.88</td>
</tr>
</tbody>
</table>

The analysis of findings indicate that the Tasmanian commission has become more cost efficient in the delivery of its FDR program. Over the period, the net benefit (NPV) for the Tasmania FDR program has increased by $0.9 million and the return on a $1 investment in FDR (BCR) ranged between $3.00 in 2004-05 and $5.01 in 2007-08.

The Tasmanian commission operates a lean FDR model with all its expenditure on salaries and grants, with little expenditure on fixed assets such as accommodation. In addition, the screening process is largely performed by the legal representative and so represents a lower cost per matter. Minimal costs in the screening process, and
positive FDR outcomes in terms of fully and partially resolved matters, combine to deliver a high BCR of $3.88 for the period.

**Australian Capital Territory**

The investment of just under $1 million into the FDR program is estimated to generate $1.4 million of savings in court events hours. The return on investment therefore equals $1.45 for every dollar invested.

Table 13.8 presents the CBA output summary table for the Australian Capital Territory in each of the four years under consideration.

**Table 13.8: ACT CBA output for FDR – 2004-05 to 2007-08 (in 2007-08 dollars)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$301,000</td>
<td>$277,000</td>
<td>$328,000</td>
<td>$488,000</td>
<td>$1,394,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$236,000</td>
<td>$233,000</td>
<td>$221,000</td>
<td>$273,000</td>
<td>$964,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$64,000</td>
<td>$44,000</td>
<td>$106,000</td>
<td>$215,000</td>
<td>$430,000</td>
</tr>
<tr>
<td>BCR</td>
<td>1.27</td>
<td>1.19</td>
<td>1.48</td>
<td>1.79</td>
<td>1.45</td>
</tr>
</tbody>
</table>

The analysis of findings indicate that the Australian Capital Territory has become more cost efficient in the delivery of its FDR program. Over the period, the net benefit (NPV) for the Australian Capital Territory FDR program has increased by $151,000 and the return on a $1 investment in FDR (BCR) ranged between $1.19 in 2004-05 and $1.79 in 2007-08. Comparatively fewer costs are incurred on screening and training relative to other jurisdictions which improves the performance of the program from the Australian Government's perspective.

**Northern Territory**

The investment of $1 million into the FDR program is estimated to generate $1 million of savings in court events hours. The return on investment therefore equals a dollar for every dollar invested.

Table 13.9 presents the CBA output summary table for the Northern Territory in each of the four years under consideration.

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36 Data obtained from the Australian Government indicated an anomaly where costs amounted to $593,000 for the year 2005-06. On advice from the commission, the spike in costs over the three years is not an accurate representation of the FDR service. For the purposes of the model, data was obtained directly from the Audited Annual Revenue and Expenditure Statement and is more consistent with the preceding and following years.
### Table 13.9 Northern Territory CBA output for FDR – 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>$74,000</td>
<td>$89,000</td>
<td>$425,000</td>
<td>$462,000</td>
<td>$1,051,000</td>
</tr>
<tr>
<td>Costs</td>
<td>$37,000</td>
<td>$81,000</td>
<td>$376,000</td>
<td>$559,000</td>
<td>$1,053,000</td>
</tr>
<tr>
<td>NPV</td>
<td>$37,000</td>
<td>$8,000</td>
<td>$49,000</td>
<td>-$97,000</td>
<td>-$2,000</td>
</tr>
<tr>
<td>BCR</td>
<td>2.01</td>
<td>1.10</td>
<td>1.13</td>
<td>0.83</td>
<td>1.00</td>
</tr>
</tbody>
</table>

The analysis of findings indicate that it is difficult to determine a trend in the Northern Territory. A drop in efficiency can be established between 2004-05 – 2005-06 although, given the sudden change in activity in 2006-07, the years are not broadly comparable. A return on a $1 investment in FDR (BCR) ranged between $2.01 in 2004-05 and $0.83 in 2007-08.

During 2006-07, the commission invested in the construction of new facilities specifically designed to conduct FDR conferences. The cost of the renovations was apportioned to the FDR program reflecting the large jump in the costs associated with FDR. However, the increase in costs is mirrored by increased activity resulting in a positive NPV.

### 13.3 Sensitivity analysis

Discussed above are the findings of the model which attribute benefits in avoided court time to both fully resolved and partially resolved matters. All fully resolved matters are expected to avoid litigation costs and therefore represent a benefit to the Australian Government. On average, 75 per cent of partially resolved matters are considered to avoid litigation. The remaining 25 per cent go on to litigate where half experience a saving attributed to the preceding FDR conference.

Although anecdotal evidence suggests the above scenario is considered a reasonable representation of what occurs in practice, there is little evidence to indicate the number of partially resolved matters that subsequently proceed to court and the amount of court time they save as a result of having been through the FDR process.

Anecdotal evidence gathered by Victoria, and based on interviews with six FDR practitioners, suggests that as many as 90 per cent of partially resolved matters do not subsequently proceed to formal litigation.37 This suggests that the benefits in avoided court time attributed to partially resolved matters in the modelling may be underestimated. However, in the absence of supporting data in Victoria and other

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37 Written advice to KPMG from the Victorian legal aid commission dated 11 June 2008.
jurisdictions, it is considered prudent to adopt a more conservative estimate for modelling purposes.

For this reason, a sensitivity analysis of the model has been undertaken. The sensitivity analysis varies this key assumption for

- an ‘optimistic’ scenario which has the effect of increasing the benefits of the program (100 per cent of partially resolved matters avoiding litigation)
- a ‘pessimistic’ scenario which has the effect of reducing the overall benefit of the program (0 per cent of partially resolved matters avoiding litigation).

Under both scenarios, the model output generated for the program remains positive. This suggests that there would be little effect on the model output even if

- the main analysis had overstated the number of partially resolved matters that do not proceed to litigation as a result of FDR (thereby attracting the maximum benefit in avoided court time), or
- the amount of court time was saved as a result of issues narrowing for partially resolved matters that do proceed to litigation.

In reference to the modelled benefits, an optimistic scenario (table 13.10) assumes 100 per cent of partially resolved matters avoid litigation.

Table 13.10 Optimistic scenario CBA output for FDR – 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Benefits</th>
<th>Costs</th>
<th>Net present value</th>
<th>Benefit cost ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>$44,521,000</td>
<td>$26,118,000</td>
<td>$18,403,000</td>
<td>1.70</td>
</tr>
<tr>
<td>VIC</td>
<td>$10,696,000</td>
<td>$11,971,000</td>
<td>-$1,280,000</td>
<td>0.89</td>
</tr>
<tr>
<td>Qld</td>
<td>$41,641,000</td>
<td>$26,272,000</td>
<td>$15,368,000</td>
<td>1.58</td>
</tr>
<tr>
<td>WA</td>
<td>$9,442,000</td>
<td>$6,830,000</td>
<td>$2,612,000</td>
<td>1.38</td>
</tr>
<tr>
<td>SA</td>
<td>$4,972,000</td>
<td>$2,660,000</td>
<td>$2,312,000</td>
<td>1.87</td>
</tr>
<tr>
<td>Tas</td>
<td>$8,071,000</td>
<td>$1,867,000</td>
<td>$6,204,000</td>
<td>4.32</td>
</tr>
<tr>
<td>ACT</td>
<td>$1,440,000</td>
<td>$1,867,000</td>
<td>$477,000</td>
<td>1.49</td>
</tr>
<tr>
<td>NT</td>
<td>$1,109,000</td>
<td>$1,053,000</td>
<td>$56,000</td>
<td>1.05</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$121,892,000</strong></td>
<td><strong>$77,736,000</strong></td>
<td><strong>$44,157,000</strong></td>
<td><strong>1.57</strong></td>
</tr>
</tbody>
</table>

Findings from the optimistic scenario indicate that, over the period 2004-05 to 2007-08, the NPV equals 44.2 million or 7.2 million more than the realistic scenario. FDR would deliver a BCR of 1.57, or a return of $1.57 (BCR), for every $1 invested in FDR. Similar
patterns across the states and territories emerge in comparison to the realistic scenario with the Victorian FDR service returning a BCR of 0.89 (compared to 0.79).

The pessimistic scenario (table 13.11) assumes 0 per cent avoid litigation with all matters going on to litigate.

Table 13.11 Pessimistic scenario CBA output for FDR – 2004-05 to 2007-08 (in 2007-08 dollars)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Benefits</th>
<th>Costs</th>
<th>Net present value</th>
<th>Benefit cost ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>$35,484,000</td>
<td>$26,118,000</td>
<td>$9,366,000</td>
<td>1.36</td>
</tr>
<tr>
<td>VIC</td>
<td>$5,941,000</td>
<td>$11,971,000</td>
<td>-$6,030,000</td>
<td>0.50</td>
</tr>
<tr>
<td>Qld</td>
<td>$33,310,000</td>
<td>$26,272,000</td>
<td>$7,037,000</td>
<td>1.27</td>
</tr>
<tr>
<td>WA</td>
<td>$7,820,000</td>
<td>$6,830,000</td>
<td>$989,200</td>
<td>1.14</td>
</tr>
<tr>
<td>SA</td>
<td>$3,597,000</td>
<td>$2,660,000</td>
<td>$936,300</td>
<td>1.35</td>
</tr>
<tr>
<td>Tas</td>
<td>$4,747,000</td>
<td>$1,867,000</td>
<td>$2,880,000</td>
<td>2.54</td>
</tr>
<tr>
<td>ACT</td>
<td>$1,253,000</td>
<td>$1,867,000</td>
<td>$290,000</td>
<td>1.30</td>
</tr>
<tr>
<td>NT</td>
<td>$874,200</td>
<td>$1,053,000</td>
<td>-$180,000</td>
<td>0.83</td>
</tr>
<tr>
<td>Total</td>
<td>$93,025,500</td>
<td>$77,736,000</td>
<td>$15,290,000</td>
<td>1.20</td>
</tr>
</tbody>
</table>

Under the pessimistic scenario, over the period 2004-05 to 2007-08, the NPV equals 15.3 million, 21.7 million less than the realistic scenario. Across all states and territories combined, the BCR remains positive at $1.20 for every $1 invested in FDR. States and territories with proportionally high numbers of matters partially resolved, such as Tasmania and Victoria, exhibit lower benefits reflecting a drop in their respective BCRs.
Part III – Overall findings and recommendations
14 Effectiveness of FDR for each state and territory commission

14.1 Queensland

The Queensland commission provides a highly cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes Queensland’s FDR model effective in avoiding the higher cost of litigation.

Queensland’s FDR model is also effective in providing lawyer assisted mediation which combines clinical and legal approaches. This multidisciplinary approach enables FDR practitioners to use a range of clinical and legal strategies to manage complex legal and support needs. Queensland’s model is also effective in supporting parties post-conference to implement their agreements and identifying family violence and child abuse at screening.

Queensland is also exploring culturally competent models of FDR for Indigenous parties.

Opportunities for improving Queensland’s FDR services exist in the provision of training and professional development of FDR staff/FDR practitioners, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.

14.2 New South Wales

The New South Wales commission provides a highly cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes New South Wales’ FDR model effective in avoiding the higher cost of litigation.

The New South Wales FDR model is also effective in providing lawyer assisted mediation which combines clinical and legal approaches. This multidisciplinary approach enables FDR practitioners to use a range of clinical and legal strategies to manage complex legal and support needs. The New South Wales model is also effective in identifying family violence and child abuse at screening.

The high level of experience of FDR practitioners, both in terms of number of conferences chaired and years experience as an FDR practitioner, is also a great asset to the New South Wales FDR program.

New South Wales is also exploring culturally competent models of FDR for Indigenous parties as well as strategies to increase access to FDR by Indigenous people through the employment of Indigenous FDR practitioners.

Opportunities for improving the New South Wales FDR services exist in the provision of training and professional development of FDR staff/FDR practitioners, formalising
guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.

14.3 Victoria

The Victorian commission provides a marginally cost effective model of FDR as evidenced by the low volume of matters conferenced and shows a lower return on investment. This reduces the effectiveness of its FDR model in avoiding the higher cost of litigation. Cost drivers for the Victorian model seem to be the time and cost intensive process of intake, screening and preparation combined with the large number of matters that are screened out of FDR.\textsuperscript{38}

Victoria’s FDR model provides lawyer assisted mediation which combines clinical and legal approaches. This multidisciplinary approach enables FDR practitioners to use a range of clinical and legal strategies to manage complex legal and support needs. As a result of the human services backgrounds of its case managers and the structure of its intake process, Victoria’s model is also effective in identifying and managing family violence, child protection and other support needs.

Victoria also has formal guidelines regarding child focused mediation and a formal program of professional development.

Opportunities for improving Victoria’s FDR services exist in increasing its cost effectiveness and monitoring and improving its FDR services.

14.4 South Australia

The South Australian commission provides a cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes South Australia’s FDR model effective in avoiding the higher cost of litigation.

South Australia’s FDR model is also effective in providing lawyer assisted conciliation which combines a clinical perspective through the use of child psychologist assessment. South Australia is also effective at building working arrangements with other FDR and support providers.

Opportunities for improving South Australia’s FDR services exist in the provision of training and professional development of FDR staff/FDR practitioners, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.

\textsuperscript{38} Data on the number of matters screened out either before or during the screening and preparation phase was not able to be provided by the commission. Anecdotal information suggests the number is comparably higher than in other jurisdictions in part due to matters being resolved prior to the actual conference.
14.5 Western Australia

The Western Australian commission provides a cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes Western Australia’s FDR model effective in avoiding the higher cost of litigation.

Western Australia’s FDR model is also effective in providing lawyer assisted mediation which combines clinical and legal approaches. This multidisciplinary approach enables FDR practitioners to use a range of clinical and legal strategies to manage complex legal and support needs.

Western Australia is also effective in building relationships with its local family law networks as well as the training and professional development of their FDR staff, FDR practitioners and family lawyers.

Opportunities for improving Western Australia’s FDR services exist in developing culturally competent models of FDR, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.

14.6 Northern Territory

It is difficult to determine the Northern Territory commission’s cost effectiveness. Northern Territory’s FDR model is, however, effective in providing lawyer assisted mediation.

Opportunities for improving the Northern Territory’s FDR services exist in developing culturally competent models of FDR, the provision of training and professional development of FDR staff/FDR practitioners, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.

14.7 Tasmania

The Tasmanian commission provides a highly cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes Tasmania’s FDR model effective in avoiding the higher cost of litigation.

Tasmania’s FDR model is also effective in providing lawyer assisted mediation which effectively engages lawyers in the screening and assessment process. The commission is also expanding its FDR services to include child inclusive mediation.

Opportunities for improving Tasmania’s FDR services exist in building on the screening process to include an assessment function for the FDR manager, the provision of training and professional development of FDR staff/FDR practitioners, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.
14.8 Australian Capital Territory

The Australian Capital Territory commission provides a cost effective model of FDR as evidenced by the volume of matters it conferences and shows a high degree of return on investment. This makes the Australian Capital Territory’s FDR model effective in avoiding the higher cost of litigation.

The Australian Capital Territory’s FDR model is also effective in providing lawyer assisted conciliation that effectively conferences parenting and property disputes. The Australian Capital Territory model is also effective in building relationships amongst its local family law networks.

Opportunities for improving the Australian Capital Territory’s FDR services exist in the provision of training and professional development of FDR staff/FDR practitioners, formalising guidance regarding child focused mediation and the best interests of the child, and monitoring and improving its FDR services.
15 Overall findings on effectiveness of FDR in commissions

The evaluation has found that FDR is effective in reducing cost and time to individuals and government by providing an appropriate alternative to litigation. FDR is also effective in achieving other outcomes such as narrowing of issues in dispute, participatory negotiated agreement making for disadvantaged individuals, and ensuring agreements are child focused.

This chapter outlines the areas in which FDR in commissions has been found to be particularly effective, and describes the characteristics of effective FDR services.

15.1 Areas of particular effectiveness

The following outlines the areas in which the evaluation has found FDR services in commissions to be most effective.

Role in the family law reforms

Commissions’ FDR services play an important role in the family law reforms as they provide a lawyer assisted form of alternative dispute resolution which sits between Family Relationship Centre provided mediation and litigation and court. FDR is also useful at the various stages of litigation to stop the escalation of matters through the court system.

Low cost, less adversarial option for economically disadvantaged people

FDR in commissions provides economically disadvantaged people access to a timely and low to no cost option for resolving family law disputes.

Referrals to other services

Commissions’ screening and intake processes provide the opportunity to assess the suitability of the matter for the commissions’ FDR services or other more appropriate services such as Family Relationship Centre child inclusive practice (where this may be offered and considered appropriate), FDR through an external provider, and/or external support services.

Screening and intake

The commissions’ screening and intake processes have increased in their sophistication since the 2000 evaluation. Commission screening and intake processes now collect information to identify family violence, power imbalances and child protection concerns. This information proves invaluable in the determination of suitability for conferencing and for the chairing of conferences.
Skill and experience of FDR practitioners

FDR practitioners play an important role in assisting parties to reach an agreement through conferencing. The majority of FDR practitioners are highly experienced in terms of their length of time as a mediator/conciliator and the number of conferences they have chaired. Their qualifications are also important in being able to appropriately manage conferences. All FDR practitioners have various tools and strategies for managing a range of issues such as power imbalances, supporting difficult people and lawyers, and maintaining the parties’ focus on the child.

Compliance with legal aid guidelines

While commissions differ in their FDR models and procedures, all are child focused and comply with the legal aid requirements for reporting, accreditation and acceptance of matters for FDR.

Cost benefit

At the national level, and in the majority of jurisdictions, FDR is cheaper than litigation. The most cost efficient FDR services in commissions (which also have higher rates of full settlement) are

- those that conference a large volume of matters (i.e., they screen in 80-90 per cent of matters where appropriate)
- manage their screening costs by limiting the time taken to screen and have a streamlined process for collecting and assessing the information required to determine the suitability for conference
- budget on average three hours per conference and provide lawyers with one hour preparation time with their client.

15.2 Characteristics of effective FDR services in commissions

The evaluation has identified a number of characteristics which make FDR services in commissions more effective. The characteristics listed below are those which are evident within some, but not all, FDR services in commissions operating throughout Australia.

Experienced intake officers

Intake officers in effective FDR services in commissions have a high level of knowledge and experience in identifying, assessing and managing risk related to family violence, child protection and other support needs.

Interviews

Interviewing all parties is part of the screening and intake process to collect the required information and confirm that information with lawyers is an effective process.
Summary of issues

Providing a summary of the issues in dispute and proposed outcomes to all parties prior to the conference (with both parties consent) can serve to narrow and focus the issues in dispute, thereby reducing the time required for conferencing.

The right match

Appropriate matching of parties to FDR practitioners is beneficial. This includes matching on the basis of gender, ethnicity, knowledge, experience and discipline.

Legal representation of all parties

Lawyers play an important role in ‘circuit breaking’ irrational or uncompromising positions which can then lead to an agreement.

Knowledge of FDR

An awareness and understanding of FDR, the family law amendments and impacting issues, such as family violence by FDR practitioners and lawyers, is highly advantageous.

Multidisciplinary approach

Effective services often have a multidisciplinary approach to FDR where the contribution of experienced family lawyers and social scientists are valued equally. FDR rarely deals with purely legal or purely relationship issues; rather, family law is a combination of these, therefore FDR must acknowledge this and be chaired by professionals who can manage both issues appropriately and effectively.

Professional development

Where FDR practitioners, intake officers and FDR managers engage in professional development by peer review and participate in professional networking in their local family law networks, effectiveness is greatly improved.
16 Recommendations for continuous improvement of FDR services in commissions

While FDR services in commissions are generally effective (as noted in the previous chapters), opportunities for improvement exist in some areas. These are discussed below in the form of recommendations for continuous improvement.

They are arranged according to the area of proposed improvement. Some of these areas closely match some of the ‘evaluation dimensions’ outlined in chapter 1.

16.1 Screening and intake

Two of the recommendations are in regard to screening and intake, which is one of the dimensions examined as part of this evaluation.

Recommendation 1 – Develop and implement a national risk assessment and management approach to screening and intake for FDR services in commissions

How the information which is collected through screening and intake is used to inform the suitability of matters for conferencing is of critical importance. Screening and intake is currently lacking a risk assessment and management process which weighs all the information to determine an appropriate response based on the circumstances. Screening and intake should focus on

- reducing the likelihood of harm to the parties as a result of conferencing
- increasing the prospect of resolution of the dispute
- reducing the likelihood of harm to any children involved in the dispute.

To determine a matter’s suitability for conference and to manage the above, a risk assessment and management approach should capture

- the legal issues in dispute
- how to identify risk factors such as family violence, child protection and other support needs such as drug and alcohol addiction and mental health concerns and their potential impacts on conferencing
- the presence of risk mitigation strategies such as support people, support services and the availability of appropriately qualified FDR practitioners, the representation of one or all parties, and experienced FDR practitioners to chair the conference.

In identifying the above risk factors, issues such as family violence in particular should be defined in their broadest form (ie physical, psychological, emotional and sexual).

A risk assessment and management framework should then provide intake officers with the decision making tools to determine the suitability of a matter for conference. The framework should also provide practice guidance to intake officers and FDR
practitioners for the appropriate management of risk factors such as through referral to support services or mandatory reporting to child protection authorities.

**Recommendation 2 – Improve pre conferencing preparation of parties**

Once determined suitable for conference, all parties should undergo a briefing by the intake officer/conference organiser on the purpose and outcome of conferencing. This may also involve providing parties with the option of viewing a video of a mock conference so that they can adequately prepare for the conference.

**16.2 Referral pathways**

This recommendation concerns the interaction between the commissions and other services.

**Recommendation 3 – Strengthen referral pathways and relationships with Family Relationship Centres**

Where commissions do not have formal working arrangements or relationships with Family Relationship Centres, which at a minimum outline the referral pathways between the two services, these should be developed. Such working arrangements should specify

- the roles and responsibilities of each organisation in the context of providing alternative dispute resolution services
- agreed criteria for referring between the two services
- a single point of referral for both organisations
- information sharing protocols (in accordance with privacy laws) for joint clients
- mechanisms for resolving grievances between the two organisations.

**16.3 People with special needs**

This recommendation concerns provision of services to people from diverse backgrounds, one of the dimensions underlying this evaluation.

**Recommendation 4 – Develop protocols for working competently with people with special needs including people with mental health and drug and alcohol concerns, Indigenous clients and clients from culturally and linguistically diverse backgrounds**
Follow through with this recommendation would involve

- enabling people from diverse backgrounds to have access to FDR services in commissions may involve
  - actively promoting FDR services in target populations and organisations
  - forming partnerships with organisations that represent or provide services to target populations
  - developing alternative screening and intake processes that are appropriate for different populations
  - ensuring screening checklists ask for the cultural and/or religious background of the applicant

- undertaking conferences in a culturally competent manner may involve appropriate matching of parties and FDR practitioner, consideration of the mode of conference, and inclusion of support people and/or extended family members

- training all professionals involved in FDR (ie intake officers, FDR practitioners, FDR managers and lawyers) in culturally and religiously competent practice and how to manage mental health and drug and alcohol issues in the context of FDR

- examining and continuously monitoring the appropriateness of existing FDR services in commissions for people from diverse backgrounds.

### 16.4 Best interests of the child

Acting in the best interests of the child is one of the dimensions underlying this evaluation.

**Recommendation 5 – Provide guidance to FDR practitioners and lawyers on the meaning of best interests of the child**

Currently, lawyers have different understandings of the ‘best interests of the child’ and how that applies to family law in the context of shared parenting arrangements compared to commission staff.

FDR, and lawyers in particular, would benefit from the development of practice guidance as to the meaning of the best interests of the child which complements the current legislative framework, in particular the meaning of ‘best interests’ in the context of the objectives and principles of the *Family Law Act*. This includes

- the child’s development
- the existence of risk factors such as family violence, child abuse and/or other support issues
16.5 Training and professional development

The provision of training and development is again one of the original dimensions this evaluation set out to examine.

**Recommendation 6 – Develop and implement ongoing training and professional development opportunities for FDR practitioners, intake officers and lawyers through a nationally developed training and professional development framework**

Ongoing, nationally developed training (but locally delivered) for FDR practitioners, intake officers and lawyers is required in the areas of

- the best interests of the child
- identification and management of risk factors such as family violence, child protection, drug and alcohol addiction and mental health to the extent to which they impact on conferencing
- working in a competent manner with people from diverse backgrounds.

Ongoing, consistent, professional development in the form of peer review (of conferences against objective outcomes based criteria) is also required for FDR practitioners and lawyers.

The training and professional development framework should incorporate and link with the reaccreditation requirements.

16.6 Continuous improvement

These final two recommendations are more general in nature, referring to proposed changes in processes that could have wide ranging and ongoing benefits for FDR services in commissions.

**Recommendation 7 – Develop an objective outcomes based performance measurement framework**

The continuous improvement of FDR services in commissions and the program overall should be underpinned by an outcomes based performance measurement framework. Developed in conjunction with commissions, this framework should establish:

- its underpinning parameters and conditions, for example
Overall findings and recommendations
Chapter 16 – Recommendations for continuous improvement

- application – the framework should apply to regular progress reporting at the commission level as well as overall program evaluation

- underpinning principles – focus on continuous improvement, responsive to policy and legislative change, importance of FDR as a part of family law

• outcomes for FDR and supporting performance measures (examples are included in table 16.1)

Table 16.1  Example outcome and performance measures

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Measures</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clients are satisfied with FDR</td>
<td>Increased perception of fairness of FDR practitioner and process</td>
<td>Level of satisfaction</td>
</tr>
<tr>
<td></td>
<td>Increased feelings of safety before, during and after conference</td>
<td>Level of safety</td>
</tr>
<tr>
<td>Agreements are appropriate in the circumstances</td>
<td>Increased focus on the best interests of the child</td>
<td>Comparison of parenting agreements to best practice standards</td>
</tr>
<tr>
<td></td>
<td>Increased management of family violence and other support needs</td>
<td>Comparison of pre and post amendment parenting agreements</td>
</tr>
<tr>
<td></td>
<td>Increased participation of extended family</td>
<td>Level and nature of participation of grandparents</td>
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<td></td>
<td></td>
<td>Nature and type of strategies to identify and manage family violence</td>
</tr>
<tr>
<td>Agreements have longevity</td>
<td>Increased time between agreement being made and break down or change</td>
<td>Length of time lapsed between agreement being made and break down</td>
</tr>
<tr>
<td></td>
<td>Increased adaptability of agreements to ordinary change in life circumstances</td>
<td>Number of changes required to agreement</td>
</tr>
<tr>
<td></td>
<td>Increased ability of parties to resolve future disputes without outside help</td>
<td>Reasons for why agreements have broken down and stayed in place</td>
</tr>
</tbody>
</table>

• critical outcomes based targets for improving FDR over five, 10 and 15 year periods (for example, over a five year period, it may be expected that FDR programs reach a benchmark level of cost effectiveness)
• performance assessment methodologies and associated assessment tools, which includes
  − formal evaluation of the program’s effectiveness, appropriateness and efficiency
  − cost efficiency benchmarking of FDR services in commissions
  − client satisfaction surveys
  − pre and post training impact of knowledge and skill in FDR conferencing of FDR practitioners, intake officers and lawyers
  − longitudinal study of clients that do and do not participate in FDR to understand their journeys, the longevity of agreements and their journey through the family law system including litigation
• the timing and cycle of assessment processes
• operational requirements to implement an outcomes based measurement approach. This includes an assessment of any IT requirements, data collection system changes/upgrades, development of reporting templates, provision of any training about the approach
• the roles and responsibilities of the Attorney-General’s Department and the commissions within the framework, for example:
  − the Attorney-General's Department will have responsibilities in coordinating the overall implementation of the framework including the coordination of the formal evaluation, and developing standardised data collection systems
  − the commissions will have responsibility for collecting the data, completing progress reports and participating in the formal evaluation.

Outcomes based reporting should be integrated into the quarterly reporting to the Attorney-General’s Department, to provide the platform for building baseline data on key outcome areas. Such baseline data can then be used to set future targets for FDR services in commissions and inform future service improvement.

Key dimensions of the outcomes based performance measurement framework can include the impact
• of FDR services in commissions against a defined set of performance indicators and targets (as outlined above)
• on client outcomes and service uptake (including the change in demand profile and intensity)
• of the processes designed to improve FDR services in commissions and achieve client outcomes.
Overall findings and recommendations
Chapter 16 – Recommendations for continuous improvement

Collection of client satisfaction will also require the development of a robust surveying approach. Drawing on the learnings from this evaluation, an effective surveying process for this client group involves

- obtaining written consent from clients to participate in a survey upon acceptance into FDR at the screening and intake stage
- surveying clients within one month of completion of FDR
- surveying clients by telephone
- ensuring the survey is brief – maximum 10 minutes
- providing all clients with an incentive to participate in the survey (i.e. a small gratuity such as a $20 Coles voucher).

Recommendation 8 – Collect better data regarding cost of FDR services in commissions and cost of litigation

The development of an outcomes based performance measurement framework should also include mechanisms for collecting better data regarding the cost of FDR and the cost of litigation. This will require commissions to report on

- the time spent by, and cost of, commission staff on intake and screening
- the time spent by, and cost of, lawyers on litigation including court and non court events
- the number of legally aided matters which fully settle, partially settle and do not settle
- the number of legally aided matters which proceed from FDR to litigation and the stages of litigation they progress through.
Part IV – Appendices
Appendix A – Data collection methods

Each of the methods used to collect data to inform the evaluation are detailed below.

Client survey

A client survey was developed to gain an understanding of FDR clients’

- satisfaction with the FDR process
- Indigenous or ethnic background and any specific issues that supported or hindered their service access and usage
- satisfaction with the settlement arising out of participation in FDR services.

Client feedback was obtained through two surveying processes:

1 A paper based survey was originally used to collect client feedback on FDR services – this form of surveying resulted in a low response rate of 18.2 per cent (91 returns from an expected return of 500). This means that the paper based responses alone are not representative at the national or the state and territory levels.

   Survey packs were developed containing a participant information and consent form, the survey, and two reply paid envelopes to enable respondents to separately return their completed consent form and survey response. The distribution of surveys occurred as follows

   - FDR coordinators/intake officers advised the client of the survey process when arranging the conference
   - upon completion of the conference, the FDR coordinator/intake officer posted the survey, participant information sheet and KPMG addressed reply paid envelopes to the client
   - the client completed the survey and posted the survey to KPMG.

2 Additional client surveys by telephone – as a result of the low response rate for the paper based survey, client survey data was collected through an additional 316 telephone surveys. These surveys were conducted over a four week period and captured FDR clients who participated in FDR after the paper based survey period had closed to ensure client responses were not double counted.

The combined paper based and telephone client survey responses increased the total client sample size to 407.
Chairperson focus groups and survey

In consultation with each of the commissions, FDR practitioners were invited to attend a two hour focus group to provide input into the evaluation. The purpose of the focus groups was to assess:

- the effectiveness of intake and screening procedures in flagging with the practitioner situations involving domestic violence or power imbalance between parties
- the appropriateness of mechanisms to ensure the best interests of the child as well as to ensure involvement of extended family where appropriate
- their satisfaction with access to relevant training, peer support and ongoing professional development and application of new learning
- the extent to which good practice standards are being implemented.

A total of 73 FDR practitioners participated in focus groups that were held around the country.

An FDR practitioner survey was also developed to gain additional (anonymous) qualitative information about FDR. Surveys were distributed at the beginning of each focus group. Additional surveys were provided to FDR managers for FDR practitioners to complete if they had been unable to participate in a focus group.

FDR practitioner survey response rate

The FDR practitioner survey achieved a response rate of 28 per cent. A total of 80 surveys were available for data analysis.

FDR management interviews

Semi-structured interviews were conducted with FDR and commission management. The purpose of these interviews was to determine:

- the extent to which commission services are being implemented in accordance with legal aid agreements
- the effectiveness of relevant training, peer support and ongoing professional development and application of new learning
- the extent to which good practice standards are being implemented
- the extent to which working relationships have been built with Family Relationship Centres
- the extent to which commissions review their quality systems.

One group interview was conducted in each jurisdiction.
**Appendices**

**Appendix A — Data collection methods**

**Intake officer/conference organiser interviews**

Semi-structured interviews were conducted with FDR conference organisers/intake officers to assess

- the extent to which commission services are being implemented in accordance with legal aid agreements
- the effectiveness of intake and screening procedures and any other relevant protocols including handling of situations involving domestic violence or power imbalance between parties
- their satisfaction with access to relevant training, peer support and ongoing professional development and application of new learning
- the extent to which good practice standards are being implemented
- the extent to which cross referrals between relevant services are occurring
- the extent to which commissions review their quality systems.

One focus group was conducted in each jurisdiction, with the exception of the Australian Capital Territory where management and intake were interviewed together.

**Legal representative interviews**

Telephone interviews were conducted with lawyers from each jurisdiction in order to gain an understanding of lawyers’ views with respect to

- satisfaction with the FDR processes applying to both type one and type two services (ie where they have and have not been present at sessions facilitated by conference chairpersons)
- satisfaction with the settlement arising out of participation in FDR services
- experience with and confidence in conference chairpersons
- the nature of the working relationships that have developed between lawyers and commissions
- overall satisfaction with the operation of FDR services in commissions for non litigious solutions to family legal problems.

Each commission provided the names and contact details of lawyers who routinely provided legal advice or legal representation in FDR sessions. Telephone interviews were conducted to allow the flexibility for stakeholders to express diverse views and concerns and to account for local variation in each jurisdiction.

A total of 49 lawyers were interviewed.
Evaluation dimensions

The evaluation explored and assessed the effectiveness of the following nine domains of FDR services in commissions:

1. the role of commissions in the new family law context
2. screening and intake processes
3. appropriate focus on the needs of children
4. mechanisms for inclusion of extended family (including grandparents) where appropriate
5. strategies to manage intersecting issues such as family violence, child protection concerns and power imbalances between the parties
6. availability of appropriate FDR services for people with support needs including mental illness, drug and alcohol issues, Indigenous people, people with a disability and people from culturally and linguistically diverse backgrounds
7. satisfaction with the services on the part of clients, lawyers and chairpersons (including narrowing of issues in dispute and filing of final consent orders)
8. extent to which quality processes exist including the provision of training and accreditation of FDR practitioners
9. the cost effectiveness (including the avoided costs of litigation) of the current FDR services and the program as a whole.
Working from the bottom up, figure A.1 illustrates the logic of the FDR program in terms of the rationale for the program’s development, the inputs invested and processes developed to deliver services, the outputs and the overall objectives of the program.

As shown in the first box, “community need and government policy”, FDR was developed in response to high levels of litigation which were costly to individuals, community, government and the overall system.
Box two, “inputs”, illustrates the investment - such as funding, training, law reform and staffing - that has been provided to develop an alternative to litigation. This investment is then funneled into a series of processes (ie reporting, professional development, establishing the conferencing infrastructure, recruiting FDR practitioners and developing intake and screening processes) and outputs or activities (ie conferencing, issuing of conference certificates, referrals to FDR). These processes and activities are then designed to achieve the overarching objectives of more timely and less costly resolution of family law disputes.

The combined economic, quantitative (arising from the survey data) and qualitative evaluation of FDR informed the assessment of whether this program logic has been achieved.
Appendix B – Surveys

B1 – Conference chairpersons survey

Participant Information and Consent Form

National Evaluation of family dispute resolution Services in legal aid commissions

Researchers: KPMG Health and Human Services Practice

This Participant Information and Consent Form is two pages long. Make sure you have all the pages.

About the Project

KPMG has been asked to evaluate the legal aid commission’s Family Dispute Resolution (FDR) services.

The evaluation will examine how well the FDR services are currently operating and how they can be improved.

Do I have to participate?

You do not have to participate in the project. The decision is yours.

You are free to change your mind about participating at any time. If you decide not to participate, this will not affect your involvement in FDR in any way.

If you want to take part in the project, you will be asked to sign the attached Consent Form. By signing the Consent Form, you are showing that you understand the information and that you agree to participate.

What's involved?

To participate in the evaluation, you will be invited to fill in a short questionnaire. The questions ask you about your experience in providing FDR services.

You do not need to talk to anyone to participate, you simply tick the appropriate response to each question on the questionnaire. The questionnaire will take about five minutes to complete.

Are there any risks?

We have made sure that the questions do not ask you to identify yourself, so we can’t tell who answered the questions. However, if you do not wish to answer some of the questions, you do not have to.
How will the information I provide be used?

The information that you provide will be combined with information provided by other users of the FDR services and analysed to decide how well the services are working. The findings from the survey will be reported as themes and will not be associated to any individual.

How will my survey response be stored?

All surveys will be stored on a secure file at the KPMG office. As your survey response will not have your name on it, we will not be able to identify which survey response is yours. This is to protect your privacy.

Will there be a report?

We will write a report which will be provided to the Australian Government Attorney-General’s Department.

Where can I get more information?

If you want more information about the project, please contact Natalie Walker (Project Manager) by phone 02 9335 8125 or by email on nmwalker@kpmg.com.au.

CONSENT FORM

Project Title: National Evaluation of family dispute resolution services in legal aid commissions

I have read, and I understand this Participant Information sheet.

I freely agree to participate in this evaluation according to the conditions in the Participant Information sheet.

I understand that the information I provide will not be able to identify me and will not affect the services I receive from the Family Dispute Resolution service.

Participant’s Name (printed) ………………………………………………………………

Signature                  Date
Appendices
Appendix B — Surveys

Facilitator’s script

The Attorney-General’s Department (AGD) has engaged KPMG’s National Health and Human Services Practice to evaluate the legal aid commission’s family dispute resolution (FDR) services.

The evaluation will examine the effectiveness of the programs currently operating in each legal aid commission and make recommendations to facilitate ongoing program development and continuous improvement into the future.

As a Chairperson of FDR conferences, we need your help to do this evaluation.

As a condition of your participation, we guarantee to protect your privacy and confidentiality. Information you provide will not be revealed in any way to staff of the legal aid commission, your clients, or anyone else. Results will be reported as numbers and percentages, individuals will NOT be able to be identified.

We would appreciate it if you would take the time to answer the questions in the following pages. It should take you only about five minutes. We are interested in your opinion of the conferencing service. Your opinions, and the opinions of other participants in the survey, are important as they will inform ongoing development of FDR services.

This questionnaire is anonymous. Please do NOT write your name anywhere on these sheets.

An information sheet accompanies this survey. Please read this information sheet thoroughly. If you have any questions, please discuss with your facilitator. If you agree to participate in the survey, please sign the attached consent form and return it to your facilitator.

Thank you for your participation in the survey.

HOW TO FILL OUT THIS QUESTIONNAIRE

To answer most of the questions, you only need to tick a box. Please tick the box which is closest to your view—there are no right or wrong answers. Here is an example.

Q1. I was satisfied with how the conference was run

| Strongly agree                      | ☑ |
| Agree                              |   |
| Disagree                           |   |
| Strongly disagree                  |   |
| Not sure                           |   |
Sometimes you are asked to write in an answer — in that case, simply write your answer in the space provided.

1. **In which state or territory are you located?**
   - Qld
   - Tas
   - NSW
   - SA
   - ACT
   - WA
   - Vic
   - NT

2. **How long have you been employed as a Conference Chairperson?**
   - Less than one year
   - One year to less than three years
   - Three years to less than five years
   - More than five years

3. **Approximately how many conferences do you chair each year?**
   - Less than five
   - Five to nine
   - Ten to twenty
   - More than twenty

4. **Please outline the qualifications you hold in the space below**

5. **The table below contains a number of statements. Please tick the response that best describes your agreement with each statement**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are appropriate protocols and procedures in place to allow practitioners to effectively respond to clients who are victims of family violence.</td>
<td></td>
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</tr>
<tr>
<td>Statement</td>
<td>Strongly agree</td>
<td>Somewhat agree</td>
<td>Somewhat disagree</td>
<td>Strongly disagree</td>
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<td>---------------------------------------------------------------------------</td>
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<tr>
<td>There are appropriate protocols and procedures in place to allow</td>
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<tr>
<td>practitioners to effectively respond to clients who require family support</td>
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<tr>
<td>There are appropriate protocols and procedures in place to allow</td>
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<tr>
<td>practitioners to effectively respond to clients who present</td>
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<tr>
<td>present with emotional wellbeing issues</td>
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<td>Mechanisms to ensure the best interests of the child are appropriate</td>
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<tr>
<td>Where appropriate, extended family and grandparents are being</td>
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<tr>
<td>involved in the FDR process</td>
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<tr>
<td>FDR accommodates the needs of people from diverse backgrounds (ie</td>
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<tr>
<td>Indigenous people, people from culturally and linguistically diverse</td>
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<td>backgrounds, or people with a disability)</td>
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<tr>
<td>The time budgeted for conferences is adequate</td>
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<tr>
<td>Conferencing assists the parties to gain a better understanding of</td>
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<tr>
<td>each other’s main issues</td>
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<tr>
<td>Conferencing assists in narrowing any legal issues that are present</td>
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<tr>
<td>In general, settlements arising out of FDR conferencing are child</td>
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<td>focused and workable given the circumstances of the parties in any</td>
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<tr>
<td>given matter</td>
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<tr>
<td>The good practice standards in FDR have been implemented and are</td>
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<tr>
<td>continually monitored</td>
<td></td>
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<tr>
<td>The FDR service in which I operate provides opportunities for</td>
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<tr>
<td>practitioners to participate in training and other professional</td>
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<tr>
<td>development</td>
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<tr>
<td>The FDR service in which I operate has an established system of</td>
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<tr>
<td>peer-support in place</td>
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<tr>
<td>Overall, I am satisfied with the FDR program</td>
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</tr>
</tbody>
</table>
6. What is the approximate average time taken to conduct a conference?

   - Less than two hours
   - Two to three hours
   - Three to four hours
   - More than four hours

7. Have any of the below issues emerged during a conference? Please select all that are relevant

   - Child protection
   - Family violence
   - Drug and alcohol
   - Mental health
   - Health
   - Housing and homelessness
   - Other — please specify

   ____________________________________________________________

If you could change one thing about the FDR service, what would it be?

   ____________________________________________________________
   ____________________________________________________________
B2 – Client survey

PARTICIPANT INFORMATION AND CONSENT FORM

National Evaluation of family dispute resolution services in legal aid commissions

Researchers: KPMG Health and Human Services Practice

This Participant Information and Consent Form is two pages long. Make sure you have all the pages.

About the Project

KPMG has been asked to evaluate the legal aid commission’s family dispute resolution (FDR) services.

The evaluation will examine how well the FDR services are currently operating and how they can be improved.

Do I have to participate?

You do not have to participate in the project. The decision is yours.

You are free to change your mind about participating at any time. If you decide not to participate this will not affect your involvement in FDR in any way.

If you want to take part in the project, you will be asked to sign the attached Consent Form. By signing the Consent Form, you are showing that you understand the information and that you agree to participate.

What’s involved?

To participate in the evaluation, you will be invited to fill in a short questionnaire. The questions ask you about your experience in providing FDR services.

You do not need to talk to anyone to participate, you simply tick the appropriate response to each question on the questionnaire. The questionnaire will take about five minutes to complete.

Are there any risks?

We have made sure that the questions do not ask you to identify yourself, so we can’t tell who answered the questions. However, if you do not wish to answer some of the questions, you do not have to.
How will the information I provide be used?

The information that you provide will be combined with information provided by other users of the FDR services and analysed to decide how well the services are working. The findings from the survey will be reported as themes and will not be associated to any individual.

How will my survey response be stored?

All surveys will be stored on a secure file at the KPMG office. As your survey response will not have your name on it, we will not be able to identify which survey response is yours. This is to protect your privacy.

Will there be a report?

We will write a report which will be provided to the Australian Government Attorney-General’s Department.

Where can I get more information?

If you want more information about the project, please contact Natalie Walker (Project Manager) by phone 02 933 58125 or by email on nmwalker@kpmg.com.au.

CONSENT FORM

Project Title: National Evaluation of family dispute resolution Services in legal aid commissions

I have read, and I understand this Participant Information sheet.

I freely agree to participate in this evaluation according to the conditions in the Participant Information sheet.

I understand that the information I provide will not be able to identify me and will not affect the services I receive from the family dispute resolution Service.

Participant’s Name (printed) ………………………………………………………………..

Signature        Date
HOW TO FILL OUT THIS QUESTIONNAIRE

To answer most of the questions you only need to tick a box. Please tick the box which is closest to your view—there are no right or wrong answers. Here is an example.

1. Are you female or male?
   - Female
   - Male
   - Other (eg transgender)

Sometimes you are asked to write in an answer — in that case, simply write your answer in the space provided.

When you have completed the survey, please place it in the reply paid envelope labelled 'survey response' and post to KPMG.

KPMG use only: NT
1. Are you female or male?
   - Female
   - Male
   - Other (eg transgender)

2. Are you Aboriginal and/or Torres Strait Islander?
   - Yes, Aboriginal
   - Yes, Torres Strait Islander
   - Yes, both Aboriginal and Torres Strait Islander
   - No

3. In which country were you born?
   - Australia
   - Other country
      Please write the name of the country in the space below

4. How satisfied were you with the support you received during the conference? If you did not need these services, please select ‘Not applicable’.

<table>
<thead>
<tr>
<th>Service</th>
<th>Very satisfied</th>
<th>Satisfied</th>
<th>Not sure</th>
<th>Dissatisfied</th>
<th>Very dissatisfied</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpreter</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to support person(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other assistance (eg aids for deaf or visually impaired people)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. How satisfied were you with the information provided to you about the whole conference process?

<table>
<thead>
<tr>
<th>Very satisfied</th>
<th>Satisfied</th>
<th>Not sure</th>
<th>Dissatisfied</th>
<th>Very dissatisfied</th>
<th>Not applicable</th>
</tr>
</thead>
</table>
### 6. How safe did you feel:

<table>
<thead>
<tr>
<th></th>
<th>Very safe</th>
<th>Safe</th>
<th>Not sure</th>
<th>Unsafe</th>
<th>Very unsafe</th>
</tr>
</thead>
<tbody>
<tr>
<td>During conference</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>After conference</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 7. How satisfied were you with:

<table>
<thead>
<tr>
<th>Statement</th>
<th>Very satisfied</th>
<th>Satisfied</th>
<th>Not sure</th>
<th>Dissatisfied</th>
<th>Very dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>The way the Conference Chairperson explained the conference process and their role</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Conference Chairperson’s fairness and professionalism in managing the conference</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 8. Please tick the response that best describes your agreement with each statement

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly agree</th>
<th>Agree</th>
<th>Not sure</th>
<th>Disagree</th>
<th>Strongly disagree</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conferencing helped me better understand the relevant issues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conferencing gave the other party and I a chance to talk through our problems and issues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I believe that I will now be better able to resolve future disputes with the other party without outside help</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I needed more legal advice before coming to an agreement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The conference helped me to understand/focus on the interests of our children</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overall, I was satisfied with the outcome of conferencing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Please any further comments about our conference in the space below.


Thank-you for completing the survey. Please place your survey in the reply paid envelope labelled ‘survey response’ and post to KPMG.
Appendix C – Interview tools

C1 – Focus groups and interviews script

Introduction
The Attorney-General’s Department (AGD) has engaged KPMG to evaluate the legal aid commissions’ family dispute resolution (FDR) services.

KPMG’s Health and Human Services Practice is comprised of staff with a broad range of knowledge and skill including, experience working in state and federal government at the service delivery, program management and policy development levels.

The Practice has significant experience in conducting program evaluations and reviews for government and, in doing so, works closely with project stakeholders including funded service deliverers, peak organisations and service users.

Purpose of this evaluation
This evaluation will:

• examine the effectiveness of the programs currently operating in each legal aid commission, including the relative cost effectiveness of these programs; and

• make recommendations on a framework to facilitate ongoing program development and continuous improvement into the future.

To undertake the evaluation, the KPMG project team will talk to:

• representatives of the AGD and the FDR Working Group;

• Legal Aid Directors and management;

• Conference chairpersons, lawyers, family dispute resolution (FDR) coordinators; and

• other stakeholders such as Family Relationship Centres and the courts.

The KPMG project team will also ask clients of FDR services and conference chairpersons to participate in a brief survey regarding their involvement in FDR.

Purpose of today’s focus group/interview
Participating in the interviews and workshops will provide an opportunity to give the evaluation team feedback on:

• the strengths and opportunities for FDR services in your jurisdiction; and

• how FDR services can be further developed for the future.

Further information
Please contact the evaluation project manager, Natalie Walker, on 0408 721 216 if you would like more information about the evaluation.
C2 – Interviews with FDR and commission management

The purpose of these interviews is to collect data on the overall direction and implementation of FDR in individual commissions as well as to collect data to inform the cost effectiveness analysis.

The following questions will be explored:

1) Extent to which FDR services are being implemented in accordance with legal aid agreements.
   a) How have the services been implemented?
   b) Were there any processes to incorporate the legal aid agreements into the implementation? Please describe

2) The average costs (ie time, money, staffing, overheads) to provide the FDR services
   a) Does providing an FDR service place a financial burden on your service? Does your service subsidise the FDR service?

3) Please describe the nature of the relationship between the commission and other support services (including Family Relationship Centres). What mechanisms are in place to work together?

4) To what extent are the following being implemented:
   • clarity of your jurisdictions FDR model?
   • intake and screening guidelines? What level of involvement do clients and their lawyers have in the process?
   • screening of family violence and/or allegations of child abuse?
   • processes that focus on the best interests of the child(ren)?
   • processes that include extended family where appropriate?
   • national training model for chairpersons, lawyers, and intake staff?
   • ongoing monitoring and evaluation of FDR services?
   • collection of reliable statistics for conferencing and FDR services?

5) How do clients access FDR services? Does the commission employ a process to assess the most suitable FDR provider based on the circumstances of the cases? Please explain.
Appendices

Appendix D — Findings for each commission

6) The extent to which commissions review their quality systems
   a) Do you have quality review processes in place?
   b) Can you describe them?

C3 – Group interviews with FDR coordinators and intake officers

1 Effectiveness of intake and screening procedures and any other relevant protocols including handling of situations involving family violence and child protection issues.
   • What is your opinion of the quality of the intake and assessment procedures?
   • How well do these procedures work in cases involving domestic violence?
   • How well do these procedures work in cases involving power imbalances?
   • How well do these procedures work in cases involving child protection issues?
2 What level of involvement do clients and their lawyers have in the intake and assessment process?
3 To what extent do you assess any special requirements or needs of clients? For example, the cultural diversity of the client, mental health needs, child protection issues, family violence etc.
4 Do you refer clients to other support services where appropriate? If so, which services to refer to and why?
5 Has your ability to manage complex clients issues (such as family violence and child protection concerns) increased, decreased or remained stable overtime?
6 Satisfaction with access to relevant training, peer support and ongoing professional development and application of new learning
   • What type of training and professional development opportunities are available for practitioners involved in FDR?
7 Measuring success — how is the success of FDR services measured?
8 What are the average costs (ie time, staffing) to undertake the intake and assessment process for FDR (not including assessment for legal aid)? What factors influence these costs? For example, complexity of the matter, location of the clients, number of parties, existence of additional support needs etc.
9 The extent to which commissions review their quality systems
   • Do you have quality review processes in place?
   • Can you describe them
10 If you could choose one thing about the operations of FDR that you could change, what would it be?
11 What is the thing you are the proudest of about the FDR services? Why?
C4 – Group interviews with conference chairpersons

The following questions will be explored:

1 Effectiveness of conferencing procedures and any other relevant protocols including handling of situations involving family violence and child protection issues.
   • What is your opinion of the quality of the conferencing procedures?
   • How well do these procedures work in cases involving family violence?
   • How well do these procedures work in cases involving power imbalances?
   • How well do these procedures work in cases involving child protection issues?

2 Please describe some of the procedures used to involve extended family in FDR conferencing.

3 Please describe some of the mechanisms used to ensure the best interests of the child are upheld.

4 Please describe some of the procedures used to manage clients with a history of family violence.

5 Please describe the processes to accommodate the needs of people from diverse backgrounds.

6 Satisfaction with access to relevant training, peer support and ongoing professional development and application of new learning
   • What type of training and professional development opportunities are you receiving?
     - Prompt — how often, is this enough?
     - Prompt — is this relevant for your work?
     - What type of other training would be useful?
   • Can you use your peers for advice and support?
     - Prompt — is this done informally or is there a structure in place for peer support?
     - Do you think it would be useful to build more support into this role?
     - Should peer support be formalised (if not already)?
   • Do you have opportunity to apply the things you have learned formally or from your peers in your work?
     - Prompt — explore reasons why they are/are not able to apply things.

39 It is understood that family lawyers may also be conference chairpersons or practitioners. In this case, they can participate in both the focus groups as well as the legal representative interviews should they choose to do so.
7 If you could choose one thing about the operations of FDR that you could change, what would it be?

8 What is the thing you are the proudest of about the FDR services? Why?

C5 — Individual interviews with lawyers

Lawyers identified by legal aid commissions from each jurisdiction will be individually interviewed. Up to 49 interviews are planned. They will take approximately one (1) hour and will be conducted face to face or over the telephone. The questions are below:

1 Are you a private lawyer or are you employed by Legal Aid? Other________

2 How many FDR conferences have you represented clients in the previous twelve months? (Approx)

3 Do you also chair conferences?

4 How often have there been FDR conferences where your clients had to attend without you (or other legal representation)?

5 What is your impression of the quality of the initial engagement of clients coming into FDR (ie first contact, intake and assessment procedures)?

6 In your opinion are clients appropriately directed towards FDR? That is, are the ones who should be going through FDR are being directed towards it and the ones who you feel are not suitable for FDR are being directed away from it?

7 Do you think FDR is flexible enough to respond to a diverse range of special needs?

8 Have you seen instances where you think the FDR conference process needed to respond to the special needs of clients? Do you think the response was appropriate and adequate?

- reports of domestic violence
- reports of child abuse
- power imbalance between the parties
- people from non-English speaking backgrounds, including people who may be hearing impaired (who may/may not require an interpreter)
- people from Aboriginal or Torres Strait Islander backgrounds (who may/may not require an interpreter)
• people with impaired capacity because of intellectual, mental health or significant alcohol and drug issues

• other special needs (please identify).

9 In the conferences you have been involved in, what type of people have been involved?

• (Prompt — for instance, clients, conference chairperson, legal representation, independent children’s lawyers, children, extended family, interpreters, support staff from other services?)

10 Do you think the conferences include the right mix of people? Do you think any of these roles and responsibilities should be altered?

11 How effective are the chairpersons in their role? What informs this view?

12 How confident are you in the capacity of these neutral third parties? What informs this view?

13 Do you think the settlements arising from conferences are fair?

• Do they tend to favour one side (ie legal aid applicants? women?). Do you think this is reasonable?

• Do you think the conference is equally fair for clients represented by Legal Aid as those who are not eligible for Legal Aid (ie either using private lawyers or representing themselves?)

14 Do you think the agreements are workable? Are they likely to be durable?

15 Approximately what proportion of conferences you have been involved with have reached full agreement? Partial? Interim?

16 About how many of the conferences you have been involved in have failed to reach agreement and ended up proceeding to the Family Court?

17 What is the relationship like between lawyers and legal aid commissions?

18 How satisfied are you with FDR services for non-litigious solutions to family legal problems overall?

19 If you could change one thing about FDR services, what would it be?

20 What is the thing you are proudest of about the FDR services? Why?
**Appendix D – Findings for each commission**

**D1 – Queensland**

<table>
<thead>
<tr>
<th>Form of dispute resolution</th>
<th>Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualification of FDR practitioners</td>
<td>Registered lawyers and social scientists</td>
</tr>
<tr>
<td>Number of FDR practitioners</td>
<td>120</td>
</tr>
<tr>
<td>Legal representation</td>
<td>One party must be eligible for legal aid (therefore legally represented)</td>
</tr>
<tr>
<td>Issues conferenced</td>
<td>Parenting and property</td>
</tr>
<tr>
<td>Conferencing modes</td>
<td>All modes available</td>
</tr>
<tr>
<td>Conferences held (2007-08)</td>
<td>2,391</td>
</tr>
<tr>
<td>Settlements</td>
<td>1,846</td>
</tr>
</tbody>
</table>

Queensland provides mediation based FDR where at least one party is legally represented. FDR is available for parenting and property disputes. Queensland also offers an Indigenous Mediation Process which involves the participation of the Aboriginal and Torres Strait Islander Legal Service. In 2007-08, Legal Aid Queensland held 2,391 FDR conferences.41

Queensland’s FDR panel is a multidisciplinary team of 120 registered lawyers, social workers and psychologists. FDR practitioners are matched to conferences based on their experiences and skills in particular subject areas such as

- previous work in prisons
- ability to speak a second language
- previous work in child safety
- experience working with Indigenous clients or people from culturally and linguistically backgrounds.

FDR practitioners who are registered lawyers are matched to property matters. Where matters may be particularly complex or involve multiple parties, conferences are co-facilitated, usually involving a lawyer and a social worker.

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40 Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

41 Attorney-General’s Department, LARI data 2007-08, number of conferences held.
Queensland provides all modes of conferencing – telephone/in person shuttle, face to face conferencing, combination of shuttle and in person, and videoconferencing. The most appropriate mode of conferencing is determined at the intake stage. Matters involving family violence are generally conferenced by shuttle.

Queensland has also introduced a post conference support where an in house social worker refers parties to other support agencies to assist them to implement their agreement.

**Evaluation findings**

*Role of FDR services in the new family law context*

Queensland provides a lawyer assisted form of mediation for parenting and property disputes. In providing this service, the commission engages with

- Family Relationship Centres through the FDR coordinator’s participation in the Family Relationship Centre’s steering committee and participation in joint alternative dispute resolution training
- external FDR providers on a referral basis where the commission may assess another provider’s FDR services as being more appropriate for the parties’ needs
- other support services, at intake and post conference, on a referral basis to assist parties access additional required support in the areas of drug and alcohol, mental health, housing/homelessness, general counselling.

Queensland has plans to establish an FDR Managers forum (to include commission staff, Family Relationship Centre manager, FDR coordinator and relevant community agencies such as external providers and the Women’s Legal Service) to improve coordination and collaboration amongst providers within Queensland.

The purpose of engaging with these services is to assist parties to access the most appropriate service for their needs. At intake, the commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission will refer applicants to a Family Relationship Centre or external provider where the parties are seeking child inclusive practice (where this may be offered) or if they are not eligible for legal aid.

FDR management advised that these referral relationships are not underpinned by any formal working arrangements such as referral protocols. Rather, they have been developed organically and are implemented informally.

**Screening and intake**

Parties can access FDR through the following means

- they can make an application directly to the commission
- they can approach a lawyer to make an application on their behalf (preferred provider lawyers can e-lodge)
• other agencies can refer parties, or
• the court can order the parties to conference through legal aid.

Indigenous parties can also apply for legal aid and FDR through the Aboriginal and Torres Strait Islander Legal Service.

Once a request is received, a file is made, letters are sent to both parties including a self assessment sheet. Following this, the conference organiser will ring to clarify any matters and then a determination is made as to the suitability for a grant of legal aid with a lawyer. If granted, a lawyer assessment sheet is sent to the lawyer. The information on the client self assessment sheet and the lawyer assessment sheet provides the basis for intake and screening. Lawyers can access this form electronically.

If the parties agree to participate in FDR, all the parties and their lawyers are asked to complete an assessment sheet. This assessment sheet identifies the legal issues in dispute, the parties to the dispute, details of the respondent party, details of any children and/or property, any concerns regarding family violence (especially the existence of an apprehended violence order) and/or child abuse, and any other support needs (ie need for interpreter services).

Intake Officers and the FDR coordinator use this information to determine the suitability of the matter/parties for FDR.

When two different FDR providers are approached by the parties to undertake mediation (one of which is legal aid), an assessment is made of which service is most appropriate for the family.

If child abuse is identified, the matter does not proceed to FDR. If family violence is identified, strategies to mitigate power imbalance and ensure the safety of the parties are developed. Such strategies include conducting the conference by shuttle.

Conference organisers stated that the processes for identifying family violence, child protection issues, cultural background and other support needs are effective. However, this process is only as effective as the information provided, and the process can break down when lawyers fail to return the assessment sheets for their clients.

Child focused FDR services

FDR management advised that the commission does not have a formal policy or protocol for ensuring FDR focuses on the best interests of the child. Rather, there is an implicit expectation that

• lawyer’s advice to their clients is in the best interests of the child
• FDR practitioners will reality test proposed agreements against the best interests of the child.

FDR practitioners advised that ‘the best interests of the child’ is often interpreted in the context of the court’s tendency towards shared parenting arrangements, ie a 50/50 split in the time spent with each parent. For the most part, the best interests of the child is not broadly defined to include developmentally and age appropriate arrangements.
Seventy one per cent (n=10) of FDR practitioners strongly or somewhat agreed that current mechanisms to ensure the focus on the best interests of the child are appropriate, while 28.5 per cent (n=4) strongly or somewhat disagreed.42

Seventy per cent (n=77) of clients strongly agreed or agreed that the conference helped them to understand/focus on the interests of their children, while 26 per cent (n=29) disagreed or strongly disagreed.

**Inclusion of extended family**

The commission only includes extended family with the agreement of both parties or where extended family is a party in their own right. For Indigenous families, the commission has allowed extended family to be present in conferences as support people.

The majority of FDR practitioners (62.5 per cent) strongly agreed or agreed that the above mechanisms for including extended family are appropriate43, while 31.25 per cent (n=5) FDR practitioners either strongly disagreed or disagreed appropriate mechanisms are in place.

Lawyers also agreed that the current arrangements are appropriate.

**Management of family violence, power imbalances and child protection issues**

Conference organisers advised that the guidelines for screening family violence and child abuse are clear and, when the correct information is provided by the parties, the mechanisms to deal with such issues are effective. However, FDR practitioners encounter issues when this information is not disclosed at screening and emerges during the conference. Responses to such issues are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

FDR practitioner responses to the survey showed a high level of agreement with the commission having appropriate protocols in place to manage family violence, child abuse and other support needs

- 87.5 per cent (n=14) of FDR practitioners strongly or somewhat agreed that appropriate protocols are in place for responding to family violence
- 69 per cent (n=11) of FDR practitioners strongly or somewhat agreed that appropriate mechanisms are in place for responding to family support needs.

42 Two FDR practitioners did not respond to this question.
43 One FDR practitioner did not respond to this question.
However, when responding to the emotional wellbeing needs of clients, only 56.25 per cent (n=9) of FDR practitioners strongly or somewhat agreed that appropriate protocols were in place to deal with these issues.

**Availability of services for people with special needs**

In partnership with the Aboriginal and Torres Strait Islander Legal Service, the commission provides an Indigenous Mediation Service for Indigenous parties. FDR management advised that this is an area which can be significantly improved to ensure models of conferencing are culturally competent.

Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language, however, it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups. Conference organisers advised that they rely upon lawyers to flag any support needs (such as the need for an interpreter).

Seventy three per cent of FDR practitioners strongly or somewhat agreed that FDR in Queensland accommodates the needs of people from diverse backgrounds. FDR practitioners noted that very few, if any, of their conferences involve Indigenous or culturally and linguistically diverse parties. FDR practitioners commented that they do not chair conferences any differently for people from culturally and linguistically diverse backgrounds.

**Satisfaction with FDR**

FDR management advised that FDR services are implemented in accordance with their legal aid agreements. A review of Queensland’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Sixty two per cent of clients (n=76) strongly agreed or agreed that they were satisfied with the outcome of conferencing. Ninety-four per cent (n=15) of FDR practitioners strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process:

- 62 per cent (n=69) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 46 per cent (n=55) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 33 per cent (n=41) strongly agreed or agreed that they would be better able to resolve future issues with the other party without outside help

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44 Three FDR practitioners did not respond to this question.
45 per cent (n=54) strongly agreed or agreed that they required additional legal advice before coming to an agreement.

Ninety four per cent of FDR practitioners strongly or somewhat agreed that they were satisfied with the FDR program. FDR practitioners noted the benefits and strengths of FDR as

- the development of more detailed agreements (compared to court ordered agreements)
- early intervention to stop the escalation of disputes
- its solutions focused nature
- availability of post conference support
- narrowing of issues
- increased understanding by parties of the relevant issues.

Conference organisers highlighted the strengths of Queensland’s FDR program as the involvement of parents in decision making, it is less adversarial nature, it is less traumatic for parties, it is a simplified process, and it provides quick resolution of issues as they arise.

Lawyers also expressed a high-level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timely, involvement of parties in decision making, and allows for reality checking of proposed agreements.

Common areas for improvement across all consultations were

- reducing the time between application for legal aid and conferencing (on average this takes three months) as a result of clients and lawyers not returning the assessment sheets on time
- ensuring all parties are legally represented – lawyers play an important role in reality testing agreements and advising clients. Parties who are not legally represented are less likely to agree with a proposed plan as they don’t have access to legal advice
- providing the opportunity for more than one conference per matter, especially where interim or partial agreements are made
- increasing FDR practitioners’ pre conference preparation time including the provision of conference material within a reasonable timeframe prior to the conference as well as allowing FDR practitioners to have a per conference meeting with all the parties
- having access to family reports
- allowing correspondence and negotiation between lawyers prior to the conference, including the exchange of information prior to conference (especially for property matters)
- ensuring parties are emotionally ready for conferencing.
Quality improvement

Queensland has developed a training manual for grants officers and conference organisers that outlines all the steps involved in the FDR process to ensure that their decisions comply with the Regulations. The commission provides minimal training for FDR practitioners and other FDR staff and such training is limited to meet reaccreditation requirements. Current training includes

- three day orientation training for new employees
- training for staff on amendments to the law
- mandatory staff participation in an annual two day conference.

In addition to training, all staff undergo annual performance reviews.

To be a fully accredited chair, all new FDR practitioners must undergo a minimum of three co chaired conferences before conferencing on their own. In the focus groups, FDR practitioners stated that little peer support or formal supervision is currently provided through the commission. This is supported by survey responses which shows that 56 per cent of FDR practitioners either somewhat or strongly disagreed that an established system of peer support is available in Queensland.

Similarly, the survey results show that 56 per cent of FDR practitioners strongly or somewhat disagree that they are provided with training and professional development opportunities.

Some FDR practitioners expressed confusion or little knowledge about the reaccreditation requirements and their responsibilities within those requirements. FDR practitioners offered that they would benefit from a more formalised system of peer review and supervision as well as training in particular issues such as drug and alcohol use/misuse, family violence, child focused mediation, and solution development tools.

Clients expressed a high level of confidence in FDR practitioners. Ninety one per cent of clients (n=118) were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Seventy five per cent of clients (n=97) were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, maintain the focus on the child and reality test effectively.

The FDR practitioner survey results confirms their high level of experience both in years and number of conferences chaired.

Sixty nine per cent of FDR practitioners surveyed have more than five years’ experience in FDR.

Sixty three per cent of FDR practitioners surveyed have chaired more than 20 conferences.
To monitor the quality of its FDR services, Legal Aid Queensland

- undertakes a monthly audit of its intake process (to identify any issues in conference organisers assessment of the suitability of matters for conference and to ensure the intake process is followed)
- conducts a client satisfaction survey by telephone every two years (conducted by an external consultant)
- other monitoring processes
- produces quarterly reports to the Attorney-General's Department on the number of conferences held and settlement rates (ie fully, partially, no settlement).

The commission also has in place a complaints handling process where clients can complain about an in house lawyer and/or FDR practitioner.

**Summary — Queensland**

The current strengths of the Queensland’s FDR services are

- its role as a lawyer assisted form of FDR provides a combined legal and social science response where appropriate
- its intake process which assesses the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- the clarity conference organisers and FDR managers have about the matters that are suitable for its FDR services and those that are not suitable
- involvement of parties and lawyers in the screening and intake process
- the commission’s engagement with Family Relationship Centres through joint training and participation in its steering committee
- the provision of post conference support to parties to assist them to implement their agreements
- its increasing cost effectiveness and efficiency overtime.

The current opportunities for improving Queensland’s FDR services exist in the areas of

- developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from a legal, developmental and age appropriate perspective
- exploring culturally competent FDR models by building on existing partnership with the Aboriginal and Torres Strait Islander Legal Service and Indigenous communities
- developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers.
Appendices

Appendix D — Findings for each commission

D2 — New South Wales

<table>
<thead>
<tr>
<th>Form of dispute resolution</th>
<th>Mediation-conciliation</th>
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<tr>
<td>Qualification of FDR practitioners</td>
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<td>Settlements (2007-08)</td>
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New South Wales provides a combined mediation-conciliation FDR model. This model empowers FDR practitioners to assist parties to reach a settlement as well as reality test parties’ positions and agreements against the current case law. In 2007-08, the commission held 2,449 FDR conferences.\(^46\)

The commission requires that all FDR practitioners have a minimum of five years’ experience in mediation (or alternative dispute resolution) and have either legal or social science qualifications. The commission currently has 108 registered FDR practitioners on its panel.

FDR practitioners are located throughout the state. As a result, conferences can be held in most locations face to face (where appropriate). Other modes of conferencing are also available including telephone and video conference. Shuttle is available for all modes of conferencing depending on the circumstances of the dispute, the power imbalance between the parties and request of the parties. One party to the conference must be eligible for legal aid (therefore legally represented). This may include an independent child lawyer.

Evaluation findings

**Role of FDR services in the new family law context**

New South Wales provides lawyer assisted combined mediation-conciliation for parenting and property disputes. In providing this service, the commission engages with

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\(^{45}\) Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

\(^{46}\) Attorney-General’s Department, LARI data 2007-08, number of conferences held.
Family Relationship Centres through FDR staff participation in Family Relationship Centre steering committees and referrals to Family Relationship Centres

external FDR providers on a referral basis where the commission may assess another provider’s FDR services as being more appropriate for the parties’ needs

other support services on a referral basis at intake to assist parties access additional required support in the areas of drug and alcohol, mental health, housing/homelessness, general counselling.

The purpose of engaging with these services is to assist parties to access the most appropriate service for their needs. At intake, the commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission may refer applicants to a Family Relationship Centre or external provider where the parties are seeking child inclusive mediation (where this may be offered) or if they are unable to obtain a grant of aid.

New South Wales FDR management commented that an increasing number of family law disputes initially access Family Relationship Centres. The commission has also developed an information module for Family Relationship Centres and community providers about the role of the commission’s FDR services to foster appropriate referrals. It is when the dispute is complex or where the parties are legally represented that the commission’s FDR services are sought.

Commission FDR services are particularly appropriate where parties would benefit from the lawyer assisted model including where this can address power imbalance and assist with reality testing as well as in matters where the parties may benefit from the possibility of obtaining enforceable consent orders.

**Screening and intake**

Clients can access FDR either directly (by seeking advice and applying for legal aid through New South Wales) or through their lawyer (through the e-lodge process). In New South Wales, applications for legal aid are rarely received by support services or Family Relationship Centres on behalf of clients.

Initial applications for aid are processed through the grants division. The grants officers assess means, merit and whether a matter comes under an exception. If a matter is suitable, automated letters are sent to the parties and referral is made to FDR. The conference organisers in FDR undertake screening and intake processes, issue notice provisions and either book an FDR conference or issue a section 60I certificate as appropriate in conjunction with the FDR practitioner or manager.

Conference organisers then distribute screening checklists to all parties and their lawyers for completion. If a party is not legally represented, they will encourage the unrepresented party to seek legal representation. If the party remains unrepresented, conference organisers will interview the party directly to collect the required information including the legal issues in dispute, existence of family violence, child abuse and/or mental health needs, and any other support needs (ie need for interpreter services).
Appendix D — Findings for each commission

Where independent child lawyers are involved, they are also asked to complete an assessment checklist for conferencing. Based on this information, the conference organiser determines the suitability for conference.

New South Wales's intake assessment sheet asks clients and lawyers if child abuse and/or family violence exists. If child abuse is identified, the matter does not proceed to FDR. If family violence is identified and the parties wish to proceed, strategies to mitigate power imbalance and ensure the safety of the parties are developed. Such strategies include conducting the conference by shuttle and ensuring all parties are legally represented. The client checklist also asks clients if they have any health/mental health requirements which may impact on their ability to participate in a conference.

On average, it takes eight days to two weeks from initial application for legal aid to determination of suitability for FDR.

If determined suitable, a date for the conference is set and an FDR practitioner is allocated to the conference. Matching of FDR practitioners to clients is based on the needs of the client and on the issues in dispute.

Prior to the conference, the conference organisers provide FDR practitioners with a report on the relevant issues for the conference including the issues in dispute and whether family violence exists. The FDR practitioner uses this information to chair the conference appropriately.

Conference organisers stated that there are clear policies and procedures in place for identifying and managing power imbalances, child abuse and support needs. Where matters are particularly complex, conference organisers will consult with the FDR manager for additional guidance and advice. Conference organisers stated that these processes are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients. However, a matter will not proceed until all intake and screening documents have been received.

FDR management advised that currently 7.7 per cent of the FDR client population are Indigenous. To better target FDR services for Indigenous clients, the commission is introducing an Indigenous traineeship program for FDR practitioners. FDR management advised that this is an area which can be significantly improved. The commission is currently liaising with the Attorney-General's Department as to entry qualifications for the program.

Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language; however, it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

Child focused FDR services

New South Wales provides child focused FDR services which is underpinned by the objects and principles of the Family Law Act and embodied in the draft operating manual used by conference organisers and FDR practitioners. Lawyers are expected
that their advice to clients is in the best interests of the child. FDR practitioners are also expected to reality test proposed agreements against the best interests of the child.

FDR practitioner survey results for New South Wales suggests that FDR mechanisms to ensure the best interests of the child are appropriate. Seventy three per cent (n=11) of FDR practitioners strongly or somewhat agreed that such mechanisms were appropriate, while 27 per cent (n=4) strongly or somewhat disagreed.47

Eighty three per cent (n=34) of clients strongly agreed or agreed that the conference helped them to understand/focus on the interests of their children, while 12 per cent (n=5) disagreed or strongly disagreed.

Inclusion of extended family

New South Wales includes extended family as support people to parties in conference (where both parties consent) in addition to inclusion in conferences as parties in their own right.

Fifty seven per cent of FDR practitioners (n=8) strongly agreed or agreed that the current mechanisms for including extended family are appropriate,48 while 43 per cent (n=6) of FDR practitioners either strongly disagreed or disagreed that these mechanisms are appropriate. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family in conferences as support people is not often appropriate as their inclusion can disrupt the agreement making process.

Management of family violence, power imbalances and child protection issues

Conference organisers advised that the guidelines for screening family violence and child abuse were clear and, when the correct information is provided by the parties, the mechanisms to deal with such issues are effective. However, FDR practitioners encounter issues when this information is not disclosed or obtained at screening but it emerges during the conference. Responses to such issues (eg family violence or child abuse) are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

Where family violence issues are identified (either at screening or conference) the conference may take place by shuttle or telephone.

FDR practitioner responses to the survey showed a high level of agreement with New South Wales’s current processes for managing family violence and child abuse

47 Two FDR practitioners did not respond to this question.

48 Three FDR practitioners responded that this question is not applicable.
Appendices

Appendix D — Findings for each commission

- 87 per cent (n=14) of FDR practitioners strongly or somewhat agreed that appropriate protocols are in place for responding to family violence

- 80 per cent (n=12) of FDR practitioners strongly or somewhat agreed that appropriate mechanisms are in place for responding to additional support needs.

However, when responding to the emotional wellbeing needs of clients, only 57 per cent (n=8) of FDR practitioners strongly or somewhat agreed that appropriate protocols were in place to deal with these issues.

Availability of services for people from diverse backgrounds

New South Wales has actively recruited Indigenous FDR practitioners to its panel and developed an Indigenous traineeship program to increase the cultural competence of their FDR services.

When at conference, New South Wales attempts to allocate lawyers experienced in working with Indigenous people to the matter. FDR management agreed that it could improve the delivery of FDR services for Indigenous clients.

Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are included in the conference process.

Sixty per cent of clients strongly agreed or agreed that they were satisfied with the outcome of conferencing. All FDR practitioners strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process

- 79 per cent (n=30) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 68 per cent (n=28) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 55 per cent (n=23) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help
- 52.5 per cent (n=21) strongly agreed or agreed that they required additional legal advice before coming to an agreement, while 45 per cent (n=18) disagreed or strongly disagreed.

Eighty one per cent of FDR practitioners strongly or somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: ensuring all lawyers who participate in FDR are trained in alternative dispute resolution as well as have a clear understanding of the best interests of the child; ensuring all lawyers take thorough instructions from their
clients well before the conference; and the development of a peer support program for FDR practitioners.

FDR practitioners and conference organisers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and an increased understanding by parties of the relevant issues, and quick resolution of issues as they arise.

Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making, and allowing for reality checking of proposed agreements.

**Quality improvement**

New South Wales is an accredited FDR provider. The commission provides training for FDR practitioners (including a two day annual conference) to meet reaccreditation requirements.

Conference organisers advised that the commission provides a comprehensive range of professional development opportunities including support for external courses and study through to in house and on the job training. Examples of in house training include:

- cultural awareness
- family violence awareness
- client/customer service
- tools for managing aggressive clients.

FDR practitioners (from the focus group) on the other hand advised that they have access to very little training and peer review. Where they are offered training, they generally have to cover the expense to attend (e.g., either time or course fees). This level of dissatisfaction with the training and professional development opportunities is reflected in their survey responses, with:

- only 47 per cent of FDR practitioners agreeing that they are provided with professional development and training opportunities
- 53 per cent of FDR practitioners agreeing that there is an established system of peer support in place (compared to 47 per cent who disagreed with this statement).

New South Wales FDR practitioners in the focus group suggested that they would benefit from regular peer review of practice as conference chairs as well as regular networking opportunities to share experiences and learnings.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Ninety two per cent of clients very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Eighty eight per cent of clients were very satisfied or satisfied with the FDR practitioners’ fairness and professionalism.
Appendices

Appendix D — Findings for each commission

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, maintain the focus on the child and reality test effectively. This level of experience is reflected in the number of years and conferences New South Wales FDR practitioners have chaired.

Ninety four per cent of FDR practitioners surveyed have more than five years’ experience in FDR.

Seventy one per cent of the FDR practitioners surveyed have chaired more than 20 conferences in the last year.

To monitor the quality of its FDR services

- conference organisers receive informal feedback through clients and FDR practitioners
- formal reports on service utilisation are developed by the FDR manager — these reports are provided to the Attorney-General’s Department on a quarterly basis and report on the number of conferences held and settlement rates
- New South Wales has in place a complaints handling process where clients can complain about an in house lawyer and/or FDR practitioner.

Summary — New South Wales

The current strengths of the New South Wales FDR services are

- its role as a lawyer assisted form of FDR which provides a combined legal and social science conferencing approach where appropriate
- its intake process which assesses the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- the clarity conference organisers and the FDR manager have about the matters that are suitable for its FDR services and those that are not suitable
- involvement of parties and lawyers in the screening and intake process
- its development of different strategies to increase the accessibility of FDR services for Indigenous parties
- the experience of its FDR practitioners in terms of number of conferences chaired and years of experience as a mediator-conciliator
- its increasing cost effectiveness and efficiency overtime.

The current opportunities for improving New South Wales’s FDR services exist in the areas of

- developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from a legal, developmental and age appropriate perspectives
- exploring culturally competent FDR models for parties from culturally and linguistically diverse backgrounds
• developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers

• developing an outcomes based quality improvement and monitoring approach to its FDR services.

**D3 – Victoria**

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<tr>
<th>Form of dispute resolution</th>
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<td>Conferencing modes</td>
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<td>Settlements[^49]</td>
<td>772</td>
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In 2007-08, Victoria held 925 conferences. Victoria’s FDR program is termed Roundtable Dispute Management. This utilises a combined mediation-conciliation approach to dispute resolution which is underpinned by a case management approach.

Case managers who may either have a legal, social sciences, social work or psychology background work with parties during the screening and preparation process. The role of the case manager is to meet with/speak with both parents for the purpose of assessing the appropriateness of conferencing, determining factors relevant to organising the conference, narrowing the issues of contention and, as much as possible, focusing parents on the best interests of the child. Case managers receive fortnightly clinical supervision on an individual and peer group basis in addition to quarterly professional development days.

FDR practitioners in Victoria are ‘hand picked’ professionals from legal, social work, psychology and counselling backgrounds. FDR practitioners receive comprehensive support and supervision from the Roundtable Dispute Management manager. This

[^49]: Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.
involves regular case discussions and supervision and professional development on a quarterly basis. Ten FDR practitioners are on the panel of chairs.

**Evaluation findings**

*Role of FDR services in the new family law context*

Victoria may refer parties to a Family Relationship Centre or other services (such as Parenting Orders Programs) if they have attempted FDR conferences without a successful resolution.

Victoria also has a collaborative relationship with the Domestic Violence Resource Centre where FDR staff can access training regarding the identification and management of family violence in conferences.

Case managers will also refer clients to external support services where required. Such services include drug and alcohol services, family counselling, family violence support groups, men's behaviour change programs and Family Relationship Centres. Referrals may be made prior to attending a conference or commonly arise from agreements made during a conference.

Victoria also participates in the local family pathways network which provides the opportunity for Family Court of Australia, Federal Magistrates Court, lawyers, commission staff, FDR practitioners, Family Relationship Centres, child support agencies, contact centres involved in family law matters to build relationships.

**Screening and intake**

FDR is accessed through Victoria’s application process for legal aid. Lawyers make an application for legal aid on behalf of their clients.

Victoria has developed the following five step process for conferencing

1  Engagement

2  Screening and intake

3  Preparation

4  Conferencing

5  Follow-up.

Once a grant is allocated, the matter is passed to a case manager who then contacts both parties. This is the engagement stage. Once contact has been made, case managers then undertake the screening and intakes stage to assess the suitability of the matter for conferencing and, if appropriate, the most appropriate mode of conferencing. A number of tools have been developed to support this process, including
• a screening and preparation tool

• a screening out checklist.

The screening and preparation tool provide clear direction about family violence, and also identify any other issues which may impact on the ability of the parent to participate in conferencing.

A central part of the screening process is the case manager and parties’ interview. Case managers interview all parties (usually the parents) to determine the suitability for conference. These interviews also provide an opportunity to

• coach parties to make the most of conferencing through explaining the process, developing coping strategies, discussing the need for a support person and focussing on the key messages

• assess the level of risk and urgency for conferencing

• determine the suitability for conferencing

• determine the factors that are relevant to organising a conference

• narrow the issues in dispute and clarify each party’s underlying concerns

• assess the need for child inclusive practice

• focus the parties on the best interests of the child.

Case managers spend on average up to six hours with parties during the screening and preparation stage. Within this average time frame, one and half to two hours are spent with each party and two hours are spent preparing a summary report for the FDR practitioner.

If the parties agree to conference and the matter is assessed as being suitable for conference, the administrative services team will arrange the conference (including FDR practitioner).

Victoria has guidelines for identifying family violence, child protection and support needs through its screening process. The guidelines for identifying family violence have been developed in conjunction with the Domestic Violence Resource Centre (DVRC). Case managers stated that the guidelines are clear on how to respond to family violence. Case managers also advised that they are trained on how to manage a range of complex issues such as suicide, mental health, and drugs and alcohol. All case managers undertake four days intensive and accredited training with DVRC.

The screening checklist also collects information on Indigenous status, cultural/religious background and support requirements (such as the need for interpreter services, visual aids).

Lawyers noted that, where required, the commission arranges interpreters for clients for whom English is a second language. However, it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.
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Appendix D — Findings for each commission

Child focused FDR services

Victoria has a child focused protocol for ensuring FDR focuses on the best interests of the child. This protocol commences at the screening stage where all parties are briefed on the purpose of FDR and its child focus. As such, parties are encouraged to view their dispute from the perspective of their child(ren) in their absence.

Victoria has also developed a child inclusive practice called the Kids Talk Program. This program provides an opportunity for children to provide their views on their parents’ dispute in a safe environment. Their feedback is then included, via a confidential and inadmissible summary, to each party, their lawyers and the chairperson conducting the conference. This process assists parents to work at the most cooperative level for their children leading to a better parenting relationship.

If child protection concerns are raised during screening and/or conferencing, Victoria has a policy of reporting these concerns to the appropriate authorities. FDR practitioners advised that they may report at least one case every two months.

FDR practitioner survey results for Victoria suggests that mechanisms to ensure the best interests of the child are appropriate. All (n=7) of FDR practitioners strongly or somewhat agreed that existing mechanisms are appropriate.

Inclusion of extended family

Victoria has a policy of including extended family in FDR including conferencing regardless of whether they are support people or parties themselves. As a result, its FDR conferences involve a large number of matters involving grandparents. The involvement of extended family is seen as a mechanism to support and assist a party to make a decision rather than to impede the decision making process. All FDR practitioners strongly or somewhat agreed that these mechanisms are appropriate.

To explore mechanisms for including extended family in conferencing, legal aid commissions are developing a national training program for practice which is inclusive of grandparents.

Management of family violence, power imbalances and child protection issues

Case managers and FDR practitioners advised that the guidelines for screening family violence and child abuse were clear and, when the correct information is provided by the parties, the mechanisms to deal with such issues are effective. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately and report the matter to the relevant authorities.

In addition to being experienced social workers, psychologists and lawyers, all case managers and FDR practitioners have participated in at least six days of interactive family violence training with the Domestic Violence Resource Centre and the commission. Where family violence issues are identified (either at screening or conference) the conference will take place by shuttle or a combination of shuttle and face to face work where appropriate.
To support the management of family violence in conferencing, the commission has developed the following tools to guide assessments and to safely manage conferences:

- family violence policy and procedures
- safety plan tip sheet
- safety procedures during FDR conferences
- FDR preparation interview guide.

The above tools are based on leading practice research to ensure a psychologically, emotionally and physically safe environment and process for all parties during conference.

FDR practitioners and case managers also noted a high volume of matters where one or more party presents with mental illness and substance misuse issues.

FDR practitioner responses to the survey showed that all (n=7) FDR practitioners strongly or somewhat agreed that the Victoria has in place appropriate protocols in place to manage family violence, child abuse and other support needs.

**Availability of services for people with special needs**

Victoria does not have a specific approach to providing services to people from diverse backgrounds (including Indigenous people, people from culturally and linguistically diverse backgrounds, people with a disability or people from different religious backgrounds).

Victoria provides interpreter services for people from non English speaking backgrounds or aids for people with a disability.

All case managers and FDR practitioners have received specialist workshops in working with Arabic communities and also cross cultural training, with particular reference to the impact of family violence.

While case managers come from an array of cultural backgrounds, FDR practitioners acknowledge that this is an area that can be improved. Understanding the implications of religious and cultural beliefs can be critical to agreement making and the matching of FDR practitioners to a particular conference (e.g. female FDR practitioner with a male Muslim client).

All FDR practitioner respondents strongly or somewhat agreed that FDR services accommodate the needs of people from diverse backgrounds.

**Satisfaction with FDR**

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.
Sixty seven per cent (n=43) of clients strongly agreed or agreed that they were satisfied with the outcome of conferencing. One hundred per cent of FDR practitioners strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process:

- 64 per cent (n=41) strongly agreed or agreed that conferencing helped them to understand the relevant issues.
- 58 per cent (n=37) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues.
- 55 per cent (n=34) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help.
- 58 per cent (n=34) strongly agreed or agreed that they required additional legal advice before coming to an agreement.

All FDR practitioners (n=7) strongly or somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: improving the conferencing infrastructure for regional areas; having a more flexible conference time; providing an information session on FDR for parties; and improving referral arrangements with Family Relationship Centres.

FDR practitioners and case managers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and increased the understanding by parties of the relevant issues, and quick resolution of issues as they arise.

Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making, and allowing for reality checking of proposed agreements.

**Quality improvement**

Victoria is an accredited FDR provider. The commission provides training for FDR practitioners by way of quarterly professional development days.

FDR practitioners and case managers advised that the Victoria provides a comprehensive range of professional development opportunities both within Victoria and with other organisations such as DVIRC, men’s groups and migrant resource centres. Examples of training includes:

- child focused mediation
- family violence awareness
- mental health awareness.

All FDR practitioners (n=7) strongly or somewhat agreed that there is an established system of peer support in place and that they have access to training and professional development opportunities.
Lawyers and clients expressed a high level of confidence in FDR practitioners. Ninety per cent (n=60) of clients were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Eighty per cent (n=52) of clients were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, understand the different and complex support needs of the client group, maintain the focus on the child and reality test effectively.

All FDR practitioners who responded to the survey have between three to five years’ experience in commission FDR conferences.

Eighty six per cent of FDR practitioners surveyed have chaired more than 20 conferences in the last 12 months.

To monitor the quality of its FDR services, the Victoria keeps data on service utilisation and provides quarterly reports to the Attorney-General’s Department on the number of conferences held and settlement rates.

No formal quality review or improvement process is in place for the Victoria's FDR services. The formal supervision of case managers, regular case consultation and peer supervision of FDR practitioners provides quality assurance for FDR. The responsibility of quality assurance and improvement lies with the manager of Roundtable Dispute Management.

**Summary – Victoria**

The current strengths of the Victoria’s FDR services are:

- its role as a lawyer assisted form of FDR which provides a combined legal and social science conferencing approach where appropriate
- its intake tools which assess the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- involvement of parties and lawyers in the screening and intake process
- the clarity conference organisers and the FDR manager have about the matters that are suitable for its FDR services and those that are not suitable
- its development of formal protocols and guidelines for including extended family and for focusing on the best interests of the child
- the experience of its FDR practitioners in terms of number of conferences chaired and years of experience as a mediator-conciliator
- the breadth and depth of training and professional development it provides to FDR staff and FDR practitioners.

The current opportunities for improving Victoria's FDR services exist in the areas of:
• exploring culturally competent FDR models for parties from Indigenous, culturally and linguistically diverse and different religious backgrounds
• developing an outcomes based quality improvement and monitoring approach to its FDR services
• increasing its cost effectiveness and efficiency overtime by reviewing its screening and preparation processes including the length of time to screen and prepare for the conference and the volume of matters screened out.

D4 — South Australia

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<tr>
<th>Form of dispute resolution</th>
<th>Mediation-conciliation</th>
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<td>Experienced family lawyers</td>
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<td>Number of FDR practitioners</td>
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<td>Legal representation</td>
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<td>Conferencing modes</td>
<td>All modes available</td>
</tr>
<tr>
<td>Conferences held (2007-08)</td>
<td>370</td>
</tr>
<tr>
<td>Settlements</td>
<td>304</td>
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</tbody>
</table>

South Australia’s FDR model is a combination of mediation with conciliation where appropriate. In 2007-08, the South Australian legal aid commission held 370 conferences.

All nine FDR practitioners are lawyers and have extensive experience in family law. Four of the lawyers are in house. An additional five external lawyers can be called upon to chair conferences. The commission has agreed to double the output of FDR and hence increase the number of staff. The FDR coordinator is also an FDR practitioner and conducts conferences in locations outside of Adelaide.

Conferences out of Adelaide are held in magistrate courts throughout the state. A child psychologist is employed by the commission and is sometimes used in the FDR

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50 Data on the number of matters screened out either before or during the screening and preparation phase was not able to be provided by the commission. Anecdotal information suggests the number is comparably higher than in other jurisdictions in part due to matters being resolved prior to the actual conference.

51 Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

52 Attorney-General’s Department, LARI data 2007-08, number of conferences held.
process to ensure the best interests of the child are upheld via an assessment and report.

Once a conference is arranged, FDR occurs over two stages

- PDR 1 focuses on building trust and understanding of the issues. Six hours are assigned to PDR 1 which includes a three hour conference and time for preparation/conclusion
- PDR 2 is a review session which aims to fine tune an agreement if it breaks down.

**Evaluation findings**

**Role of FDR services in the new family law context**

The commission provides a lawyer chaired combined mediation-conciliation model of FDR. In providing FDR, the commission engages with Family Relationship Centres, the family pathways network and external support providers. Family Relationship Centres operate throughout the state and the commission’s FDR program has a relationship with these services.

The commission has developed a family dispute resolution Service Framework which details the target groups, locations, contact details, features and costs of the commission’s FDR services and mediation services provided by external organisations including Family Relationship Centres. This framework is used to assess the most appropriate alternative dispute resolution option for families.

In conjunction with Relationships Australia, the commission has developed a memorandum of understanding to guide the engagement between the commission’s FDR services and the service provided by the Family Relationship Centre. In addition to this memorandum of understanding, the commission FDR manager provides assistance to the Family Relationship Centre to help develop their mediation services.

Information about other support agencies is provided to parents as determined at the point of conference.

**Screening and intake**

The commission receives applications for grants of aid from private and in-house lawyers and individuals (ie the party).

Lawyers and parties are sent letters inviting them to participate in FDR. The letter to lawyers encourages them to make contact to identify any issues which the FDR practitioner should be aware of (eg if parent has a disability or if an interpreter is needed).

The letter to the parents provides information about FDR (including a pamphlet) and invites them to contact the conference organiser within seven days. The conference organiser will ensure that both parties have made application to legal aid if appropriate.
Conference organisers will follow up with parties with a second letter if they do not hear from them.

If the parties agree to participate in FDR, the matter is then forwarded to the FDR unit for a detailed assessment of suitability for FDR.

Upon contact with the conference organisers (who are experienced paralegals), an intake is completed. This ‘FDR Intake/Screening questions’ cover special needs, communication and conflict between the parties, presence of family violence and any restraining orders and the safety of the child. It also explores the persons level of comfort with the proposed FDR process and discusses different approaches such as shuttle.

The commission employs a child/family psychologist (whose main role is to write family reports for the Family Court. The psychologist, however, will meet with children when they are old enough to express an opinion or have a view and will prepare a report or provide a verbal one for the conference.

The screening checklist collects information on Indigenous status, cultural or religious background and support requirements (such as the need for interpreter services, visual aids).

This process does not focus on narrowing the issues – rather it is designed to gather information to assess for the suitability of conferencing and the type of conference which should be held.

A file is prepared for the FDR practitioner and this identifies what ‘issues’ are present (alcohol, communication issues, mental health etc) and the intake/screening form.

The conference organiser then arranges the conference and advises all parties.

FDR practitioners and FDR management advised that the facilities at the commission are not ideal for conferencing and families are present in areas of the building where staff are located. Alternate sites are available in Adelaide but rarely used because of the safety aspect (no support or staff available to chairperson).

The FDR Coordinator is also an FDR practitioner and chairs conferences. Conferences out of Adelaide are held wherever accommodation is available including courts and Family Relationship Centres.

*Child focused FDR services*

FDR management and conference organisers advised that FDR is child focused, however, the commission does not have a documented policy or procedure to guide this.

All FDR practitioners (n=7) strongly or somewhat agreed that existing mechanisms for focusing on the best interests of the child are appropriate.
Inclusion of extended family

The inclusion of extended family in FDR is decided by FDR practitioners and is limited to inclusion as support people to conferences and as parties in their own right. All FDR practitioners (n=7) strongly or somewhat agreed that the current mechanisms for including extended family are appropriate.

Management of family violence, power imbalances and child protection issues

Conference organisers and FDR practitioners advised that the guidelines for screening family violence and child abuse are clear and, when the correct information is provided by the parties, the mechanisms to deal with such issues are effective. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately and report the matter to the relevant authorities.

An in house child psychologist also provides secondary consultation advice to conference organisers and FDR practitioners in how to appropriately manage child related issues.

Conference participants are given signals to ensure they can end the conference at anytime they feel uncomfortable. Separate rooms and the use of shuttle conferencing are all designed to minimise the degree of intimidation one party may impose on another.

All FDR practitioners (n=7) strongly or somewhat agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.

Availability of services for people from diverse backgrounds

The commission has a large internal migration unit which provides advice to FDR practitioners on migrant issues and culturally and linguistically diverse groups to ensure they are fully informed of how to work with these groups. The commission also arranges interpreters for conferences when required.

Lawyers also agreed that the current processes to support people from diverse backgrounds (predominantly people from culturally and linguistically diverse backgrounds) are appropriate.

Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Eighty six per cent (n=19) of clients strongly agreed or agreed that they were satisfied with the outcome of conferencing. All FDR practitioners (n=7) strongly or somewhat agreed that settlements arising out of FDR are workable.
The client survey indicated the following levels of agreement with the conference process:

- 84 per cent (n=16) strongly agreed or agreed that conferencing helped them to understand the relevant issues.
- 50 per cent (n=11) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues.
- 46 per cent (n=11) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help.
- 57 per cent (n=12) strongly disagreed or disagreed that they required additional legal advice before coming to an agreement.

All FDR practitioners (n=7) strongly or somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: reducing the use of teleconferencing as it is less effective; allowing for the review of agreements over time; and reducing the delay between application for legal aid and conference.

FDR practitioners and the conference organiser noted the benefits and strengths of FDR were: the experience and background of FDR practitioners allowing them to effectively reality test agreements.

Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making in a non-confrontational environment, and allowing for reality checking of proposed agreements.

**Quality improvement**

The commission is an accredited FDR provider. The commission provides training for FDR practitioners (including a two-day annual conference) to meet reaccreditation requirements.

Conference organisers advised that they have not undertaken any specific training in FDR or the issues related to it. FDR practitioners advised that training is provided on an informal basis and receive an adequate level of support from the FDR manager to fulfil their duties.

All FDR practitioners (n=7) strongly or somewhat agreed that there is an established system of peer support in place and that they have access to training and professional development opportunities.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Eighty-eight per cent (n=21) of clients very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Eighty-three per cent (n=20) of clients were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, understand the different
and complex support needs of the client group, maintain the focus on the child and reality test effectively.

Fifty seven per cent of FDR practitioners surveyed have between three to five years’ experience in FDR. Forty three per cent of FDR practitioners have less than five years’ experience.

Eighty six per cent of FDR practitioners surveyed have chaired between 10 to 20 conferences in the last 12 months.

To monitor its FDR services, the commission keeps data on service utilisation and provides quarterly reports to the Attorney-General’s Department on the number of conferences held and settlement rates.

No formal quality review/improvement process is in place for the commission’s FDR services. Debriefing sessions with FDR practitioners provides quality assurance for FDR. The responsibility of quality assurance and improvement lies with the FDR coordinator.

Summary — South Australia

The current strengths of the South Australian legal aid commission’s FDR services are

- its role as a lawyer assisted form of FDR
- its relationships with other FDR providers and its referral protocol to assist in the assessment of the most suitable FDR service for the parties' needs
- its intake tools which assesses the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- involvement of parties and lawyers in the screening and intake process
- the clarity conference organisers and the FDR manager have about the matters that are suitable for its FDR services and those that are not suitable
- its increasing cost effectiveness and efficiency overtime.

The current opportunities for improving the commission’s FDR services exist in the areas of:

- exploring culturally competent FDR models for parties from Indigenous, culturally and linguistically diverse and different religious backgrounds
- developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers
- developing an outcomes based quality improvement and monitoring approach to its FDR services.
D5 – Western Australia

<table>
<thead>
<tr>
<th>Form of dispute resolution</th>
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<td>Qualification of FDR practitioners</td>
<td>Experienced family lawyers and social scientists</td>
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<tr>
<td>Number of FDR practitioners</td>
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<tr>
<td>Legal representation</td>
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<td>Issues conferenced</td>
<td>Parenting and property</td>
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<tr>
<td>Conferencing modes</td>
<td>All modes available</td>
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<tr>
<td>Conferences held (2007-08)</td>
<td>349</td>
</tr>
<tr>
<td>Settlements(^{53})</td>
<td>283</td>
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</tbody>
</table>

Western Australia provides a child focused mediation based FDR. FDR practitioners are a combination of social scientists and experienced family lawyers. In 2007-08, the commission held 349 conferences.\(^{54}\)

The family law environment in Western Australia is different to other jurisdictions as the Family Court of Western Australia deals with all state and federal family law matters. Unlike other jurisdictions where the Family Court of Australian and Federal Magistrates Court have jurisdiction over federal family law matters.

The majority of the commission’s FDR practitioners are located in Perth and Bunbury, with a number also located in regional and remote locations. The commission has facilities for telephone, video and face to face conferencing. Shuttle is available for all modes of conferencing depending on the circumstances of the dispute, the power imbalance between the parties and request of the parties. All parties to the conference must be legally represented.

Evaluation findings

**Role of FDR services in the new family law context**

The commission works closely with the family law fraternity in Western Australia including the Family Court of Western Australia, family consultants and lawyers. The model of FDR provided targets more complex matters, therefore making the FDR

\(^{53}\) Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

\(^{54}\) Attorney-General’s Department, LARI data 2007-08, number of conferences held.
services provided by the commission distinct to those services provided by the Family Relationship Centre. Where required, intake officers will refer clients to external support services.

The commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission will refer applicants to a Family Relationship Centre or an external provider where the parties are seeking child inclusive mediation (where this is offered) or if they are not (or choose not to be) legally represented. A decision to refer will also depend on funding priorities and take in to account client needs and complexity of the issues in dispute.

Screening and intake

Clients can access FDR either directly (by seeking advice and applying for legal aid through the commission) or through their lawyer (usually through the online e-lodgement process).

Once approved for legal aid, the matter is referred to the alternative dispute resolution team leader for determination of suitability for FDR.

Intake officers contact the parties to complete a screening checklist which identifies the legal issues in dispute, existence of family violence, child abuse and/or mental health needs, and any other support needs (ie need for interpreter services). Based on this information, the conference organiser determines the suitability for conference.

For complex matters that may involve a mix of legal and clinical issues, intake officers discuss the assessment with the in house clinical manager and / or lawyer in charge where appropriate. The clinical manager is a social worker with family law/court experience. Together, the clinical manager and intake officers determine the suitability of the matter for conference.

If child abuse allegations are identified, the matter does not proceed to FDR until such allegations have been investigated by the Department of Child Protection (WA) and, following any report/requirements from the Department, if FDR is appropriate. If family violence is identified strategies to mitigate power imbalance and ensure the safety of the parties are developed. Such strategies include conducting the conference by shuttle and ensuring all parties are legally represented.

If determined suitable, a date for the conference is set and an FDR practitioner is allocated to the conference. Matching of FDR practitioners to clients is based on the needs of the client and on the issues in dispute where particular requirements are identified (otherwise FDR practitioners are allocated on a rotational basis).

The median number of days from receipt of application by the commission to FDR is 73. The median number of days from the FDR grant following determination of suitability to FDR is 43.

If all parties agree to participate in conferencing and if the matter is deemed suitable for conferencing, the FDR coordinator approves the grant of aid for FDR. At this point,
Appendices

Appendix D — Findings for each commission

lawyers are funded for an hour to take instructions from their client prior to the conference for children's issues and two hours for property issues.

Prior to the conference, the conference organisers provide FDR practitioners, where appropriate, with a report on the relevant issues for the conference including the issues in dispute and whether family violence exists. Each solicitor also provides completed screening guideline forms to the FDR practitioner. The FDR practitioner uses this information to chair the conference appropriately.

Conference organisers stated that there are clear policies and procedures in place for identifying and managing power imbalances, child abuse and support needs. Where matters are particularly complex, conference organisers will consult with the clinical manager for additional guidance and advice. Conference organisers stated that these processes are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients.

The screening checklist collects information on Indigenous status, cultural and religious background and support requirements (such as the need for interpreter services, visual aids). The commission does not have any strategies to specifically target people from diverse backgrounds.

Child focused FDR services

FDR management, intake officers and FDR practitioners advised that FDR is child focused however the commission does not have a documented policy or procedure to guide this. The commission arranges child psychologist reports for some conferences.

FDR practitioners described a range of tools they use to ensure parties focus on the best interests of the child during the conference (including photos of the children, writing their names on a whiteboard, and reality testing agreements against the impact on the child).

All FDR practitioners (n=12)\(^ {55}\) strongly or somewhat agreed that existing mechanisms for focusing on the best interests of the child are appropriate.\(^ {56}\)

Inclusion of extended family

The commission includes extended family, where appropriate, in conferences as parties in their own right with their own legal representation. Screening processes determine if it is appropriate for extended family members, particularly those who care for children, to be present. As all parties are legally represented, it is very unusual for an extended family member to participate in the conference as a support person. However, an extended family member may often provide support outside the

\(^ {55}\) On all occasions, ‘n’ equals the number of surveys completed by FDR practitioners not the total number of FDR practitioners employed by the commission.

\(^ {56}\) Three FDR practitioners did not respond to this question.
conference in the waiting room or by providing transport to the conference for the participating party.

Fifty eight per cent of FDR practitioners (n=7) strongly agreed or agreed that appropriate mechanisms are in place to include extended family, while 42 per cent (n=5) FDR practitioners either strongly or somewhat disagreed appropriate mechanisms are in place.

Management of family violence, power imbalances and child protection issues

Intake officers advised that the guidelines for screening family violence and child abuse were clear and when the parties provide the correct information, the mechanisms to deal with such issues are effective. However, FDR practitioners encounter issues when this information is not disclosed at screening and emerges during the conference. Responses to such issues are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

Where family violence issues are identified (either at screening or conference) the mode in which the conference takes place will be decided in consultation with the parties. The commission does not have a policy of conducting conferencing involving family violence by shuttle. The rationale for this is that better results are achieved through face to face conferencing as long as both parties are legally represented.

FDR practitioner responses to the survey showed a high level of agreement with the commission having appropriate protocols in place to manage family violence, child abuse and other support needs

- 92 per cent (n=10) of FDR practitioners strongly or somewhat agreed that appropriate protocols are in place for responding to family violence
- 78 per cent (n=7) of FDR practitioners strongly or somewhat agreed that appropriate mechanisms are in place for responding to family support needs.

However, when responding to the emotional wellbeing needs of clients, only 64 per cent (n=7) of FDR practitioners strongly or somewhat agreed that appropriate protocols were in place to deal with these issues, while 36 per cent strongly or somewhat disagreed that appropriate protocols were in place.

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57 Three FDR practitioners responded that this question is not applicable.
58 Six FDR practitioners did not respond to this question.
59 Four FDR practitioners responded that this question is not applicable, while two FDR practitioners did not respond to this question.
**Appendix D — Findings for each commission**

### Availability of services for people with special needs

The commission does not have a specific approach to providing services to people from diverse backgrounds (including Indigenous people, people from culturally and linguistically diverse backgrounds, people with a disability or people from different religious backgrounds).

It provides interpreter services for people from non-English speaking backgrounds or aids for people with a disability.

FDR management acknowledged the importance of exploring culturally competent models of FDR for Indigenous and culturally and linguistically diverse parties. As such, the commission is currently exploring a co chair mediation model for Indigenous parties which may involve an experienced FDR practitioner and an Indigenous mediator / elder where appropriate.

Recognition of the work required in this area is reflected in the FDR practitioner survey responses. Fifty eight per cent of FDR practitioners strongly or somewhat agreed that FDR services accommodates the needs of people from diverse backgrounds, while 42 per cent strongly or somewhat disagreed that appropriate measures are in place.

### Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Only 45 per cent of clients (n=14) strongly agreed or agreed that they were satisfied with the outcome of conferencing, while 48 per cent strongly disagreed or disagreed. All FDR practitioners (n=15) strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process

- 52 per cent (n=15) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 65 per cent (n=20) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 58 per cent (n=18) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help
- 50 per cent (n = 15) strongly disagreed or disagreed that they required additional legal advice before coming to an agreement, while 47 per cent were in agreement.

All FDR practitioners (n=15) strongly or somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: ensuring all lawyers who participate in FDR are trained in alternative dispute resolution as well as having a clear understanding of the best interests of the child; ensuring all lawyers take thorough instructions from their clients.
well before the conference; and the development of a peer support program for FDR practitioners.

FDR practitioners and intake officers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and increased understanding by parties of the relevant issues, and quick resolution of issues as they arise.

Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making in a non confrontational environment, and allowing for reality checking of proposed agreements.

**Quality improvement**

The commission is an accredited FDR provider. The commission provides training for FDR practitioners to meet accreditation and reaccreditation requirements.

The commission provides a range of training and professional development opportunities for intake officers, FDR practitioners and lawyers (both in house and external). This includes

- formal, regular supervision of FDR practitioners through supervision / consultation of conferences (by an expert panel) every 12 months
- assisting FDR practitioners to meet their reaccreditation requirements through the provision of regular FDR practitioner clinical case discussions and clinical skills training sessions such as child focused mediation.

The commission has also trained a pool of 160-170 family lawyers in Western Australia in FDR and the Act requirements.

Eighty seven per cent of FDR practitioners (n=13) strongly or somewhat agreed that they have access to training and professional development opportunities.

Ninety three per cent of FDR practitioners (n=14) strongly or somewhat agreed that there is an established system of peer support (consultation) in place.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Ninety four per cent of clients very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Seventy six per cent of clients were very satisfied or satisfied with the FDR practitioner’s fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, understand the different and complex support needs of the client group, maintain the focus on the child and reality test effectively.

Sixty per cent of FDR practitioners surveyed have more than five years’ experience in FDR.
Eighty six per cent of FDR practitioners surveyed have chaired between 10 to 20 conferences in the last 12 months.

To monitor the quality of its FDR services, the commission records data on service utilisation and provides quarterly reports to the Attorney-General's Department on the number of conferences held and settlement rates. No formal quality review or improvement process is in place for FDR services.

**Summary – Western Australia**

The current strengths of the Western Australian legal aid commission's FDR services are

- its role as a lawyer assisted form of FDR provides a combined legal and social science conferencing approach where appropriate
- its intake tools which assess the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- involvement of parties and lawyers in the screening and intake process
- the clarity conference organisers and the FDR Manager have about the matters that are suitable for its FDR services and those that are not suitable
- its relationship with the family law fraternity throughout Western Australia, in particular the inclusion of family lawyers in commission training and professional development
- the experience of its FDR practitioners in terms of number of conferences chaired and years of experience as a mediator
- the breadth and depth of training and professional development it provides to FDR staff and FDR practitioners.

The current opportunities for improving Western Australia’s FDR services exist in the areas of

- exploring culturally competent FDR models for parties from Indigenous, culturally and linguistically diverse and different religious backgrounds
- developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from a legal, developmental and age-appropriate perspectives
- developing an outcomes based quality improvement and monitoring approach to its FDR services.
D6 – Northern Territory

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<th>Form of dispute resolution</th>
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<td>Qualification of FDR practitioners</td>
<td>Experienced family lawyers currently. But looking to recruit social scientists</td>
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<tr>
<td>Number of FDR practitioners</td>
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<td>Legal representation</td>
<td>One party must be legally represented</td>
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<td>Issues conferenced</td>
<td>Parenting</td>
</tr>
<tr>
<td>Conferencing modes</td>
<td>Face to face available in Darwin and Alice Springs. Teleconference and video conference available outside these locations</td>
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<tr>
<td>Conferences held (2007-08)</td>
<td>102</td>
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<tr>
<td>Settlements(^{60})</td>
<td>80</td>
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</tbody>
</table>

The Northern Territory held 102 conferences in 2007-08.\(^ {61}\) The commission provides a lawyer assisted combined mediation-conciliation approach to FDR.

All 11 FDR practitioners are experienced family lawyers, and until recently, were required to be an independent child lawyer for membership on the FDR practitioner panel. However, the commission is in the process of opening up eligibility for FDR practitioner membership to social scientists.

FDR practitioners are based in Darwin and Alice Springs. The commission has the facilities to hold conferences by telephone, video conference and face to face. Given the geographical size of the Northern Territory and the location of FDR practitioners, where appropriate face to face conferences are held in Darwin and Alice Springs. Where parties are located outside of these areas, conferences are generally held by video or telephone.

Evaluation findings

*Role of FDR services in the new family law context*

The commission has a relationship with the Family Relationship Centre in that the commission will refer clients to Family Relationship Centres where they require child

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\(^{60}\) Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

\(^{61}\) Attorney-General’s Department, LARI data 2007-08, number of conferences held.
inclusive mediation (where this is offered) or if they do not wish to be legally represented.

The commission assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission will refer applicants to a Family Relationship Centre or external provider where the parties require child inclusive (where this is offered) mediation or if they are not (or choose not to be) legally represented.

The commission is currently working on developing a memoranda of understanding to guide the relationship and referrals between the Family Relationship Centre and FDR services.

**Screening and intake**

Before a client can apply for FDR or legal aid they must attend an advice session. At the advice session, the client receives an application for legal aid, which is then assessed for eligibility (ie means and merit tests applied) by assignments officer.

Once approved for legal aid, the file is forwarded to the FDR intake officer. At this point, the intake officer will write to other party to invite, and will write to applicant advising conference is pending. Included in letters is screening questionnaire. One questionnaire goes to lawyers, one to clients. The other party is given seven days to respond. The intake officer then will write a second letter and attempt telephone contact.

The other party is given opportunity to gain free legal advice through advice session. If conflict exists (small community, independent lawyer may not be available) then client provided with a letter to take to a private solicitor (who can invoice legal aid for $70).

A solicitor assessment sheet is completed as part of preparation. Both lawyers and clients return assessment sheets within two days of the conference. Assessment sheets are exchanged between parties so that all issues are known prior to conference.

The intake officer

- reviews assessments if a domestic violence order is in place. Here the intake officer will obtain the order to see if it is possible to conference. The commission may apply to have the order amended to allow mediation
- will screen out on advice of the lawyer for emotionally wellbeing issues, severe power imbalance, or if child protection proceedings are under way
- screens all cases for conflicts of interest (given the Northern Territory is a small community) and allocates the FDR practitioner.

The intake officer places proposed orders onto a laptop in the conferencing room prior to conference. This allows orders to be typed up and modified easily during conference.

The intake assessment sheet asks clients if child abuse and/or family violence exists. If child abuse is identified, the matter does not proceed to FDR. If family violence is identified strategies to mitigate the power imbalance and ensure the safety of the
parties are developed. Such strategies include conducting the conference by shuttle and ensuring all parties are legally represented.

Conference organisers stated that these processes for identifying issues were effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients.

The screening checklist collects information on Indigenous status, cultural and religious background and support requirements (such as the need for interpreter services, and visual aids).

Lawyers noted that where required, the commission arranges interpreters for clients for whom English is a second language however it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

**Child focused FDR services**

The commission does not have formal guidelines for focusing on the best interests of the child.

FDR practitioners commented that focusing on the best interests of the child is ‘just what we do’. FDR practitioners described a range of tools they use to ensure parties focus on the best interests of the child during the conference (including photos of the children, writing their names on a whiteboard, bringing the child(ren)s hobbies into the discussion, and reality testing agreements against the impact on the child).

Seventy five per cent of FDR practitioners (n=3) strongly or somewhat agreed that existing mechanisms for focusing on the best interests of the child are appropriate.62

**Inclusion of extended family**

The commission includes extended family as support people to conferences in addition to inclusion in conferences as parties in their own right.

Fifty per cent of FDR practitioners (n=2) strongly or somewhat disagreed that appropriate mechanisms are in place to include extended family.63 Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family member to participate in conferences as support people is often not appropriate as their inclusion can disrupt the agreement making process.

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62 One FDR practitioner responded that this question was not applicable.
63 One FDR practitioner responded that this question was not applicable.
Management of family violence, power imbalances and child protection issues

Intake officers advised that the guidelines for screening family violence and child abuse were clear and when the parties provide the correct information, the mechanisms to deal with such issues are effective. However, FDR practitioners encounter issues when this information is not disclosed at screening and emerges during the conference. Responses to such issues are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

Where family violence issues are identified (either at screening or conference) the mode in which the conference takes place will be decided in consultation with the parties. The Northern Territory has conferencing facilities which allow for shuttle conferencing in these situations. FDR practitioners cannot conference matters where a domestic violence order condition stipulates no contact unless there is a variation to allow of FDR.

FDR practitioner responses to the survey showed a high level of agreement with the commission having appropriate protocols in place to manage family violence, child abuse and other support needs

- all FDR practitioners strongly or somewhat agreed that appropriate protocols are in place for responding to family violence
- 75 per cent (n=3) of FDR practitioners strongly or somewhat agreed that appropriate mechanisms are in place for responding to family support needs.64

However, when responding to the emotional wellbeing needs of clients, only 50 per cent (n=2) of FDR practitioners strongly or somewhat agreed that appropriate protocols were in place to deal with these issues.

Availability of services for people with special needs

FDR practitioners advised that the current FDR model is not appropriate for Indigenous people. For conferences in Darwin and Alice Springs, the commission has adapted the model to allow the full extended family to sit at the conference table. However, where parties are located in regional or remote locations the conference is conducted by telephone or video which is inappropriate for Indigenous families.

The commission also arranges interpreters for conferences when required.

All FDR practitioners strongly or somewhat agreed that FDR accommodates the needs of people from diverse backgrounds.

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64 One FDR practitioner did not respond to this question.
Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission's screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Sixty three per cent of clients (n=17) strongly agreed or agreed that they were satisfied with the outcome of conferencing. All FDR practitioners (n=4) strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process

- 73 per cent (n=19) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 61.5 per cent (n=16) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 52 per cent (n=14) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help
- 65 per cent (n=17) strongly agreed or agreed that they required additional legal advice before coming to an agreement.

Seventy five per cent of FDR practitioners (n=3) strongly or somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: ensuring all lawyers who participate in FDR are trained in alternative dispute resolution as well as have a clear understanding of the best interests of the child; ensuring all lawyers take thorough instructions from their clients well before the conference; and the development of a peer support program for FDR practitioners.

FDR practitioners and intake officers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and increased understanding by parties of the relevant issues, and quick resolution of issues as they arise.

Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making in a non-confrontational environment, and allowing for reality checking of proposed agreements.

Quality improvement

The commission is an accredited FDR provider. The commission provides annual training (two days for FDR practitioners and one day for lawyers) on a range of issues including issuing certificates to conferencing techniques/tools. Intake officers can sit in on this training as well as attend the National Legal Aid Working Group.
Seventy five per cent of FDR practitioners (n=3) strongly or somewhat agreed that they have access to training and professional development opportunities.

All FDR practitioners (n=4) strongly or somewhat agreed that there is an established system of peer support in place.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Eighty nine per cent of clients (n=24) were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Sixty seven per cent of clients (n=18) were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced family lawyers who are able to assist parties to reach agreements, understand the different and complex support needs of the client group, maintain the focus on the child and reality test effectively.

Seventy five per cent of FDR practitioners surveyed have one to less than five years’ experience in FDR.

Seventy five per cent of FDR practitioners surveyed have chaired between 10 to 20 conferences in the last 12 months.

To monitor the quality of its FDR services, the commission records data on service utilisation and provides quarterly reports to the Attorney-General’s Department on the number of conferences held and settlement rates. No formal quality review or improvement process is in place for FDR services.

**Summary – Northern Territory**

The current strengths of the Northern Territory’s FDR services are

- its role as a lawyer assisted form of FDR
- its intake tools which assess the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- involvement of parties and lawyers in the screening and intake process
- the exchange of information between parties prior to conference to assist in the narrowing of issues
- the clarity conference organisers and the FDR Manager have about the matters that are suitable for its FDR services and those that are not suitable.

The current opportunities for improving the Northern Territory’s FDR services exist in the areas of

- exploring culturally competent FDR models for parties from Indigenous, culturally and linguistically diverse and different religious backgrounds
- developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from legal, developmental and age appropriate perspectives
- developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers
- developing an outcomes based quality improvement and monitoring approach to its FDR services.
The FDR program in Tasmania is a conciliation model where the chairs are all lawyers with extensive experience in family law. The seven FDR practitioners that comprise the panel of chairs not only facilitate the conference but may assist the parties and practitioners in reaching an agreement. In 2007-08, the commission held 491 conferences.

Clients must access the service through legal representation, either through a private lawyer or a legal aid funded lawyer. The client lodges an application for legal aid through their lawyer, once they have determined their eligibility, via an electronic form which is then assessed and approved by the grants manager. The grants manager then screens the matter for FDR. Screened in applications are then forwarded to the FDR organiser who then conducts a second screen while also setting up the conference including allocating the matter to the next available FDR practitioner. Any potential issues (such as significant family violence) flagged by the FDR coordinator may result in the conference, with advice from either the FDR manager or grants manager, being cancelled.

The FDR organiser sends an invitation to the other party although if the client’s issue is a reoccurring one, the FDR organiser may approach the lawyers of the two parties directly. The second party has two weeks to reply with a follow up letter sent if they fail to reply. If the second party contacts the FDR organiser, the process is explained and options given regarding their representation. They are encouraged to use the legal advice line if they choose not to be represented.

### D7 – Tasmania

<table>
<thead>
<tr>
<th>Form of dispute resolution</th>
<th>Conciliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualification of FDR practitioners</td>
<td>Experienced family lawyers only</td>
</tr>
<tr>
<td>Number of FDR practitioners</td>
<td>7</td>
</tr>
<tr>
<td>Legal representation</td>
<td>Prefer that both parties be legally represented</td>
</tr>
<tr>
<td>Issues conferenced</td>
<td>Parenting and property</td>
</tr>
<tr>
<td>Conferencing modes</td>
<td>All modes available</td>
</tr>
<tr>
<td>Conferences held (2007-08)</td>
<td>491</td>
</tr>
<tr>
<td>Settlements[^65]</td>
<td>395</td>
</tr>
</tbody>
</table>

[^65]: Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

[^66]: Attorney-General’s Department, LARI data 2007-08, number of conferences held.
Once the conference is finalised and the lawyers have been notified, each legal representative prepares a brief outlining the background of the client and the issues which is sent to the FDR practitioner. At this point, the FDR practitioner may make further enquiries with the parties’ lawyers. All material, letters and notes are stored on the client’s electronic file. Once these reports are received, the FDR coordinator sets a date, unless already pre specified and the conference can occur.

**Evaluation findings**

*Role of FDR services in the new family law context*

Tasmania assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission refers matters to Family Relationship Centres where neither party is eligible for legal aid, and where the parties are seeking mediation including child inclusive mediation. The Family Relationship Centre refers parties to the commission where they require lawyer assisted FDR.

The commission’s relationship with the Family Relationship Centre is informal and there are no written referral guidelines. The commission has formed strong relationships with Relationships Australia, Anglicare, interagency panels and family law pathways networks.

*Screening and intake*

Tasmania receives applications for grants of aid from private and in house lawyers and individuals (ie the party). Once approved for legal aid, non aided parties are sent letters inviting them to participate in FDR. If the parties agree to participate in FDR, the FDR coordinator contacts the parties’ lawyers to assess the suitability of the matter for conferencing.

An intake assessment sheet asks clients if child abuse and/or family violence exists. If child abuse is identified, the matter does not proceed to FDR.

The FDR organiser stated that these processes for identifying issues were effective.

The screening checklist collects information on Indigenous status cultural and religious background and support requirements (such as the need for interpreter services, visual aids).

Lawyers noted that where required, the commission arranges interpreters for clients for whom English is a second language however it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.
Child focused FDR services

Tasmania does not have formal written guidelines for focusing on the best interests of the child. The FDR and commission management advised that to their knowledge, conferences are child focused and that they largely rely on FDR practitioners to conduct conferences in a child focused manner.

FDR practitioners recently completed child inclusive mediation training. This training assists FDR practitioners to identify the need for child inclusive mediation at the first conference. If the need is identified a child psychologist prepares a report on the child’s needs which is then discussed at the second conference.

FDR practitioners advised that they will not conference matters involving child abuse allegations (however very few such matters have emerged). If FDR practitioners require advice on conferencing in a child focused manner, they will seek the counsel of experienced in house family lawyers.

All FDR practitioners (n=5) strongly or somewhat agreed that existing mechanisms for focusing on the best interests of the child are appropriate.

Inclusion of extended family

Tasmania includes extended family as support people to conferences (with the permission of the other party) in addition to inclusion in conferences as parties in their own right. Where extended family is a significant part of the agreement the commission will endeavour to involve them.

All FDR practitioners (n=5) strongly agreed or agreed that appropriate mechanisms where in place to include extended family.

Management of family violence, power imbalances and child protection issues

The FDR coordinator advised that lawyers are relied upon to identify such issues and determine the suitability of a matter for conferencing where these issues exist.

FDR practitioners encounter issues when this information is not disclosed at screening and they emerge during the conference. Responses to such issues are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

Where family violence issues are identified (either at screening or conference) the mode in which the conference takes place will be decided in consultation with the parties.

67 On all occasions, n equals the number of surveys completed by FDR practitioners not the total number of FDR practitioners employed by the commission.
All FDR practitioners strongly or somewhat agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.

Availability of services for people with special needs

The FDR coordinator advised that few clients present with special needs or from diverse backgrounds. Where a party has a disability, the carer (if relevant) is encouraged to participate in conferences upon the agreement of the other party.

Lawyers also agreed that the current processes to support people from diverse backgrounds (predominantly people with a disability or those requiring an interpreter service) are appropriate.

All FDR practitioners strongly or somewhat agreed that FDR accommodates the needs of people from diverse backgrounds.

Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Sixty six per cent of clients (n=44) strongly agreed or agreed that they were satisfied with the outcome of conferencing. All FDR practitioners (n=5) strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process

- 65 per cent (n=44) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 64 per cent (n=41) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 49 per cent (n=32) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help, while 15 per cent were not sure (n = 10)
- 55 per cent (n=35) strongly agreed or agreed that they required additional legal advice before coming to an agreement.

All FDR practitioners (n = 5) strongly or somewhat agreed with the statement that they were satisfied with the FDR program.

FDR practitioners and conference organisers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and increased understanding by parties of the relevant issues, and quick resolution of issues as they arise.
Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making, and allowing for reality checking of proposed agreements.

**Quality improvement**

Tasmania is an accredited FDR provider. The commission provides advanced mediation training and pays for any other training as identified by FDR practitioners. FDR practitioners elect to attend the annual national mediation conference as well as (one day) training provided to independent child lawyers within Tasmania.

All FDR practitioners (n=5) strongly or somewhat agreed that they have access to appropriate training, professional development and peer support through the FDR program. However, they did note that training which focuses on special issues such as mental health and drug and alcohol would also be useful.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Ninety per cent (n=61) of clients very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Eighty eight per cent of clients (n=59) were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in family law and are able to assist parties to reach agreements, maintain the focus on the child and reality test effectively.

Sixty per cent of FDR practitioners surveyed have more than five years' experience in FDR.

Based on the survey completed by FDR practitioners, twenty per cent have chaired between 10 to 20 conferences in the last year. The remaining FDR practitioners conference between five to nine times per year. This low level of frequency may be reflective of the small volume of matters Tasmania deals with on an annual basis.68

To monitor the quality of its FDR services, Tasmania records data on service utilisation and provides quarterly reports to the Attorney-General’s Department on the number of conferences held and settlement rates. No formal quality review or improvement process is in place for FDR services.

**Summary – Tasmania**

The current strengths of the Tasmania’s FDR services are

- its role as a lawyer assisted form of FDR

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68 Feedback from the Tasmanian Legal Aid Commission on 25 November 2008 on the draft report indicated that this data is incorrect and that all FDR practitioners conference between 70-80 conferences per year reflecting the high volume of matters conferenced per head of population.
• involvement of lawyers in the screening and intake process
• its cost effectiveness and efficiency
• the experience of FDR practitioners and the volume of conferences undertaken by them each year.

The current opportunities for improving Tasmania’s FDR services exist in the areas of
• strengthening the screening and assessment function of the FDR coordinator in determining the suitability of matters for conference (rather than relying on lawyers’ judgement)
• involving parties in the screening and intake process
• developing formal guidelines for screening and managing family violence, child abuse and other support needs of parties
• developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from a legal, developmental and age appropriate perspectives
• exploring culturally competent FDR models for parties from Indigenous and culturally and linguistically diverse backgrounds
• developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers
• developing an outcomes based quality improvement and monitoring approach to its FDR services.
## D8 – Australian Capital Territory

<table>
<thead>
<tr>
<th>Form of dispute resolution</th>
<th>Conciliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualification of FDR practitioners</td>
<td>Experienced family lawyers only</td>
</tr>
<tr>
<td>Number of FDR practitioners</td>
<td>11</td>
</tr>
<tr>
<td>Legal representation</td>
<td>One party must be legally aided</td>
</tr>
<tr>
<td>Issues conferenced</td>
<td>Parenting, property and child support</td>
</tr>
<tr>
<td>Conferencing modes</td>
<td>All modes (majority by shuttle)</td>
</tr>
<tr>
<td>Conferences held (2007-08)</td>
<td>102</td>
</tr>
<tr>
<td>Settlements</td>
<td>83</td>
</tr>
</tbody>
</table>

The Australian Capital Territory provides a conciliation model of FDR. This model empowers FDR practitioners to assist parties to reach a settlement as well as reality test parties' positions and agreements against the current case law. In 2007-08 the Australian Capital Territory commission held 102 conferences.\(^{70}\)

All 11 FDR practitioners are experienced family lawyers. All conferences are held in person by shuttle or teleconference.

### Evaluation findings

#### Role of FDR services in the new family law context

The Australian Capital Territory assesses the appropriateness of its FDR service, Family Relationship Centre mediation and external FDR services against the needs of the applicant. The commission will refer applicants to a Family Relationship Centre or external provider in cases of

- less complex matters
- where lawyer assisted FDR is not necessary
- where one party expresses preference to attend FDR with an external provider, or

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\(^{69}\) Settlement rate is defined as those matters recorded by commissions as being ‘fully’ and ‘partially’ settled. This data has been obtained from Attorney-General’s Department, LARI data 2007-08, Settlement rates.

\(^{70}\) Attorney-General’s Department, LARI data 2007-08, number of conferences held.
where parties are seeking child inclusive practice where that may be offered and when it is appropriate.

Very few, if any, referrals are received by the commission from the Family Relationship Centre.

The commission’s relationship with the Family Relationship Centre is informal and there are no written referral guidelines. The commission has referral relationships with external FDR providers such as Relationships Australia.

The commission’s FDR manager participates in the family pathways network steering committee. The FDR manager is also involved in projects to educate the community about changes to the family law system and to achieve better collaboration of service delivery of agencies who deal with separated families.

**Screening and intake**

The commission receives applications for grants of aid from individuals and lawyers (private and in house). Applications for aid include applications from lawyers seeking an extension of their client's current grants (eg request to extend aid from FDR to litigation).

Once approved for legal aid (ie meets the means and merit tests), a grant of aid to include FDR is usually made for all new matters where litigation has not commenced (unless urgent court intervention is considered necessary). A grant of aid to include FDR may also be made for matters where litigation has commenced (eg matters listed for a final hearing may be given a grant of aid for FDR prior to a grant of aid to prepare for a final hearing)

Once a grant of aid is made to include FDR, the applicant for assistance is notified by letter from client services that their matter is being referred to the FDR manager who will assess if it is appropriate to arrange a FDR conference in the matter.

The FDR manager then contacts all parties (in person if self represented or their lawyer if represented) by email or letter to confirm that the matter is being assessed for its suitability for FDR. Correspondence explains the FDR program and how it operates, invites comment and seeks certain assessment information (eg in the form of a list of questions to ascertain if issues exist concerning language, culture, religion, family violence, fear and power imbalance, criminal history, drug or alcohol abuse, mental health, child abuse including sexual abuse and if there are any issues of relocation). This information determines the suitability for FDR.

All clients are sent information brochures containing general and legal information about the FDR program and about FDR in family law matters.

When assessment information is received, the FDR manager reviews the file to determine if FDR is appropriate. This may involve making further contact with a self represented party or a legal representative, by telephone, email or letter to complete the assessment process.
If child abuse is identified as an issue, the matter does not proceed to FDR.

If FDR is assessed as appropriate, lawyers or self-represented parties are contacted to arrange a date and time for a conference and a FDR practitioner is appointed as the conference convenor.

The convenor receives certain documents in relation to the conference including a convenor report to be completed at the conclusion of the conference. Lawyers and self represented parties receive certain documents including a case summary document that requires them to provide information to the convenor about their client/matter (eg details of the relationship, history of parenting arrangements since separation, issues of violence, drug or alcohol abuse, issues in dispute). These completed documents are forwarded to the FDR manager who then distributes them to all parties and the convenor in preparation for the conference.

Conference organisers then distribute screening checklists to all parties and their lawyers for completion. If a party is not legally represented, conference organisers will interview the party directly to collect the required information including the legal issues in dispute, existence of family violence, child abuse and/or mental health needs, and any other support needs (ie need for interpreter services). Both clients and lawyers are requested to provide information to assist the conference organiser in determining suitability for FDR.

The intake assessment sheet asks clients if child abuse and/or family violence exists. If child abuse is identified, the matter does not proceed to FDR. If family violence is identified strategies to mitigate power imbalance and ensure the safety of the parties are developed. Such strategies include conducting the conference by shuttle and ensuring all parties are legally represented.

Conference organisers stated that the processes for identifying family violence and child protection issues are effective. They also stated that the effectiveness of the screening process was impeded when lawyers failed to return the assessment sheets for their clients.

The screening checklist collects information on Indigenous status, cultural and religious background and support requirements (such as the need for interpreter services, visual aids).

Lawyers noted that where required, the commission arranges interpreters for clients for whom English is a second language however it does need to explore more culturally competent models of FDR for Indigenous and culturally and linguistically diverse groups.

Child focused FDR services

The commission has a formal written policy that agreements reached at a FDR conference must be in the best interests of a child. Child focused FDR includes scheduling conferences to coincide with the release of a family or expert report so that the parties and the conference convenor have the benefit of the views of a child expert.
It is expected that lawyers, convenors and FDR practitioners will participate in FDR by focusing on the needs of children and developing agreements and consent orders that are appropriate for the individual circumstances of each child and each matter. Convenors have liberty to address this issue directly with lawyers and parties if they are of the view that a party is being unreasonable and not considering the needs of a child.

All FDR practitioners (n=9) strongly or somewhat agreed that existing mechanisms for focusing on the best interests of the child are appropriate. Seventy five per cent of clients (n=9) strongly agreed or agreed that conferencing helped them to understand or focus on the interests of their children.

**Inclusion of extended family**

The commission includes extended family as support people to conferences in addition to inclusion in conferences as parties in their own right.

Fifty five per cent of FDR practitioners (n=5) strongly agreed or agreed that appropriate mechanisms were in place to include extended family, while 44 per cent (n=4) FDR practitioners somewhat disagreed appropriate mechanisms were in place. Comments from the FDR practitioner focus group reveal that the current arrangements which allow extended family to participate in conferences as support people is often not appropriate as their inclusion can disrupt the agreement making process.

**Management of family violence, power imbalances and child protection issues**

The FDR manager advised that lawyers are relied upon to identify such issues and determine the suitability of a matter for conferencing where these issues exist. The FDR manager also makes independent investigations with parties and lawyers.

If there are issues of family violence, strategies are developed to mitigate power imbalance and ensure the safety of the parties. Such strategies usually include conducting the conference by shuttle, arranging separate arrival and leaving times and ensuring all parties are legally represented. Arrangements may include that a victim of violence attend the conference by telephone and their lawyer be present in person.

FDR practitioners encounter issues when this information is not disclosed at screening and emerges during the conference. Responses to such issues are left to the professional judgement of the FDR practitioner chairing the conference. Where child abuse concerns are raised, all FDR practitioners consulted advised that they would terminate the conference immediately.

Where family violence is identified (either at screening or conference) the FDR practitioner in consultation with the lawyers will decide the mode in which the conference takes place.

All FDR practitioners strongly or somewhat agreed that the commission has appropriate protocols in place to manage family violence, child abuse and other support needs.
Appendices

Appendix D — Findings for each commission

Availability of services for people with special needs

The FDR manager advised that few clients present with special needs or from diverse backgrounds. Where a party has a disability, the carer (if relevant) is encouraged to participate in conferences upon the agreement of the other party.

Lawyers also agreed that the current processes to support people from diverse backgrounds (predominantly people with a disability or those requiring an interpreter service) are appropriate.

All FDR practitioners strongly or somewhat agreed that FDR accommodates the needs of people from diverse backgrounds.

Satisfaction with FDR

FDR management advised that FDR services are implemented in accordance with their legal aid agreement in accordance with their legal aid agreement (including Commonwealth Legal Aid Family Law Guidelines) and obligations under the Family Law Regulations. A review of the commission’s screening and intake process and FDR model confirmed that all matters (except those which the mandatory guidelines do not apply) are being conferenced.

Seventy five per cent of clients (n=12) strongly agreed or agreed that they were satisfied with the outcome of conferencing. Eighty nine per cent of FDR practitioners (n=8) strongly or somewhat agreed that settlements arising out of FDR are workable.

The client survey indicated the following levels of agreement with the conference process

- 78.5 per cent (n=11) strongly agreed or agreed that conferencing helped them to understand the relevant issues
- 66 per cent (n=8) strongly agreed or agreed that conferencing gave them a chance to talk through their problems and issues
- 64 per cent (n=9) strongly disagreed or disagreed that they would be better able to resolve future issues with the other party without outside help, while only seven per cent were in agreement (n = 1)
- 50 per cent (n=7) strongly disagreed or disagreed that they required additional legal advice before coming to an agreement.

Fifty six per cent of FDR practitioners (n=5) somewhat agreed with the statement that they were satisfied with the FDR program. FDR practitioners noted the main areas for improvement as being: ensuring all lawyers who participate in FDR are trained in alternative dispute resolution as well as have a clear understanding of the best interests of the child; ensuring all lawyers take thorough instructions from their clients well before the conference; and the development of a peer support program for FDR practitioners.

FDR practitioners and conference organisers noted the benefits and strengths of FDR as including: reality testing of agreements, empowering clients to make decisions, being solutions focused, narrowing of issues and increased understanding by parties of the relevant issues, and quick resolution of issues as they arise.
Lawyers also expressed a high level of satisfaction with the FDR program, citing its strengths being the experience of FDR practitioners, reduced costs, timeliness, involvement of parties in decision making, and allowing for reality checking of proposed agreements.

**Quality improvement**

The Australian Capital Territory is an accredited FDR provider. The commission provides limited training opportunities for FDR practitioners and FDR staff. The commission is currently exploring options for developing a training framework which matches the accreditation requirements.

All FDR practitioners (n=9) strongly or somewhat agreed that they have access to appropriate training and development opportunities, while 78 per cent of FDR practitioners (n=7) strongly or somewhat agreed that there is a strong system of peer support in place.

Lawyers and clients expressed a high level of confidence in FDR practitioners. Eighty eight per cent of clients (n=14) were very satisfied or satisfied with the way the FDR practitioner explained their role and the conference process. Eighty eight per cent of clients (n=14) were very satisfied or satisfied with the FDR practitioners fairness and professionalism.

Lawyers stated that FDR practitioners are highly experienced in their relevant disciplines and are able to assist parties to reach agreements, maintain the focus on the child and reality test effectively.

Seventy eight per cent of FDR practitioners surveyed have more than five years' experience in FDR.

Eighty nine per cent of FDR practitioners surveyed have chaired between 10 and 20 conferences in the last year.

To monitor the quality of its FDR services, the Australian Capital Territory records data on service utilisation and provides quarterly reports to the Attorney-General's Department on the number of conferences held and settlement rates. No formal quality review or improvement process is in place for FDR services.

The commission management did note the need to upgrade FDR accommodation facilities to enable the FDR program to provide for multi conferencing, to improve access, safety and privacy for clients and to expand the FDR program.

**Summary — Australian Capital Territory**

The current strengths of the Australian Capital Territory’s FDR services are

- its role as a lawyer assisted form of FDR
Appendices

Appendix D — Findings for each commission

- its intake process which assesses the suitability of the matter for its FDR services on the basis of child protection factors, family violence, and the overall needs of the parties
- the clarity conference organisers and the FDR Manager have about the matters that are suitable for its FDR services and those that are not suitable
- involvement of parties and lawyers in the screening and intake process
- the experience of its FDR practitioners in terms of number of conferences chaired and years of experience as a mediator-conciliator
- its increasing cost effectiveness and efficiency overtime.

The current opportunities for improving the Australian Capital Territory’s FDR services exist in the areas of

- developing formal guidance for FDR practitioners, lawyers and conference organisers regarding the best interests of the child from legal, developmental and age appropriate perspectives
- exploring culturally competent FDR models for parties from culturally and linguistically diverse backgrounds
- developing a training and professional development framework which targets the training and professional development needs of FDR practitioners, conference organisers and family lawyers
- explore options for upgrading conferencing facilities
- developing an outcomes based quality improvement and monitoring approach to its FDR services.
Appendix E – Technical notes
The table below steps through the calculations of the revised FDR cost benefit analysis model at the program level for 2006-07. The table also documents all data sources and assumptions. Further details of the calculations and output for each jurisdiction are contained in the accompanying spreadsheet.

<table>
<thead>
<tr>
<th>Category</th>
<th>Calculation inputs</th>
<th>Value</th>
<th>Calculation</th>
<th>Assumptions</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost (FDR) calculations (2007-2008 dollars)</strong></td>
<td></td>
<td></td>
<td>A</td>
<td>Sourced from LARI and assumes consistency across the State and territories.</td>
<td>Attorney-General’s Department (LARI)</td>
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<tr>
<td>Cost of FDR</td>
<td>Costs of FDR (Grant &amp; Screening &amp; Administration)</td>
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<tr>
<td><strong>Benefit (avoided costs) calculations</strong></td>
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<td></td>
<td>B</td>
<td>Reurrent expenditure provides an estimate of annual service costs. Recurrent expenditure on court administration covers costs associated with the judiciary, court and probate registries, sheriff and bailiff’s offices, court accommodation and other overheads. The components of the expenditure include salary and nonsalary expenditure, court administration agency and umbrella department expenditure, and contract expenditure. This figure is expected to inflate the actual cost per case given not all costs of running the Court are directly attributable to cases. The Family Court of Australia expenditure figures have been discounted (estimated) for resources and services (work of Court staff and</td>
<td>Real net recurrent expenditure per finalisation for Family Court Productivity Commission Review of Government Services 2008, pp. 7.11</td>
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<td>Australian Government expenditure per case</td>
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<tr>
<td>Real average cost to Commonwealth in legal aid fees per case for a family law matter</td>
<td>$2,706</td>
<td>C</td>
<td>The median amount paid by legal aid prior to hearing for cases handled by private lawyers.</td>
<td>Hunter, R. (2000) <em>Legal services in family law</em>, Law Foundation of NSW, pp 224</td>
<td></td>
</tr>
<tr>
<td>Hours funded by legal aid</td>
<td>Hours 21.6</td>
<td>D</td>
<td>Weighted average of estimates provided during consultation</td>
<td>Commission SA and Commission NT</td>
<td></td>
</tr>
<tr>
<td>Hourly cost per case to Commonwealth</td>
<td>$281</td>
<td>(B+C)/D = E</td>
<td>Derived value</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Benefit attribution**

<table>
<thead>
<tr>
<th>Matters fully resolved at conference</th>
<th>Matters 3,887</th>
<th>F</th>
<th>Attorney-General's Department (LARI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court event hours avoided</td>
<td>84,115</td>
<td>D x F = G</td>
<td>Derived value</td>
</tr>
<tr>
<td>Cost of hours avoided</td>
<td>$23,611,000</td>
<td>E x G = H</td>
<td>Derived value</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Matters Partially Settled at conference</th>
<th>Matters 1,567</th>
<th>I</th>
<th>Attorney-General's Department (LARI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of matters which do not result in litigation</td>
<td>1,175</td>
<td>J</td>
<td>75%</td>
</tr>
<tr>
<td>Category</td>
<td>Calculation inputs</td>
<td>Value</td>
<td>Calculation</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>---------------</td>
</tr>
<tr>
<td></td>
<td>result in saved court event time</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Court event hours avoided</td>
<td>25,432</td>
<td>$D \times J = K$</td>
</tr>
<tr>
<td></td>
<td>Cost of hours avoided</td>
<td>$7,139,000$</td>
<td>$E \times K = L$</td>
</tr>
<tr>
<td></td>
<td>Number of partially settled matters that result in litigation but experience saved court event time</td>
<td>196</td>
<td>$M$</td>
</tr>
<tr>
<td></td>
<td>Court event hours avoided</td>
<td>1,411</td>
<td>$D/3 \times M = N$</td>
</tr>
<tr>
<td></td>
<td>Cost of hours avoided</td>
<td>$397,000$</td>
<td>$E \times N = O$</td>
</tr>
<tr>
<td></td>
<td>Total cost of partially settled matters avoided</td>
<td>$7,536,000$</td>
<td>$L + O = P$</td>
</tr>
<tr>
<td></td>
<td>Total benefits</td>
<td>$31,147,000$</td>
<td>$H + P = Q$</td>
</tr>
</tbody>
</table>
E.1 Model output calculations – Net present value and benefit cost ratio (2006-07)

The table below steps through the cost benefit analysis output of the revised FDR cost benefit analysis model at the program level for 2006-07. Further details of the calculations and output for each jurisdiction are contained in the accompanying spreadsheet.

<table>
<thead>
<tr>
<th>CBA output</th>
<th>Calculation inputs</th>
<th>Value</th>
<th>Calculation</th>
<th>Assumptions</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of benefits</td>
<td>$31,147,000</td>
<td>Q</td>
<td>Na</td>
<td>From previous table</td>
<td></td>
</tr>
<tr>
<td>Value of costs</td>
<td>$19,748,000</td>
<td>A</td>
<td>Na</td>
<td>From previous table</td>
<td></td>
</tr>
<tr>
<td>Net present value of program</td>
<td>$11,399,000</td>
<td>Q – A = R</td>
<td>Na</td>
<td>Derived value</td>
<td></td>
</tr>
<tr>
<td>Cost Benefit Ratio</td>
<td>Value of benefits for every dollar spent on FDR</td>
<td>$1.58</td>
<td>Q/A = S</td>
<td>Na</td>
<td>Derived value</td>
</tr>
</tbody>
</table>
Appendix F – Open-ended client survey responses

Positive comments

• Whilst I was very anxious at first, overall the conference process was far less stressful than a court/magistrate appearance (and I would imagine less expensive). The true character of the parties involved is also more likely to be demonstrated in this.

• Conference was a good starting point in helping build a fair agreement for our children.

• Extremely satisfied, didn't know the service was available and have recommended it to other people. Having an independent third party view was excellent.

• At first I felt intimidated but the chairperson handled it in a way that made me feel at ease, together with my lawyer was able to do the best for my children and their needs.

• The help I received was very professional and made the situation very bearable. Thank you.

• Forum for coming to an agreement regarding our child. They did a good job keeping everyone calm.

• I felt very comfortable with the entire process and was very pleased with the outcome

Feedback on the chairperson

• The chairperson was easy to communicate with, patient, and conferred well between myself and the other party, especially since it was done via teleconference.

• I was extremely happy with the conference and all the support I had with the Legal Aid team in Bundaberg. Thank-you so much.

• I wish the mediator was handling my divorce from the beginning. He really focused on what was good for the children and not concerned with mudslinging and … allegations like my ex wife's solicitor did.

• Having to bring up the hard past was really upsetting. Want to say thanks very much for the support we both received through the process – we wouldn't have been able to do it without them.

• My mediator was brilliant.

• Mediator was excellent, fair, gave both a chance to talk through issues – made ex partner be quiet and gave me a chance.
• Good process generally, chair was excellent, and could be useful for others.

• Chair was excellent, very professional. Very happy with the process and been able to talk to partner more since the mediation.

• Was handled by the chairperson in a very reassuring manner with a good outcome.

• Facilitator was opinionated and held her own strong views.

• While the chairperson was an expert in conciliation, they didn't appear to be able to answer any legal stuff eg implications of custody arrangements.

More time required

• I feel that one conference was not enough. I needed time to sort through the information and that a second conference would be great.

• Not enough time – try to force you to make an agreement in one day. Should be able to carry over otherwise may regret.

• It was planned for four hours but the chair only gave two hours on request of the other party. Therefore the major issues were not discussed and the outcome was not great.

Agreement making

• I felt bullied and blackmailed into making an agreement. I felt it was just a fight for my son's father to win and not focusing on what was/is best for my son.

• The mediator was very pushy – just wanted an agreement and didn't care. He put so much pressure on us to have something agreed on. He was very unprofessional.

• The mediator pressured us to make a decision. It was uncomfortable and unprofessional. We should be asked for the main issues at the beginning of the session. It is now going to trial and will not be aided.

Need for a support person

• I was told it would only be myself and my ex and our solicitors. His wife was there and ran the show. I wish I could have had a support person in with me. It was a lopsided affair with a power imbalance due to numbers.

Opportunities for improvement

• The only problem with the conference was that they took his request and changed the chairperson. Chair number two didn't know what was going on. We spent five hours with the first person and she knew everything.

• Chairman did not turn up therefore the lawyers had to cover his/her role.
• No repercussions for people not making an effort (i.e., their behaviour was not taken into account in court).
• Quite unproductive, too many chiefs, not enough Indians. Lawyers hindered process. Chairperson was more focused on following the process/script than helping us to prioritise issues.
• Other party refused to talk... should have established the actions of the other party before organising the conference.

Safety/violence
• People with Domestic Violence Orders should not be forced to conference.
• We were left on our own after the conference in the lobby.
• Felt uncomfortable when left in room with other party without chairperson.
• Power imbalance issue – DV – need to be really sensitive to this and provide more breaks in the conference.
• No opportunity to do shuttle conferencing despite history of abusive partner.
• The case involved DV. These cases should never be brought to conference as they enable the other person to continue their behaviour and it does appropriately address the issues of DV. The conference chairperson dismissed DV as an issue.

Lawyer issues
• At my first conference, lawyer seemed to dictate everything, didn't get full 4 hours. Also, the time limitation is difficult.
• The whole conference process should be a lot less lawyer-based and more one on one with the mediator. The lawyer is now pushing the legal battle for more fees/profit.
• Felt belittled and intimidated by ex-partner's lawyer – eventually mediator intervened, but lawyers should be better educated.
• Both parties need lawyers present otherwise it's a one-sided affair meaning the party without a lawyer gets belittled and feels much inferior and agrees to terms he/she wouldn't if they had their lawyer present.
• Was told not to talk too much by the lawyer. Otherwise, was very happy with the process as it got things moving.
• No opportunity was provided to talk to each other. The lawyers took over despite a willingness for both parties to talk.
Information required

- Was not provided enough information from the beginning about what was happening or what it was going to be about – just received a letter.

- Lots of time discussing individually with the mediator – no three way conversation. Would be better if all sat in room together. Lots of pressure from mediator to move to shuttle conference.

- Needed more explanation leading up to the conference to explain the legal jargon.

- In my case, I feel that the other party used the conference as a way to circumvent the family law court process. They were not willing to negotiate any issues.
Appendix G – Glossary

For the purposes of this evaluation a glossary of standard terminology has been developed to described the different aspects of the FDR program. It is understood that different commissions use different terminology to describe these processes. The below glossary does not replace commissions’ terminology, rather it provides a common language for the purposes of describing FDR throughout this report.

<table>
<thead>
<tr>
<th>Terminology</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternative dispute resolution</td>
<td>Alternative dispute resolution is an umbrella term used to describe various ways of resolving disputes, other than judicial determination, in which an impartial person assists those in dispute to resolve their issues.(^{71})</td>
</tr>
<tr>
<td>Child focused conferencing</td>
<td>Child focused conferencing refers to the strategies and methods employed by FDR practitioners to ensure all the parties consider and hold paramount the best interests of their children.</td>
</tr>
<tr>
<td>Child inclusive mediation</td>
<td>Child inclusive mediation refers to the inclusion of children’s views into the conferencing process. These views can be included in the form of psychologists’ reports, direct statements from the children and participation of an independent child lawyer.</td>
</tr>
<tr>
<td>Child protection</td>
<td>Defines situations where a parent or caregiver is unable or unwilling to protect the child(ren) against significant harm (eg physical, emotional, sexual abuse and neglect). Such situations involve the intervention of the State/Territory Department responsible for child safety.</td>
</tr>
<tr>
<td>Conciliation</td>
<td>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.(^{72})</td>
</tr>
</tbody>
</table>

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72 Ibid.
Conference organiser

Also referred to as an intake officer, is the commission staff member who conducts the initial screening for conference and arranges the logistical aspects of confirming the conference and the FDR practitioner.

Family law

Those areas of the law pertaining to marriage, divorce, parenting issues, child support and paternity.

Family law (the Family Law Act 1975) does not include matters pertaining to adoption, care and protection of children, equality of status of ex-nuptial children, family provision from the estate of a testator, or property disputes between de facto couples.

Family dispute resolution

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.\(^{73}\)

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.

Family dispute resolution manager

Employed in commissions, the family dispute resolution manager manages the screening and intake process as well as program and policy development. Family dispute resolution managers also provide secondary consultation to the intake officer regarding complex matters.

Family dispute resolution practitioner

An impartial person who assists those in dispute, through either meditation or conciliation, to resolve the issues between them. Alternative terminology includes conference chairperson, conference convenor.

Family Court of Australia

The Family Court of Australia was created by the Family Law Act 1975 (Cth) to interpret and apply that law to individual cases. The Court also has jurisdiction in some matters under other legislation such as the Marriage Act 1961 (Cth) and the child support legislation.

\(^{73}\) Section 10F Family Law Act 1975 (Cth).
### Appendix F — Open-ended client survey responses

| **Family Court of Western Australia** | The Family Court of Western Australia is presided over by judges and magistrates. The court is vested with state and federal jurisdiction in matters of family law and deals with divorce, property of a marriage or de facto relationship, parenting orders and other matters relating to children, maintenance and adoption.\(^74\) |
| **Family violence** | Family violence can take the form of elder abuse, sibling abuse, violence between same sex couples, adolescent children and their parents, and violence between male-female partners. Violence can include physical, sexual, emotional and psychological abuse as well as threats of violence and intimidation.\(^75\) |
| **Federal Magistrates Court** | The Federal Magistrates Court is an independent federal court under the Australian Constitution. The jurisdiction of the Federal Magistrates Court includes family law and child support, administrative law, bankruptcy, unlawful discrimination, consumer protection and trade practices, privacy, migration, copyright, industrial law and admiralty law. The court shares those jurisdictions with the Family Court of Australia and the Federal Court of Australia. 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. |
| **Intake officer** | See conference organiser. |
| **Legal aid commission** | Legal aid commissions are independent statutory authorities established under state/territory legislation which provide access to the law and legal assistance for financially and socially disadvantaged people.\(^76\) Each state and territory has a legal aid commission. |
| **Legal representative** | Provide legal advice and legal services to parties. All lawyers are admitted legal practitioners and can be in house commission lawyers or lawyers external to the commission. |
| **Litigation** | The hearing and determination of issues in dispute by a judge (or federal magistrate) presiding over the court. |

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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. The mediator has no advisory or determinative role in regard to 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. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.\(^77\)

Shuttle conference

Is a process in which parties, with the assistance of a dispute resolution practitioner, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement without being brought together. The dispute resolution practitioner 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 dispute resolution practitioner may move between participants who are located in different rooms, or meet different participants at different times for all or part from separate locations.\(^78\) Shuttle conference can occur by telephone, video or in person conference.


\(^78\) Ibid.