



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC:JvdPvk140322

14 March 2022

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: natalie.cooper@lawcouncil.asn.au

Dear Ms Nicoll,

New family dispute resolution services for Aboriginal and Torres Strait Islander families

Thank you for the opportunity to contribute to a Law Council submission on new family dispute resolution (FDR) services for Aboriginal and Torres Strait Islander families. The Indigenous Issues Committee of the Law Society of NSW contributed to this submission.

The Law Society supports the five points identified in the Law Council's memo dated 10 February 2022 as relevant issues to raise in respect of service design. In addition to those issues, we raise the further considerations below.

1. Design of an Aboriginal FDR model

We support the establishment of new FDR services for Aboriginal and Torres Strait Islander families, and support the approach of building the capacity of Aboriginal Community Controlled Organisations (**ACCOs**) to deliver these services.

However, in our view, a significant amount of work is still required in order to determine an appropriate model of FDR for Aboriginal families, and this work should be done prior to considering the design of the grants administration process. Our members inform us that there is a significant gap in services for Aboriginal families who wish to access FDR, and particularly FDR carried out by Aboriginal FDR practitioners. In our view, the model-design considerations should be carried out as a preliminary piece of work, and include an audit of existing FDR services, and determining how many existing Aboriginal FDR practitioners there are.

An essential prerequisite for the effectiveness of new FDR services for Aboriginal families will be to understand what Aboriginal people want from engaging with FDR, as well as what Aboriginal families need for FDR services. This must include an understanding of who should be included (such as key family members who might at the time be incarcerated) and the necessary skills and capacities of FDR practitioners and of what might be at stake. For example, our members note that it is essential that FDR practitioners providing services to Aboriginal families be familiar with working in a trauma-informed way. In this regard, the Law Society notes also that Stolen Generations survivors, and their descendants, may have experienced particular and specific forms of trauma that will require specialised expertise on the part of an FDR practitioner to properly negotiate.

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It will be necessary to carry out further consultations focused on this issue. In NSW, relevant stakeholders will include Legal Aid NSW and Aboriginal Legal Services (NSW/ACT). In our view, consultations should also include the Federal Circuit and Family Court of Australia, in particular the Sydney Registry, which has now had extensive experience with its Indigenous list. It will be crucial for the new FDR services for Aboriginal families to dovetail with the Indigenous list. Consultation should include those parties providing services to support the Indigenous list.

Further, there may be significant overlap between the work of the new FDR services and the care and protection jurisdiction for some Aboriginal families. Consideration must be given to how the new FDR services for Aboriginal families can divert Aboriginal children and families away from the care jurisdiction.

Consultations should include stakeholders in the care and protection jurisdictions in each state and territory to identify appropriate points for diversion, and what those pathways might look like. It is likely to be useful to consult with those involved with specific Indigenous lists, such as the Marram-Ngala Ganbu (Koori Family Hearing Day) at Broadmeadows (and expanded to Shepparton) Children's Court in Victoria. In NSW, efforts are underway to establish an Indigenous list in the care and protection jurisdiction in the Children's Court at the Dubbo registry. Those involved in this effort should be consulted too, in respect of new FDR services for Aboriginal families.

2. Training pathways

Our members have expressed some concerns in respect of the training requirements for FDR practitioners. Noting the existing and immediate need for these services, the onerous nature of existing training requirements may present a significant barrier to achieving high numbers of Aboriginal FDR practitioners quickly.

Similar to the conceptual consideration that should be carried out in relation to an appropriate FDR model for Aboriginal families, higher level consideration should be given to what kind of qualifications and qualities Aboriginal FDR practitioners ought to possess.

In our view, FDR practitioners providing services for Aboriginal families should, most importantly, have the expertise of someone who is embedded in Aboriginal cultural knowledge and practice. Knowledge of the law (in the family and care jurisdictions) should buttress this expertise.

In our view, there should be an alternative pathway for accreditation for Aboriginal FDR practitioners. It might also be useful to consider an accreditation process which provides "credit" for relevant work or educational experience. It is important to note that in NSW, working with children checks (**WWCC**) can present a barrier to otherwise fit and appropriate Aboriginal carers in the child protection system. We are concerned that in NSW, WWCC may continue to be a barrier to those who might otherwise be appropriate FDR practitioners.

3. Family capacity building support

While these issues are outside the strict scope of the Attorney-General Department's discussion paper, we suggest that the provision of FDR services to Aboriginal families should be situated within a suite of other culturally effective family capacity building services. A holistic, earlier intervention approach is required to build capacity in Aboriginal families, within a therapeutic model, linked to legal avenues for assistance. In our view, the urgent and overarching aim of this work is to equip Aboriginal families to avoid the crisis-driven care and protection jurisdiction. The ACCOs should also lead the design and delivery of this work. ACCOs should also be resourced to provide cultural reports on the family.

Just as FDR services in the mainstream are offered in the context of Family Relationship Centres (**FRCs**), the broader services offered by FRCs should be available in a culturally appropriate and effective way for Aboriginal families, including the provision of safe and dedicated physical spaces for these services.

Referrals to these services should be available at identified points in a family lifecycle, such as during pregnancy, relationship breakdowns, restoration of children from out of home care and exiting custody. Referrals should also be available from domestic violence crisis accommodation and in the context of addiction recovery. Referral streams should be inclusive and should allow for self-referral and referrals from Aboriginal Elders, healthcare providers, and identified state government agencies. In our view, these services should be separate from out of home care providers.

Services offered should focus on strategic capacity building for families (similar to Pregnancy Family Conferencing, a cross-agency service offered in the Sydney Local Health District), where service providers (such as housing, rehabilitation etc) are held to account for meeting the needs of those families in preparation for the arrival of a new baby. The process itself should provide a therapeutic scaffold for families, and it would be appropriate for the services and referrals to be coordinated by an ACCO worker.

In our view, the resourcing that will be required for the success of new FDR services for Aboriginal families will need to include resourcing ACCOs to carrying out and coordinating this kind of family capacity building work.

Thank you for the opportunity to contribute to the Law Council's submission. Questions at first instance may be directed to Vicky Kuek, Principal Policy Lawyer, at 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaats', written in a cursive style.

Joanne van der Plaats
President