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Just click here and complete your details:  
[Brisbane Pathways Membership](#)

Email your questions and comments to the Pathways Program

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## Pathways Officer Update

Seasons Greetings to the dedicated, hardworking and passionate members of the Greater Brisbane Family Law Pathways Network. In this newsletter you should find valuable information to broaden your awareness and connections as well as some fantastic training and networking opportunities we have planned for early next year.

As the new Project Officer for the Brisbane FLPN, I have thoroughly enjoyed having the opportunity to connect and work with such intelligent and engaged members of the network and generating ideas and action to improve outcomes for clients.

On 14 November members of the Brisbane FLPN gathered at the Queensland Terrace of the State Library of Queensland to hear Family and Fertility Lawyer, Stephen Page, give an entertaining and informative presentation on the question, "Who is a Parent?" Attendees were invited to try to guess the outcomes of a number of real-life scenarios in which people had made arrangements to have a child through surrogacy, IVF and/or sperm donation only to have the courts make some unexpected decisions about who is the parent in each of the scenarios. Most found the outcomes quite surprising and it was agreed that this is an area that will require more legal and social exploration in order for families to have certainty and for children to be born and raised with legal recognition of their intended parents.

With Pathways members attending from a range of services and locations across Brisbane, people broadened their professional networks and gained deeper insights into the work of professional peers and colleagues.

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We also had more than 50 Pathways members attend the Family and Federal Circuit Courts at Brisbane over the last two weeks of November. The Registry Manger provided a context for the family law process and answered questions and attendees were able to observe Duty Lists and complex parenting and property hearings. Everyone who attended the visits reported that the experience added value and insights to their professional practice. Some were concerned by the experience and their takeaway message was that they would be encouraging clients to work harder to resolve their own issues to avoid having to participate in the court process. Others

were pleasantly surprised at the manner in which certain judges showed patience and clarity with self-represented and vulnerable litigants who were trying to navigate this daunting and complex system. All agreed that it was an invaluable experience.

We have been busy planning some fantastic training and networking opportunities for Pathways members. All of these can be diarised and booked right away.

**"This is something that everyone working with clients using this system should experience. A very worthwhile visit."**

*Pathways Member*

**The Brisbane FLPN wishes all of our members a safe and happy holiday season and looks forward to connecting with you in 2019.**

## UPCOMING EVENTS

### WORKSHOP Drugs and Alcohol in Family Law Matters

**Wednesday, 6 March 2019 8.45am to 3.30pm**  
The Edge Auditorium, Queensland State Library,  
South Brisbane

#### PRESENTERS:

**Federal Circuit Court Judge Turner:** a judicial perspective of the impact of drugs and other substances in relation to family law disputes.

**Magistrate Hennessey:** about the Queensland Drug and Alcohol Court and why we have a specialist court to deal with these issues

**Jane Bowman** (Program Manager) at Queensland Injectors Health Network sharing information on the complexities of drug and alcohol dependency and the interrelated challenges arising from mental health issues, trauma and power imbalances.

**Michelle Taylor** (Advanced Clinical Educator) and Sonia Boyd (Senior Social Worker) from Insight Alcohol and Other Drug Training and Workforce Development Queensland.

Further details and registration: [www.trybooking.com](http://www.trybooking.com)

### BREAKFAST SEMINAR Child-Inclusive Meditation

**Wednesday, 1 May 2019 7.30am to 9am**  
Wesley House, Ann Street, Brisbane

#### PRESENTERS:

**Anne-Marie Rice** (2019 Doyle's Guide Leading Family Lawyer & Mediator, Collaborative Professional, 2018 WLAQ Woman Lawyer of the Year).

**Tom Fitzgerald** (Brisbane-based social worker with 20 years' experience & specialist Family Report Writer for Family Law Proceedings involving the parenting arrangements for children).

Further details and registration: [www.trybooking.com](http://www.trybooking.com)

## NOTICEBOARD

### WAIT LIST TIMES

**For Post-Separation Services, including Parenting Orders Programs & Child Contact Services [Click Here](#)**

### FAMILY LAW VOLUNTEERS NEEDED!

**Caxton Legal Centre needs more family law solicitors to volunteer for Thursday evening family law advice sessions. Find more information, including the necessary qualifications, position description and more, at [caxton.org.au/support](http://caxton.org.au/support)**

### SUBMISSION

**In response to the Australian Law Reform Commission's Review of the Family Law System, Discussion Paper 86, the GBFLPN Steering Committee made a written submission. [Link to Submission](#)**



# Children's Participation in Family Law Disputes

by **Donna Cooper** (LLB, LLM) Senior Lecturer, Faculty of Law, Queensland University of Technology, Cofacilitator QUT Family Mediation Service and registered FDR practitioner.

## Children's Participation in Family Law Disputes

The current review of the family law system is extensive and includes a review of children's participation in family court proceedings. This is in light of recent research that strongly indicates that children and young people are unhappy with their current levels of involvement and want more opportunity to be informed and directly involved ([Rachel Carsen, Children and Young People in Separated Families](#), AIFS, 2018). One of the issues highlighted is inconsistencies in the approach of Independent Children's Lawyers ('ICLs') to their role. In parenting proceedings an ICL may be appointed under section 68L of the Family Law Act 1975 (Cth) where the judge considers it would assist the court for a lawyer to be appointed to represent the children's interests. In [Discussion Paper 86: Review of the Family Law System](#) some of the key concerns are highlighted and proposals made for change.

### When are ICLs appointed?

Family court parenting disputes arise when parents have separated, have been unable to reach agreement on arrangements for their children and one parent has decided to apply to the family court for parenting orders. In this context the current law is that the court must determine what parenting arrangements will be in the best interests of the children. Judges have to work through a list of 'best interest factors' which include the benefit to the children of having meaningful relationships with their parents, ensuring protection from harm and abuse and a range of other factors. In considering appropriate parenting arrangements, courts are directed to prioritise protection from family violence and abuse. One of the further best interest factors is any views expressed by the children, taken into account in accordance with their maturity and level of understanding.

If the court considers that there are particular concerns about children, such as issues of family violence, abuse or neglect, it can order that an independent children's lawyer (ICL) be appointed. The court will order an ICL where it considers that an independent lawyer is needed to objectively gather the relevant information to put before the court to enable the judge to make informed decisions.

### What is the role of the ICL?

Under the current system the ICL is appointed by the legal aid commission in the relevant State or Territory. The ICL will be either an in-house legal aid lawyer or a private lawyer who is on the legal aid panel. The ICL is not the children's lawyer and does not act on the children's instructions. The role of the ICL is to form an independent view of what parenting orders will be in the children's best interests. He or she is required to present information to the court so that the judge can work through the 'best interest factors' in an informed and meaningful way. The ICL will organise evidence relevant to the issues in dispute which may include information about the physical and psychological health and wellbeing of the children and parents as well as the educational and social development of the children. If there are concerns about a parent's capacity, information relevant to specific concerns, such as psychiatric reports or drug tests, will be relevant. Other relevant information may include school reports, educational assessments, medical records, police reports, hospital records and Department of Child Safety records.

In the current system there are several ways in which children's views can be put before the court. The most common way in Australia is for the court to order that a Family Report be prepared by a social worker or psychologist. The report writer interviews each parent, other members of each household and the children. They include in their report the perspectives

of the parents and children, their observations of how the parents interacted with and related to their children and any views of the children, if they chose to express them. If an ICL is appointed he or she would usually organise the Family Report.

### **Variation in the practice of ICLs around Australia**

Discussion Paper 86 highlights that the National Legal Aid Guidelines for ICLs (2013) provide that ICLs should seek to provide the children with an opportunity to express their views and that ICLs should meet with the children [at p167]. However, research has shown that there is a wide variation in practice around Australia. Some ICLs meet with children to explain their role and what is happening in court but go no further. Others are more involved and meet with children to ascertain their perspectives, some with the assistance of social scientists. If agreement is reached or court orders made they may also meet with the children to explain what has happened and why. Other ICLs see their role as more distant and as an evidential gathering exercise and have no contact with children. The dominant practice, particularly in Queensland, seems to be that ICLs exercise caution in meeting with children and prefer that evidence of children's views be presented to the court in the form of family reports [[Rae Kaspiew, Independent Lawyer's Study, Final report](#), 2<sup>nd</sup> ed, AIFS, 2014, [Margaret Voight, Is a View Different From a Wish?: Considering the child's view in parenting disputes in Australian family matters](#) (SJD, QUT, 2017)].

### **Recommendations for Change**

Discussion Paper 86 recommends changes to the current system so that the ICL would become known as a 'separate legal representative' and would remain responsible for gathering evidence to put before the court and in ensuring that negotiations between

parents to try to settle the matter before trial are child focused. However, a major suggested change is the introduction of a direct support person for the child, to be known as a 'child advocate'. This proposal involves appointing a person with social science training who would support the children through the family court process.

The child advocate would explain to children their options for putting their views forward, and ensure their views are communicated to the judge. They would also keep children informed and explain court decisions in a developmentally appropriate way. A further proposal was that children should be able to express their views in a range of ways, such as via a report prepared by the children's advocate, or by meeting with the judge or by directly appearing in court, supported by the child advocate.

The current practice in Australia is that only a small minority of judges meet with children so this proposal would be a significant departure from current practice ([Michelle Fernando, Hearing Children in Family Law Proceedings](#)). Also children do not appear directly in family court hearings so this would also be a major change.

### **Conclusion**

The proposals made in Discussion Paper 86 for the introduction of a child advocate role would certainly address the concerns raised by children in recent research that they are not currently permitted an adequate level of participation in family court proceedings which directly impact on them. However, this proposal would be costly to implement so we will have to wait and see if the Federal Government will be prepared to fund such an initiative.



## SPOTLIGHT ON A SERVICE

# Family and Advocacy Support Services (FASS)

<b>Service Activity:</b>	Family Law Duty Lawyer and Social Support Worker
<b>Location:</b>	Brisbane Family and Federal Circuit Courts –Duty Lawyer Levels 1 & 2
<b>Service Times:</b>	Monday to Friday, 9am-4pm
<b>Phone:</b>	Legal Aid 1300 65 11 88    Caxton Legal Service on (07) 3214 6333
<b>Funding Provider:</b>	Commonwealth Government
<b>Website:</b>	<a href="http://communitylegalqld.org.au/sites/default/files/downloads/webinars/fass_info_for_service_providers.pdf">communitylegalqld.org.au/sites/default/files/downloads/webinars/fass_info_for_service_providers.pdf</a>

FASS is a free service for clients affected by family violence and who have a family law issue. It is provided by lawyers and social workers at the Family and Federal Circuit Court registry. It is a drop in service primarily for clients who have a matter in court that day. Assistance may also be provided to clients who do not have a court case that day but who need to file an urgent court application.

### What services do you provide?

FASS provides legal assistance by way of a duty lawyer. The lawyer can give legal advice, assist with court documents, conduct negotiations and represent the client in court in some cases. Social supports are provided by a social worker experienced in assisting families affected by family violence. These supports can include safety planning for home and at court, preparing a Protection Order application, referrals to family and other support services, advocating with housing and other services and providing supports in court.

### How do we refer clients to this service?

Clients who have a case in court or who need assistance to file an urgent application in court can be referred to the intake officer on Level 1 who will triage clients to receive assistance from the FASS service. Unrepresented clients not affected by family violence can also be referred to the intake officer for assistance from the family law duty lawyer. Unrepresented clients who require ongoing assistance can call Legal Aid Queensland on 1300 65 11 88 or Caxton Legal Centre on

(07) 3214 6333 to find the best assistance and support available for their needs.

### What are wait times like?

Clients who present with urgent needs will be prioritised. Clients may experience delays during busy periods.

### What should we tell our clients about your service?

Clients must attend in person when help is needed (no appointments are available).

**Clients must first attend upon the LAQ intake officer on Level 1 to fill out an intake form. The intake officer will determine if the client is to be assisted by LAQ or Caxton Legal Centre who both provide FASS and family law duty lawyer services.**

No child minding facilities available.

Clients should bring along all court documents (e.g. applications, affidavits, family reports, court orders) and supporting evidence (e.g. letters from doctors, emails/ Facebook screenshots, school records, financial records).

### Does your organisation provide other services to support separating families?\*

Legal Aid Queensland and Caxton Legal Service provide a range of other services to separating families. There are also a number of community legal centres which provide legal and other support across the community. Further information can be found at:

<b>Legal Aid Queensland:</b>	<a href="http://www.legalaid.qld.gov.au">www.legalaid.qld.gov.au</a>
<b>Caxton Legal Service:</b>	<a href="http://www.caxton.org.au">www.caxton.org.au</a>
<b>Community Legal Centres:</b>	<a href="http://www.communitylegalqld.org.au">www.communitylegalqld.org.au</a>

ATTORNEY-GENERAL'S DEPARTMENT NEWS

# New Funding for Family Law Services to Support Women to Recover Financially After Separation

**As part of the Government's Women's Economic Security Package, will assist women, including victims of family and domestic violence, to pursue safer, faster and fairer family law outcomes after separation.**

Victims of family violence will benefit from new ongoing funding for Legal Aid Commissions to support the ban on direct cross-examination by perpetrators of family violence. The funding, initially \$7 million over three years, establishes the new Family Violence and Cross-examination of Parties Scheme.

Under this Scheme, Legal Aid Commissions will be funded to provide legal representation to parties subject to the ban on direct cross-examination in the Government's Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018, which is currently before the Senate.

The Bill will protect victims of family violence in family law proceedings by banning direct cross-examination in certain circumstances, requiring that cross-examination be conducted by a legal representative.

Legal representation under the Scheme will be available to all parties who are subject to the ban on direct cross-examination – the usual legal aid means and merits tests will not apply.

Further measures being funded from 2019-20 under the Package include:

- Ongoing funding to existing Commonwealth-funded specialist Domestic Violence Units and Health Justice Partnerships across Australia, with an expansion of these services to include financial advice, counselling and literacy services.
- New funding for family law property mediation services:
  - Funding for Family Relationship Centres (FRCs) to help families reach agreement about splitting their property after separation and keep them out of court.
  - Funding Legal Aid Commissions for a two year trial of lawyer-assisted mediation in each state and territory. Using a more relaxed means and merit test, the trial will support families with asset pools of up to \$500,000 (excluding debt) to resolve their property disputes with the help of experienced legal aid lawyers.
- New funding for the federal family courts to conduct a two year trial of simpler and faster court processes for resolving family law property cases with an asset pool of up to \$500,000 (excluding debt).

[Click here for full media release](#)

**Improving visibility of superannuation assets in family law proceedings**

Women will get a better deal in accessing superannuation assets at the end of a relationship as a consequence of a new information-sharing initiative announced today as part of the Coalition Government's Women's Economic Security Package.

\$3.3 million will be provided to the Australian Taxation Office to develop an electronic information-sharing system to ensure the family law courts have better visibility of parties' superannuation assets when making property orders.

Separating couples will have access to faster and fairer family law property settlements as a result of this new system which will make it easier to identify lost or undisclosed superannuation assets.

The non-disclosure of superannuation assets can often disproportionately disadvantage women due to a significant disparity in superannuation savings between men and women. A lack of financial disclosure by a former partner can result in women receiving a smaller share of property than they would otherwise be entitled to.

Non-disclosure of assets in family law proceedings can also delay cases. A recent study by the Women's Legal Service Victoria found that two-thirds of clients surveyed faced delays caused by a former partner failing to make the necessary financial disclosures.

Giving the courts access to superannuation information held by the ATO is expected to result in faster and fairer family law property settlements. It will help parties in family law proceedings, particularly women, avoid the cost and complexity involved in seeking superannuation information from multiple superannuation funds, or subpoenaing employment records.

It will also provide the family law courts with a more accurate and reliable source of superannuation information to inform a property settlement, and result in more just and equitable outcomes.

The electronic information-sharing system will commence on 1 July 2020.

[Click here for full media release](#)