

## **Submission form for Family Law Legal Aid Services Review Consultation and Options Paper**

This form has been prepared to assist you to respond to Victoria Legal Aid's Consultation and Options Paper on the Family Law Legal Aid Services Review.

You may use this form to make a submission. You do not have to make a submission on every proposal and question. The Consultation and Options Paper provides details about each of the options.

We are committed to a structured, transparent and accountable consultation that enables everyone to access the Consultation and Options Paper and the submissions in response.

Please email your submission to [familylawreview@vla.vic.gov.au](mailto:familylawreview@vla.vic.gov.au).

### **Publication of submissions**

All submissions received will be published on the VLA website after the close of the submission period.

If you do not want your submission published, please contact us on the email address above to discuss further.

Submissions are due by **Monday 16 February 2015**.

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## Submission form

### Overall comments

#### Response:

The Centre strongly supports Victoria Legal Aid's efforts through the Family Law Legal Aid Services Review to ensure that family law legal aid services are fair and as widely available as possible.

A number of the issues raised in the Consultation and Options Paper are examined in the Centre's research report [Pro bono legal services in family law and family violence: Understanding the limitations and opportunities](#) (October 2013), which considers the unmet legal need in family law and family violence, the 'gaps' in the provision of legal aid and other public legal assistance, the limitations on the ability of pro bono providers to bridge these gaps, and the intersection between clients' needs in family law and family violence matters.

One of the key findings of the report is that "...in responding to unmet need in family law, the focus needs to be on those practitioners who have the **expertise** [emphasis added] and willingness to continue doing the work, whether in publicly funded services or in private practice" (p14).

### Access and Intake

**Option 4:** Enhance intake opportunities at Magistrates' Courts for clients with family law legal need.

**Response:** The Centre supports the allocation of resources to provide this additional triage service. In [Pro bono legal services in family law and family violence](#), those who were interviewed that provide assistance in family violence matters (including pro bono lawyers, and lawyers from Legal Aid and community legal centres) reported the prevalence of clients presenting that also required assistance in family law matters (p99-101).

However the Centre warns that many of those interviewed reported the difficulties that lawyers who did not ordinarily practise in family law have in obtaining sufficient expertise to provide professional advice and assistance, given the size of the *Family Law Act* and body of case law and the unique nature of family law matters and courts (see Section 7.4, p76-81). It may be difficult to provide sufficient training to a duty lawyer (or other lawyer without expertise in family law) so that they are in a position to provide effective and professional advice.

### Vulnerable Clients

**Option 6:** Undertake a 'continuity of service delivery' pilot for high needs clients, in partnership with community legal centres.

**Response:** See response to Option 4 above.

**Option 8:** Deliver training on related areas of law to family law practitioners, so that they can better assist clients and to provide advice and referrals.

**Response:** The Centre supports the allocation of resources for this pilot. As stated above, in [Pro bono legal services in family law and family violence](#), those who were interviewed that provide assistance in family violence matters (including pro bono lawyers, and lawyers from Legal Aid and community legal centres) reported the prevalence of clients presenting that also required assistance in family law matters (p99-101).

As per Sections 8.2 and 8.4 of the Report (p95-97 & 98-101), many of those interviewed stated that gaining sufficient expertise in family violence matters was more likely to be possible/easier than gaining equivalent expertise in family law would be for someone who did not ordinarily practice in this area of law.

## Early Intervention

**Option 11:** Provide more outreach services at points of early contact for clients.

**Response:** The Centre supports this Option, and notes the discussion of communications technology as a tool to assist greater numbers of clients to obtain basic legal information, legal advice and referrals in a number of regional areas (p26). The Centre has undertaken research on the provision of legal assistance to disadvantaged clients via video conferencing technology.

We refer to the Centre's paper [The use of video conferencing technology to provide pro bono assistance to self-represented litigants in regional, rural and remote Australia](#) (April 2014), which discusses the nature of assistance that can be provided effectively using video conferencing technology, and the requirements to use this technology effectively in a legal context. We note in particular the finding that there needs to be an appropriate support person available to support clients (see 'What support is needed', p15-18).

*The experience of those involved in the video conferencing pilot projects examined by this research all point to the need to have a support person (for example the volunteer law students at the Law Works clinic) who can not only help with the use of the technology but also help the client to understand the advice and take any follow up actions. (p2)*

The Centre recommends, if a pilot project of this nature is initiated, that an appropriately trained and resourced person is available in each outreach location to provide assistance to clients.

## Duty Lawyers

**Option 29:** Pilot a duty lawyer service modelled on the Legal Aid NSW Early Intervention Unit.

**Response:** The Centre supports the allocation of resources for this pilot, and agrees with the positive feedback on the unique qualities of the model reported in the Consultations and Options Paper (p40). We also note the unique expertise in family law and early intervention that is maintained in the Unit, which is required to provide such services effectively (see also [Pro bono legal services in family law and family violence](#), Section 7.4, p76-81).

**Option 30:** Pilot an expanded duty lawyer service modelled on the QPILCH Self Representation Service (Courts) model.

**Response:** The QPILCH Self Representation Service (Courts) model has been a great success and has been duplicated in different courts in many states and territories. In Victoria, Justice Connect has recently launched a Self Representation Service in the Federal Court and Federal Circuit Court.

The Centre supports allocation of resources for this pilot, provided that participants in the pilot are lawyers that primarily practise in family law. We encourage VLA to approach QPILCH for advice and assistance in creating a service based on this model.

### Self-Represented Litigants

**Option 33:** Pilot a QPILCH-type service model for providing additional discrete task assistance for self-represented litigants.

**Response:** See response to Option 30 above. Many of those interviewed for [Pro bono legal services in family law and family violence](#) did report, however, that it can be difficult to find "... genuinely discrete tasks in family law, due to the size of the Family Law Act, the multi-faceted nature of family law cases, and the need of many family law clients for ongoing assistance" (p76). See Section 7.4 (p76-78) for more information on the lack of availability of discrete tasks.

We also note that many providers of legal assistance in family law questioned whether discrete task assistance was appropriate in many cases, and whether it may be counter-productive (p77-78).

**Option 34:** Consider establishing a student clinic model for providing discrete task assistance to self-represented litigants.

**Response:** See response to Option 33 above. Also, similar to the response to Option 4 above, the lack of experience of students exacerbates concerns regarding the provision effective and professional advice in family law.

### Any other matters or comments

**Response:** The Centre recommends the research report [Pro bono legal services in family law and family violence](#), which was prepared by the Centre in response to consistent reports of difficulties obtaining pro bono assistance in family law, despite the clear unmet legal need in this area. The reasons for this are examined in the report, and some are covered in the Responses above. They also include large firms' lack of expertise and difficulties in obtaining effective training due to the nature of family law (p72-73) and the lack of capacity among family law practitioners (p10).

Therefore, where clients with family law matters cannot access assistance from Legal Aid or community legal centres, they also find it very difficult to access pro bono legal assistance.

In the Centre's [Final Report](#) on the biennial [Fourth National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers](#) (December 2014), respondent firms reported that "Family Law (not including Family Violence)" was the area of law in which requests for assistance were most often

rejected, and remained an area of law in which little work was undertaken (p33-36, 93-95). These results mirrored those obtained in 2012, 2010 and 2008.

Justice Connect, in its [2013-14 Annual Report](#), stated that "... a significant number of all our enquiries in Victoria involved Family... Law requests, in line with funding cuts to Victoria Legal Aid... there remains significant unmet need in these areas" (p6), however only 6% of their referrals were made in matters involving family law (p7).

This underlines the need to properly resource publicly funded family law services, and for Victoria Legal Aid to work closely with private family law practitioners to find ways that limited legal aid funding can be used to best support these practitioners to address unmet legal need.