

FAMILY VIOLENCE, HOMELESSNESS AND THE *FAMILY LAW ACT 1975* (CTH)

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I INTRODUCTION

Family violence and homelessness,¹ both major social issues, are often connected. This article will examine how the *Family Law Act 1975* (Cth) ('FLA') has been applied to address these twin issues, and highlight the need for a multi-faceted approach to resolve these problems.

Family violence, perennially in the minds of those who work with separating families, has been the subject of a number of recent reports. November and December 2009 saw the release of Professor Chisholm's *Family Courts Violence Review*² and the Australian Institute of Family Studies' *Evaluation of the 2006 Family Law Reforms*.³

A recurring theme in Professor Chisholm's report was that violence must be 'disclosed, understood and acted upon'.⁴ In particular he stated that:

This theme seems helpful whether we are thinking of a lawyer interviewing a client, a dispute resolution practitioner dealing with a new case, the work of a counter clerk at a family court, or of a judicial officer. The family law system, and each component in it, needs to encourage and facilitate the disclosure of family violence, ensure that it is understood, and act effectively upon that understanding.⁵

The terms of reference of the report limited its scope to the family law system, but this theme of disclosure, understanding and action applied to each

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1 Homelessness has many definitions. In this paper I consider homelessness broadly. A useful definition is provided by the Commonwealth Government in its 2008 report *The Road Home: A National Approach to Reducing Homelessness*: 'People who are homeless fall into three broad groups, that is, those who are: sleeping rough (living on the streets), living in temporary accommodation, such as crisis accommodation (see crisis accommodation) or staying with friends or relatives, staying in boarding houses or caravan parks with no secure lease and no private facilities': Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *The Road Home: A National Approach to Reducing Homelessness* (2008) 73.

2 Richard Chisholm, *Family Courts Violence Review* (Attorney-General's Department (Cth), November 2009).

3 Rae Kaspiew et al, 'Evaluation of the 2006 Family Law Reforms' (Report, Australian Institute of Family Studies, 2009).

4 Chisholm, above n 2, 5.

5 Ibid.

component of the family law system provides a timely reminder that family violence is a complex issue that transcends the legal system. Family violence is both a symptom and a cause of disruption to family life, and is often complicated by factors including: mental health; alcohol and substance abuse; Indigenous issues; diverse cultures; and the criminal law.⁶ When the victim is unable to access scarce government resources, family violence can also lead to homelessness.

Any legal initiatives designed to address family violence must be founded on an integrated family law system that recognises the complexity of the problem. This approach was a key recommendation of the 2001 report *Out of the Maze: Pathways to the Future for Families Experiencing Separation*⁷ and was taken up by the Commonwealth Government through the establishment of Family Pathways, a series of studies of separated families being conducted by the Australian Institute of Family Studies. The Family Law Council has since recommended this multi-disciplinary approach⁸ be buttressed through the expansion of Australia-wide Family Pathways Networks.⁹ The final part of this paper examines the ways in which the family law courts have put the recommendations from the 2001 report into practice in order to benefit litigants.

Homelessness in the context of family violence is approached from various directions: state and Commonwealth legislation, government and court policies on domestic violence and initiatives to address crisis housing and refuges. The family law system deals with only a small part of the lives of people who have experienced family violence. The need for support of parties and children before, during, and after the litigation process, and in particular greater support in accessing crisis accommodation and refuges, demands an integrated approach by state and territory governments.

6 Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (Attorney-General's Department (Cth), 2009) 27–9.

7 Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* (2001).

8 In its 2009 report, the Family Law Council state that a 'multi-disciplinary' approach would require each discipline and sector to 'better understand and appreciate the role of others who support families through family violence and family relationship breakdown'. The report goes on to state that such a shared, multi-disciplinary approach should include 'family dispute resolution practitioners, family relationship service providers, lawyers, family consultants, social workers, psychologists, medical practitioners, psychiatrists and judicial officers'; Family Law Council, above n 6, 44.

9 Eight Family Pathways Networks were established in 2003 with seed funding from the Commonwealth Attorney-General's Department. By December 2009, the number of Family Pathways Networks had increased to 25. In April 2010, the Attorney-General's Department announced funding for an additional 11 Family Pathways Networks: Attorney-General's Department (Cth), '\$2.8 Million for Family Pathways Networks' (Media Release, 27 April 2010)

<[http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_27April-\\$2.8MillionforFamilyPathwaysNetworks](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_27April-$2.8MillionforFamilyPathwaysNetworks)>.

II HOMELESSNESS: FALLING THROUGH THE CRACKS

The relationship between family violence and homelessness has been the subject of various studies.¹⁰ Women and children forced to leave the family home due to family violence face great upheaval and social and economic disadvantage. This includes difficulties in obtaining suitable accommodation.¹¹

In December 2008, the Commonwealth Government released its White Paper titled *The Road Home: A National Approach to Reducing Homelessness*, which included a strategic agenda for reducing homelessness until 2020.¹² The White Paper noted that family violence was the major driver of homelessness.¹³ Unsurprisingly, this is particularly the case for women; 55 per cent of women with children and 37 per cent of young single women who seek assistance from specialist homelessness services do so to escape violence.¹⁴ After family violence, family separation and breakdown was the second most cited reason for people seeking specialist homelessness services.¹⁵ In relation to domestic violence, the White Paper acknowledged that crisis accommodation plays an integral role when staying at home is not a safe option.¹⁶ It also recommended that:

Until now there has not been sufficient effort made to support women to stay safely in their own home. In the shorter term, homelessness for women and children can be reduced by improving support for women and children to stay in their own home where it is safe and practical. To keep these women and children safe, the perpetrator of the violence should be removed. Supporting women and children to stay in their homes safely means there is less disruption to their lives. Victims of family violence should, where possible, stay in their own community accessing their support and social networks. Children can attend the same schools and maintain their after school activities, social connections and friendships.

Under the National Partnership on Homelessness expanded models of integrated support to enable women and children experiencing domestic and family violence to remain at home safely will be delivered by state and territory governments in partnership with not-for-profit providers.

Some states and territories have already introduced 'safe at home' models that take this approach. The strategy over the next decade is to build on existing programs as well as develop new ones where they are needed.¹⁷

10 See, eg, Donna Chung et al, *Home Safe Home: The Link Between Domestic and Family Violence and Women's Homelessness* (University of South Australia, 2000); Selina Tually et al, *Women, Domestic and Family Violence and Homelessness: A Synthesis Report* (Flinders University, 2008). See generally, Office for Women's Policy, Department of Premier and Cabinet (NSW) *Discussion Paper on NSW Domestic and Family Violence Strategic Framework* (2008), 47 ff.

11 Chung et al, above n 10, 1.

12 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), above n 1.

13 Ibid 7.

14 Ibid.

15 Ibid 8.

16 Ibid 34.

17 Ibid 33.

Outcomes from the May 2008 discussion paper on homelessness in Australia that preceded the release of the White Paper,¹⁸ noted that there was strong support in the community for a ‘whole-of-government approach’¹⁹ to combating homelessness and that a national approach should recognise ‘the complexity of homelessness and address the needs of different groups within the homeless population – families with children, young people, older homeless adults and women and children leaving domestic violence’.²⁰

A ‘whole-of-government’ approach would necessarily include the many services responding to family violence and homelessness that are provided and funded by the states and territories. A detailed discussion of these services is beyond the scope of this paper; however, I would like to note that at least one piece of state legislation recognises the link between domestic violence and homelessness. The example is Victoria, where the *Family Violence Protection Act 2008* (Vic) amends the *Residential Tenancies Act 1997* (Vic), allowing victims of family violence who wish to remain in the home to have a violent co-tenant excluded from the home.²¹ The amendments do this by giving the protected person the ability to change the locks to the home without providing a copy of the new set of keys to the excluded person, even where they are a party to the tenancy agreement.²² It also enables the protected person to terminate the existing tenancy agreement and to enter a new tenancy agreement even if the violent person is a party to the tenancy agreement.²³

The response to homelessness is best supported by management across jurisdictions. The sharing of information and collaboration between inter-agency departments, including Commonwealth, state and territory agencies, becomes central to an effective approach in addressing homelessness.

III THE FAMILY LAW ACT 1975 (CTH)

The *FLA* contains various provisions empowering the court to mitigate the fallout from family violence. Given the link between family violence and homelessness, sections 68B and 114 of the *FLA*, which relate to accommodation of parties, are of vital importance. These sections grant injunctive powers to a court exercising jurisdiction under the *FLA*, including the ability to make orders

18 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *Which Way Home? The New Approach to Homelessness* (2008).

19 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *Outcomes of the Public Consultation Process Homelessness Green Paper* (9 April 2009) <http://www.fahcisia.gov.au/sa/housing/progserv/homelessness/greenpaper/Pages/outcome_green_paper.aspx>.

20 *Ibid.*

21 Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2008 (Rob Hulls, Attorney-General). See *Residential Tenancies Act 1997* (Vic) ss 70A, 233A, 233B, 233C, 233D, 234(2A) (‘*Residential Tenancies Act*’).

22 *Residential Tenancies Act* s 70A.

23 *Residential Tenancies Act* s 233A.

restraining a party from entering or remaining in the matrimonial home, premises or residence in which the other party lives. Part VII of the *FLA* is applied by the court when considering the best interests of children in a parenting dispute, and can give rise to complexity in cases of family violence and homelessness.

In particular, the following sections of the *FLA* raise the circumstances of a party's accommodation as a consideration in parenting applications:

Section 60CC(3)(e)

the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

Section 60CC(3)(f)

the capacity of:

- (i) each of the child's parents; and
- (ii) any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

These sections direct the court to look at the ability, including practical ability, of the parents (and other relevant parties) to care for the children who are the subject of the application. Providing suitable and stable accommodation falls within the framework of both sections. In some cases, the lack of suitable and stable accommodation may militate against the children living with the parent who moved out due to violence, because that person may be unable to provide any accommodation for the children or accommodation of the same standard as the other parent or with any degree of permanence. When coupled with family violence, the capacity of the victim to provide accommodation may create further complexity in applying these sections, even where the presumption of equal shared parental responsibility does not apply.

In *M and M*,²⁴ where the applicant father made an application for final parenting orders, the Court found the respondent mother had been subjected to prolonged domestic violence. The mother had moved into a women's refuge with the children and later moved interstate (from Sydney, where the father was residing, to Melbourne). However, after the father attended the refuge in which the mother was staying, the acting co-ordinator of the refuge deemed it was no longer safe for the mother and children to reside there because of concerns for the safety of other residents, and the fact that the mother had become hyper vigilant. The mother noted that if she had not been required to leave she could have stayed for a year. In addition to safety issues, there was also concern that the refuge had less than 'ideal accommodation'²⁵ with the mother and four children sharing a single room.

The evidence before the Court in this case was that the mother 'could not obtain emergency housing and several other avenues to settle her family in

24 [2006] FMCAfam 419 (16 August 2006).

25 Ibid [40] (Riley FM).

Sydney did not work out, [so] it appeared to [the acting co-ordinator of the refuge] that the move to Melbourne was the preferred option'.²⁶ The mother also gave evidence that:

[S]he tried to get public housing in Sydney but that there was an extremely long waiting list. She said that she tried to get emergency housing, but she did not have the points to get priority. Priority is given for such things as having disabled children. She said that she also tried to get community housing but none was available. She said she was only able to nominate two areas for public housing, and she chose the Northern Beaches and East Sydney. She admitted that she did not nominate the Hills area, where the father lives. She said she was looking for a good church, good housing and good schools. She said she also tried the private rental market but she did not have the money for the bond and one month's rent in advance. She admitted that when the father found out where she was staying, she did not try to get a place in another refuge in Sydney.²⁷

The Court accepted that the mother was unable to afford private accommodation in Sydney and that in moving to Melbourne she would gain the assistance and support of her sister. Further, the Court noted that:

If the mother and children had moved to a different refuge, they may well have needed to continue all sharing a single room rather than having a normal home. Moving to a different refuge would have required one move to the refuge and at least one more move after that, with changes of school also likely. All in all, the move to Melbourne was the best option available.²⁸

The Court also stated that:

[T]he mother's action in removing the children from Sydney has limited the relationship that was possible between the father and the children in the last year and that has been to their detriment. I find that the mother does not have sufficient appreciation of the loss and grief the children have suffered as a result of being deprived of their father.²⁹

However, the court went on to find that:

[T]he mother placed an absolute priority on the children being removed from a violent situation and did not give adequate thought to safe ways in which the children could have had some contact with their father, even by telephone. ... However, I also accept that, in the circumstances of this case, the mother's actions are understandable. I accept that the mother and children are text book examples of people who have been subjected to prolonged and serious family violence.³⁰

The parties were in agreement that the children should live with the mother. The father wanted the children to live in Sydney, whereas the Independent Children's Lawyer and the mother were of the opinion she, the mother, should stay in Melbourne. In applying the best interests of the children to the factual circumstances of the situation the Court found it was in the best interests of the children for the mother to stay in Melbourne.

The above case highlights various issues that can arise where a parent and children are displaced from their home due to family violence.

26 Ibid [39] (Riley FM).

27 Ibid [45] (Riley FM).

28 Ibid [49] (Riley FM).

29 Ibid [98] (Riley FM).

30 Ibid [98]–[99] (Riley FM).

First, there is the temporary nature of crisis accommodation. Crisis accommodation plays an extremely critical role in providing safety for parents and children escaping family violence. However at some locations, the accommodation may not be suitable for women with large families. In this case the mother and her four children were sharing a single room.

Secondly, the mother's 'hyper vigilant'³¹ condition, while wholly understandable in the context of surviving family violence, raises issues of mental health and the effects of temporary accommodation on families, particularly the victims of violence.

Thirdly, finding accommodation can be very problematic and cause greater stress for victims of violence. The inability of the housing system to provide permanent housing to a mother escaping domestic violence can cause great disruption to the children, foster instability, and force survivors of family violence to go anywhere they can find support, including interstate. Clearly, this can be socially disruptive and emotionally and financially devastating in some instances, with direct impacts on the children involved.

Finally, the tension between protection of the children from violence and ensuring a meaningful relationship with both parents is highlighted in *M and M*. The relationship between the mother, the children and the father becomes problematic when the mother is unable to disclose her location to the father and where the need for the move interstate (because of the lack of adequate housing) hampers the relationship between the father and the children. This is not a criticism of the mother. As indicated in the reasons for judgment in this matter, the mother's actions were understandable in the circumstances. However, one wonders how differently the outcome may have been if appropriate housing were available at the time. This highlights also the fact that the timing of an application can be very important.

In *Carlton and Carlton*,³² an application for parenting orders was heard after the applicant mother had become settled and was able to provide stability. The Court found the evidence demonstrated the mother had been subject to 'intimate terrorism'³³ and this violence had been perpetrated against her by the father of her children. The family report writer in the matter found there were shortcomings in the mother's capacity to parent shortly after she had moved out of a women's and children's refuge. The Court however found that:

I think there are important mitigating factors, and that the circumstances that existed at the time for the mother and the children, no longer exist today. At the time the mother was clearly unwell, and probably depressed. She was the survivor of family violence which, the evidence indicates, continued even after this event. She had been living in a refuge, with the children, for a period of time before this event. The totality of the evidence in fact leads me to accept her evidence that the father had been persistent in his communication with her prior to this event. But none of these factors are still present in the mother's life today. She is far better supported today, than she was in 2005. She presents as the survivor of family

31 Ibid [39] (Riley FM).

32 [2008] FMCAfam 440 (10 June 2008).

33 Ibid [60] (Altobelli FM).

violence who has an appreciation and insight into what has happened in her life, and the impacts on her children, and is determined to move on.³⁴

The Court was able to determine the mother was a survivor of family violence, that she had the capacity to care for the children and could ‘move on’.³⁵ The Court determined that her circumstances at the time of the hearing were very different to a previous time when they were unstable and temporary. It is important for courts to consider how circumstances can change and whether any failing as to parental capacity is temporary and to consider it in context. This highlights the effect of violence on the parenting ability of the victim and the related question of their capacity to move on.

In *Derwent and Derwent*,³⁶ the first respondent mother sought for her address and telephone number to be concealed from the applicant father because she was residing in a women’s refuge. In this matter there were allegations of abuse of the two children by the paternal grandfather. The grandfather had permanently moved overseas and the Court found in this case there was no unacceptable risk of harm. The mother also asserted coercive controlling family violence by the father and the second respondent (the paternal grandmother), but the Court found there was no evidence of that type of violence on the facts before it. The parties in this case were in agreement with respect to parental responsibility and the time the children were to spend with the father.

Referring to section 60CC(3)(f) of the *FLA* the Court considered:

One major practical concern is the mother’s accommodation. The letter relating to the contract, tendered as Exhibit A2, indicates there are restrictions relating to her residential address. However, I find that this does not affect her capacity to provide for the children’s needs, although it does limit the father. Another concern is that if I were to make orders for the mother to disclose her address to the father there is a possibility of eviction. A letter from Ms L of the Sydney Children’s Hospital Randwick dated 12 February 2008 (Exhibit A tendered on 7 March 2008) indicates that as of that date they have moved across at 4 residences since December 2007. The uncertainty as to the mother’s accommodation is a consideration I give some weight to in making orders especially as to whether the mother should disclose her address to the father. This constant moving and the mother’s fear, whether soundly based or not, is of concern because of its potential effect on the children who need to establish a normal routine.³⁷

The Court found, as there was no evidence of violence in this case, the father should be allowed to know where his children were living. It was necessary that the father could contact his children in circumstances of emergency and was also an important aspect of the relationship between the children and the father because it was ‘important that the children do not fall into a misapprehension if they are not allowed to reveal their residential address to their father, that somehow their father, and indirectly their grandmother, is unsafe’.³⁸

34 Ibid [102] (Altobelli FM).

35 Ibid.

36 [2009] FMCAfam 863 (17 August 2009).

37 Ibid [80] (Pascoe CFM).

38 Ibid [142] (Pascoe CFM).

Additionally, because of the difficulties with the refuge and the mother finding housing in the past, the Court found that:

With respect to the mother's current accommodation, I understand the difficulty the orders sought by the father causes for the mother and I accept the evidence that the refuge will evict the mother if she discloses the address. I am also mindful of the fact that the refuge provides a most valuable service to victims of violence and abuse and I would not want to make any orders which make this important task more difficult or could place any of the other residents at risk.

I make orders that the Independent Children's Lawyer is to negotiate with the coordinators of the refuge to amend the mother's lease or to seek that a new lease be drafted to authorise disclosure of the mother's address to the father ... It is therefore important that the father and grandmother are not considered as 'perpetrators' as this will continue to place the children in a state of fear of their paternal family.³⁹

Those orders sought negotiation of a new contract. There were no orders seeking the eviction of the mother or forcing the mother to reveal her address if a new contract were unable to be negotiated. The mother's evidence in the family report had stated that she had considered moving out of the refuge within 18 months.

The facts of this case highlight how difficulty in obtaining suitable accommodation can become a factor in considering whether the parent with residence has the capacity to care for the children. The second issue is the tension inherent in mediating the relationship between the parent who spends only periodic time with the children and the need to protect the integrity of the refuge.

In *Jerrems and Argyle*,⁴⁰ which also involved an application for parenting orders, there was evidence that the applicant father had perpetuated violence towards the respondent mother earlier in their relationship. The mother had subsequently been involved in a number of other relationships, all of which involved incidents of domestic violence:

The Father says he had permitted the Mother to return to live in his home at this time as she told him she had nowhere else to live and thus neither did [the child]. The Mother's case was that she did this to enable the Father to spend time with the child. As the evidence unfolded the Mother did not have anywhere else to live and, as she has done again and again, she sought a place of refuge and safety with [the child]'s Father.⁴¹

In this case there were issues regarding the mother's mental health. She declined to accept assistance from the authorities, for example with respect to the allegations of sexual assault against the child the subject of the proceedings. The Court found the father had demonstrated a high ability to care for the child and that he had changed his lifestyle. Additionally, there was a high risk of exposure to violence in the mother's new home and therefore orders stipulated the child was to live with the father.

In this matter, the mother continued to return to the father of the child who had previously been violent towards her. This only serves to remind us that each

39 Ibid [148]–[149] (Pascoe CFM).

40 [2009] FMCAfam 760 (24 July 2009).

41 Ibid [39] (Henderson FM).

case is different and the issues and concomitant complexities relating to effects of violence are different. It is pertinent to note here that the *Home Safe Home*⁴² study found there was:

An assumption that women in a domestic or family violence situation have a focus on rebuilding their life free of violence and the perpetrator. Women in domestic and family violence circumstance are not a homogenous group and many of them, especially those in long term relationships do not necessarily want a separation.⁴³

Although I have only so far discussed matters involving parenting applications under the *FLA*, complexity can also arise when children are not involved. For example in *M and M*,⁴⁴ in an application by the husband for a decree of dissolution of marriage,⁴⁵ the husband claimed the parties were separated but living under the one roof. The wife at one point had obtained an interim apprehended violence order against the husband and there were orders restraining the husband from entering the wife's premises. The wife had various residences throughout the litigation, but later moved back in with the husband. There were parenting orders stipulating the wife was to vacate the residence occupied by the husband and children. The husband stated that he declined to enforce the order because he 'feared for her well being if she had nowhere to go'.⁴⁶

These cases discussed above all emphasise that family violence has broader implications for litigants and courts. When a matter involving family violence has reached a stage which requires judicial adjudication, various difficulties may have already occurred in relation to the provision of accommodation for the party who has experienced family violence. In some cases, this may lead to interstate relocation and thus create further difficulties in maintaining a relationship between the children and the other parent (where such a relationship is found to be in the best interests of the child). The issue of accommodation itself may cause difficulties for the court in drafting practical orders which would be in the best interests of the child.

Where parties are living in a refuge, this may raise issues of adequate disclosure and privacy – violence may be disclosed but the consequences of the violence on accommodation may not be. All these additional factors raise the level of complexity for a court making orders in the best interests of the child.

IV INITIATIVES OF THE FAMILY LAW COURTS

As I have mentioned already in this paper, there is no single tactic or solution that will, in itself address the issues surrounding family violence and homelessness. Instead we know from practice and research that affected parties

42 Chung et al, above n 10.

43 Ibid 2.

44 [2003] FMCAfam 130 (8 April 2003).

45 The husband's application was made prior to 2005.

46 *M and M* [2003] FMCAfam 130 (8 April 2003) [34] (Scarlett FM).

are best assisted through proper communication and cooperation between agencies that are both within the court system and in the government and non-government sectors.

One working example of such an inter-agency reproach is the Women's Family Law Support Service in New South Wales, an initiative of the Family Law Courts, which in conjunction with the NSW Women's Refuge Movement administers the Women's Family Law Support Service. The project is situated in the Family Law Registry in Sydney, with part-time service hours during the week. The project does not provide legal advice but instead provides non-legal support, information and referral. The particular focus is on women and children who are separating from a partner who is violent and abusive. Last year, an interim evaluation report on the outcomes of the project was released. The report indicated that although the project was limited in scope, the clients found the service very useful both in supporting them and providing referral information.⁴⁷

The family law courts have on-going links with the Family Pathways Networks. Family Consultants represent the Courts at Family Pathways Networks meetings, which occur approximately once a month and are an important forum for professionals working within the family law system.

Moreover, the federal magistrates court continues to trial new processes for case management, in particular to increase linkages with community organisations. The court's Dandenong project is one such initiative. It features a 'triage' process whereby a matter will be assessed by a Federal Magistrate at the first court event to determine the central issues in dispute. It has strong ties with community organisations. The report setting out the key arrangements of the project states that:

On duty days, a representative from one of the local Family Relationship Centres or the Melbourne Mediation Centre will be available at the Dandenong Registry to provide information about dispute resolution services, contact centres and family relationship programs that are available in the community. The providers are not employees of the Court and do not offer any form of mediation or dispute resolution on site.

This initiative promotes community dispute resolution, that is, informal justice. This is in keeping with the Attorney-General's vision of increasing the use of community-based dispute resolution to reduce the community's reliance on litigation. It is also expected that the initiative will create a more robust process to link parties experiencing family violence to appropriate community agencies.⁴⁸

Keeping in mind this link with community to assist litigants, the project also aims to ensure self-represented litigants are effectively able to participate and works closely with community legal assistance providers. The linkages the triage system provides will assist to ensure that family violence and any related issues such as homelessness can be elicited in the evidence and as early as possible so that assistance can be sought.

47 Lesley Laing, 'Interim Report on the Evaluation of the Women's Family Law Support Service' (NSW Women's Refuge Movement Working Party Inc, 2009) (copy on file with author).

48 Federal Magistrates Court of Australia, *The Dandenong Project: A Family Law Initiative* (2009) 7 (copy on file with author).

These are only some of the ways the family law courts collaborate with community networks in order to identify and assist families beyond legal orders. The courts continue to consider new pilots and different processes in order to find innovative ways to manage the challenging issues before it.

V CONCLUSION

Family violence, as demonstrated in its interaction with homelessness, is a complex issue that profoundly affects various parts of family life. I note that in April this year the Australian Law Reform Commission in conjunction with the NSW Law Reform Commission released a consultation paper titled *Family Violence: Improving Legal Frameworks* to consider the interaction of state and Commonwealth laws on family violence.⁴⁹ Inquiries like this which span different jurisdictions will assist in creating a more cohesive system. Beyond the legal frameworks, family violence needs to be addressed by all service providers working together. The complexity of family violence is such that any process to address it requires a collaborative and integrated approach, as was advocated by the Australian Institute of Family Studies' *Evaluation of the 2006 Family Law Reforms*, which in its concluding chapter found:

There is still evidence that some families with family violence and/or child abuse issues are on a roundabout between relationship services, lawyers, courts and state-based child protection and family violence systems. While complex issues may take longer to resolve, resolutions that are delayed by unclear pathways or lack of adequate coordination between services, lawyers and courts have adverse implications for the wellbeing of children and other family members.

There is a need for more proactive engagement and coordination between family relationship service professionals and family lawyers and between family law system professionals and the courts. This need is especially important when dealing with complex cases.⁵⁰

To my mind, this quote neatly encapsulates the urgency of an integrated approach by state and federal Governments, their agencies and the non-government sector if family violence, homelessness and the best interests of children are to be comprehensively addressed. The *FLA* can only provide one part of the solution. In the absence of an overall approach, there is an unacceptable risk of the most vulnerable continuing to fall through the cracks.

49 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: Improving Legal Frameworks*, ALRC Consultation Paper No 1, NSWLRC Consultation Paper No 9 (2010).

50 Kaspiew et al, above n 3, 362.