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Dr Warren Mundy Independent Reviewer of the National Legal Assistance Partnership 2020-2025

By email: submissions@nlapreview.com.au

Submission to the Independent Review of the National Legal Assistance Partnership 2020-2025

Thank you for the opportunity to make a submission to the Independent Review. The Relationships Australia federation collaborates with providers of legal assistance services within the scope of the review to deliver integrated, expert professional services to people of all ages who are experiencing legal problems alongside relationship, adverse mental health and psycho-social challenges, and the effects of structural and systemic barriers to full participation in the community.

This submission offers our observations and suggestions about how the next National Legal Assistance Partnership could be enhanced to better support our clients through keeping the justice system within reach.

Recommendations

- 1. To reduce 'postcode injustice' and promote geographic equity that the Government allocate funding to enable:
 - a. legally-assisted Family Dispute Resolution (FDR) to be available from all Family Relationship Centres,¹ and in respect of property and non-child-related matters, as well as child-related matters²
 - b. legally-assisted and culturally appropriate FDR to be available nationally
 - c. Family Advocacy Support Services (FASS) to be available five days a week at all Federal Circuit and Family Court registries
 - d. extension of the PPP500 program to deal with property pools under \$1,000,000, noting that rising property prices mean that more family homes will be worth more than \$500,000, while families are nonetheless in financial circumstances that preclude access to the justice system, including the family law system
 - e. older people experiencing age-based abuse or neglect to secure legal advice and, if necessary, representation, in matters such as (but not limited to) age discrimination and human rights breaches, guardianship and other safeguarding processes and disputes with aged care service providers

¹ For the definition of Family Dispute Resolution, see section 10F of the Family Law Act 1975 (Cth).

² If implemented, this recommendation could support amendments proposed in the Family Law Amendment (No. 2) Bill 2023.



- f. subject to favourable evaluation national rollout of specialist legal services for victim survivors of sexual violence.
- 2. Include within the definition of 'family violence related matters' abuse or neglect of older people.
- 3. To better understand and respond to the multi-faceted needs of families:
 - a. identify through appropriately-designed data collection the kinds of services that legal assistance functions in concert with, and
 - b. fund case management and navigation services.
- 4. Ensure that legal aid commissions have sufficient resources to meet demand under the Family Violence and Cross-Examination of Parties Scheme
- 5. That the Government allocate funding to enable legal aid commissions to appoint Independent Children's Lawyers (ICLs) in respect of all applications concerning special medical procedures.
- 6. That funding for ICLs should better reflect the magnitude of need in terms both of numbers of matters and complexity of matters.
- 7. That the next Partnership Agreement be sufficiently flexible to accommodate multi-disciplinary service provision, including legal assistance, from within hub models.
- 8. That, to better support collaboration between the family relationship services (FRS) sector and the legal assistance sector, the Government make an appropriate reference to the Family Law Council and, for the purpose of that reference, appoint an advisory group comprised of representatives of the FRS sector, with which the Council must consult.
- 9. That, to better support collaboration between the FRS sector and the legal assistance sector, representatives from the FRS sector (at national, state and territory level) be appointed to the Legal Assistance Inter-Governmental Committee and the National Legal Assistance Advisory Group.

The work of Relationships Australia

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choices, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Through our programs, we work with people to enhance within families, whether or not the family is together, with friends and

³ At p 22 of the current Partnership Agreement.



colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Relationships Australia is committed to:

- ensuring that social and financial disadvantage is not a barrier to accessing services
- geographic equity in service provision, including by working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres
- collaborating with other local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that a complex suite of supports (for example, legal services, drug and alcohol services, family support programs, mental health services, gambling services, and public housing) is often needed by people engaging with our services, and
- contributing our practice insights and skills to better inform research, policy development, and service provision.

As with legal assistance services, Relationships Australia organisations receive funding from both the Commonwealth and state or territory governments.

Framing principles of this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. Enjoyment by individuals of their full human rights is underpinned by access to mechanisms to prevent breaches of their human rights and mechanisms to remediate breaches when they occur. Unmet legal need arises for a range of reasons but, as noted by the Law Council of Australia in its Justice Project, certain groups are disproportionately locked out of accessing legal advice and assistance. Further, as a consequence of our commitment to human rights, we are committed to ensuring that people are able to exercise choice as to their service providers.

Poverty functions as a powerful barrier to enjoyment and assertion of human rights; this is a key reason for our commitment to universally accessible services, including timely legal assistance. Our clients face escalating hardship and precarity, severe rent and mortgage stress, and financial barriers to accessing other goods and services that are necessary to flourish. These include basic health care (including dental and mental health care and preventive health measures), physical, social and cultural activities, educational and employment opportunities, and good quality fresh food. Since the onset of the pandemic, many people have experienced these kinds of difficulties for the first time. Members of demographic cohorts who have never before needed assistance with the essentials of food and shelter are for the first time presenting to poverty crisis relief services. But there are many others, too, for



whom the pandemic has merely exacerbated longstanding structural inequalities, barriers and scarcities. For them, the situation is exponentially worse.

Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to, *inter alia*, policy and programme development and service delivery.

Principle 2 – An expanded understanding of the nature, experiences and implications of poverty

Aboriginal and Torres Strait Islander people have different ways of knowing the dimensions of poverty; indeed, the drivers of poverty and the mechanisms and conditions for escaping from poverty are different from those applying to other groups in the community. The connection to Country, and the context-specific experiences of kinship, for example, do not countenance the hyper-individualism that pervades Western assumptions about distribution of resources and obligations between the Western nation-state and individual taxpayers and among individual taxpayers. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not sufficient) step in achieving the targets in the National Agreement on Closing the Gap.

Principle 3 – Poverty is a cause, consequence and characteristic of a range of experiences, circumstances and positionalities

In our experience, poverty co-occurs with a range of experiences, circumstances and positionalities, including longstanding health restrictions, intimate partner violence, abuse or neglect of older people, poor mental health, housing insecurity and instability, employment precarity, misuse of alcohol and other drugs, legal problems, and harmful gambling. Causation is often multi-factorial and multi-directional and, once individuals, families and communities are caught by it, our social, economic, political and legal systems operate in concert not only to hinder escape, but also to exacerbate it.

Principle 4 – Acknowledging intersectionality

Relationships Australia serves many cohorts who are disproportionately more likely to experience human rights violations and systemic and structural barriers to participation in Australian social, cultural, political and economic life. These cohorts, membership of which includes a high degree of intersection, include:

- First Nations people⁴
- people with disability
- people who come from culturally and linguistically diverse backgrounds (including people who
 have chosen to migrate and people who have sought refuge)
- people affected by complex grief and trauma, intersecting disadvantage and polyvictimisation
- people living with intergenerational trauma
- survivors of all forms of abuse, including institutional abuse
- people experiencing mental ill-health

⁴ See, eg, Hunter, 2012; Markham & Biddle, 2018;



- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

None of these circumstances, experiences and positionalities exist at the level of an individual or family. They become barriers to full enjoyment of human rights and full participation in economic, cultural, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in media and entertainment.

Governments should prioritise measures to ensure that current experiences of episodic poverty do not deteriorate into entrenched, and potentially intergenerational, poverty that will not only harm the individuals experiencing it, but will hinder full economic, social and cultural recovery for Australian society in its entirety. Such measures include universal access to timely legal assistance, which can be a critical intervention to prevent poverty and enable transition out of poverty.

Principle 5 – That the burden of fragmentation should not be borne by those least equipped to bear it

We agree with the Law Council that

The legal sector should work with other sectors of the community to progress practical, targeted measures which increase awareness of these concepts, including amongst trusted non-legal professionals who can act as a gateway to legal help. Simple measures within civics education could also be pursued to build recognition of legal problems and effective responses.⁵

Relationships Australia has, over 75 years, built resilient and effective relationships across the various service landscapes within which it has operated, including the family law system, the criminal law and child protection justice systems, public health and aged care, and the broader social services sector. For example, we have strong relationships with the family law courts, community legal centres, women's legal services, and Aboriginal and Torres Strait Islander legal assistance services. Together, we work constructively to empower individuals and families at all stages of the life course to be safe, to reach their own solutions, and to avoid the crushing emotional harms and financial burdens of litigation. We work with individuals and families in situations of crisis. Detecting, responding to and enabling recovery from domestic and family violence is core business for Relationships Australia, as is supporting people experiencing or affected by:

- misuse of alcohol and other drubs
- harmful gambling

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⁵ Law Council of Australia, Justice Project (2018), *Overarching Themes* at p 2.



- poor mental health, self-harm and suicidality
- chronic disease
- housing precarity and homelessness, and
- trauma.

Providing such services, at a high standard of professional expertise, frees courts and legal professionals to focus their time and energy on meeting our clients' legal needs, whether through legal assistance to individuals or through engage in systemic advocacy and public interest litigation.

Nevertheless, fragmentation of policy, legislation and services remains a substantial obstacle to help-seeking. When engaging with the family law system, for example, families may potentially deal with: child protection services, police, domestic violence advocates, legal services, family court consultants, ICLs, hospital and medical staff, child health services, counsellors, school teachers, day care staff, school and private psychologists, chaplains, Children's Contact Services, and Centrelink. Research findings and practice experience show that the number of services accessed by families increases as harm from violence or abuse increases.⁶ The 2018 AIFS report on children and young people in separated families (Carson et al, 2018) reported that parents in their sample had accessed an average of eight services when finalising parenting matters. The main services accessed by parents included:

- lawyers (96%)
- counselling, FDR and/or mediation (94%)
- court services (83%)
- family consultants/report writers (60%), and
- ICLs (36%).⁷

Relationships Australia has welcomed recent initiatives to reduce the extent to which individuals and families must shoulder the burden in the family law, family violence and child protection systems. The recently-passed *Family Law (Information Sharing) Act 2023* (Cth) is an important milestone in building safer systems for families experiencing domestic and family violence. We have also welcomed recommendations from the Australian Law Reform Commission, the Joint Select Committee on Australia's Family Law System and the Social Policy and Legal Affairs Committee of the House of Representatives that urge better integration of service delivery.

This review, and the current review of the Family Relationship Services Program, offer opportunities to explore options for integrated, multi-disciplinary and collaborative service provision. In the discussion below, we describe Relationships Australia's proposal of Family Wellbeing Hubs.⁸

⁶ Kaspiew et al, (2015), p 132.

⁷ Carson et al, (2018).

⁸ See also our submissions to the Australian Law Reform Commission and the Joint Select Committee on Australia's Family Law System, available at https://relationships.org.au/research/#advocacy



Principle 6 – Safe, supportive and person-centred service environments

Relationships Australia is committed to providing its services in safe, welcoming, and culturally sensitive environments. For example, we are acutely conscious of the serious adverse effects on children of institutionalising conflictual dynamics between their parents, arising from court-centric systems and processes in the family law system. There are clear benefits for children (and their broader families) in keeping families away from courts; families who would not otherwise need to approach courts should not be required to go there to access essential family services.

Discussion

Removing the burden of fragmentation and silos from users of legal assistance services

The National Strategic Framework for Legal Assistance and the National Legal Assistance Partnership recognise that clients' legal needs co-exist with a range of psycho-social, relationship and health needs. Clients may need to access such services before, during and after legal interventions. Further, the complex co-morbidities and intersectionalities experienced by many family law clients⁹ can also limit people's capacity to navigate the multiple services and agencies with which they are brought into contact. These individuals and families can benefit from case management and navigation support. Case management and navigation, leading to appropriate referrals, has been demonstrated to maximise the effectiveness of legal solutions (for example, in responding to abuse and neglect of older people and in supporting people engaging with Royal Commissions). Accordingly, we recommend that the next partnership agreement include funding for case management services to work across service providers (Recommendation 3). We further recommend that the Framework and the partnership agreement identify services more precisely, so that data can be collected and analysed to better understand what service mixes offer the most benefit, and to which cohorts. Data collection that merely describes services as, for example, 'non-legal' or 'other' inhibits development of a robust understanding of what clients need and what service mixes yield the greatest benefits (Recommendation 3).

Abuse and neglect of older people

The Law Council's Justice Project (2018) drew attention to the particular barriers to accessing justice that are experienced by older people in Australia. Since then, the Royal Commission into Aged Care Quality and Safety and the Australian Institute of Family Studies have identified widespread abuse and neglect of older people. A range of campaigns have been launched to counter ageism, which underlies abuse and neglect,¹⁰ and vigorously assert that everyone, at all ages, has human rights and that everyone, at all ages, should be able to uphold their rights through relevant legal processes.¹¹

Our rights as we age are customarily viewed through reductionist medicalised, economic, or technocratic lenses. This impoverished understanding of our rights as we age has facilitated ongoing

⁹ See, eg, the Family Law Council, 2015, 2016.

¹⁰ For example, the EveryAGE Counts, of which Relationships Australia is a member. See https://www.everyagecounts.org.au/

¹¹ For example, the Rights of Older Persons Australia network, of which Relationships Australia is a founding member. See https://www.rightsofolderpersons.org.au/



ageism and age discrimination, as well as amply-documented violence, abuse, neglect and exploitation. Certainly, Australia is not unique in its conspicuous lack of attention to our rights as we age. Across the world, older persons face entrenched ageism and age discrimination. As the COVID-19 pandemic shows, older persons are disproportionately vulnerable to violation of even the most fundamental rights, such as the right to life. Although the Universal Declaration of Human Rights states that we are all born equal and are all equally entitled to the same rights as everyone else, this does not apply as we grow older.

Ageism and age discrimination in Australia – the need for accessible, timely legal assistance

In a recent submission to the Parliamentary Joint Committee on Human Rights,¹⁵ Relationships Australia has argued that a national human rights act, and identification of older persons' rights as a national priority, would provide a jurisprudential basis for effectively countering ageism and age discrimination in Australia. In Australia, the evidence of ageism directed at older people and its impact on their status as rights holders is extensive and growing.¹⁶ The research establishes that ageism is deeply implicated in the marginalisation of older people from general human rights inclusion and protection, and that human rights guarantees are often denied to older people, as older people.¹⁷ The lack of geographically equitable and specialist legal assistance for older people forms part of that marginalisation and denial of human rights.

Older persons in Australia suffer from violations to their fundamental human rights such as the right to life, the right to privacy and the right to family life, as well as the right to freedom from cruel, inhuman or degrading treatment. The Royal Commission reported that deliberate acts of harm and forms of abuse occur in residential aged care, including physical and sexual abuse. Physical and sexual violence in residential aged care sometimes occurs at the hands of staff members, and there are situations in which residential aged care providers do not protect residents from abuse by other residents. The Royal Commission Final Report states: 'This is a disgrace and should be a source of national shame. Older people receiving aged care should be safe and free from abuse at all times.' 19

The socio-demographic characteristics associated with abuse and neglect of older people include financial strain, housing stress and individual-level characteristics such as social isolation, loneliness,

¹² See the Final Report of the Royal Commission into Aged Care Quality and Safety; Qu et al, 2021.

¹³ World Report on ageing and health (2015) (n 3); Global Report on Ageism (2021) (n 3). See also Izekenova et al, 2015; Iversen, Larsen & Solem, 2009.

¹⁴ United Nations Department of Economic and Social Affairs, Covid-19 Pandemic and Older Persons (Web Page); Inter-American Commission on Human Rights, Resolution No. 01/20: Pandemic and Human Rights in the Americas (adopted 10 April 2020).

¹⁵ Submission 58 on the PJCHR website: https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Human Rights/HumanRightsFramework

¹⁶ AHRC Report, 2021a.

¹⁷ Van Bueren (Web Page).

¹⁸ Royal Commission Report Final Report, 2021 (n 36); Royal Commission Interim Report, 2019; Royal Commission into Aged Care Quality and Safety, 'Aged Care in Australia: A Shocking Tale of Neglect' (Media Release, 31 October 2019).

¹⁹ Royal Commission Final Report, 2021, 68.



mental illness, poor physical health and disability. The AIFS study reports that elder abuse largely remains a hidden problem, and that increasing recognition and awareness of elder abuse behaviours is essential.²⁰ The National Elder Abuse Prevalence Study reports that 14.8% of older persons living in the community suffer some form of neglect or abuse - psychological, sexual, financial or physical.²¹ However, the AIFS study was confined to people living in the community, and people with sufficient cognitive capacity to engage in consultation. The limitations on the study suggest that the figure of 14.8% significantly understates the prevalence of abuse and neglect: the study excluded people living with cognitive impairment and people living in residential aged care facilities, prisons and other institutional settings. The parameters of the study also did not accommodate specific examination of the situations of culturally and linguistically diverse older people, and older people experiencing compounded marginalisation through intersecting disadvantage, such as homelessness or membership of LGBTIQ+ communities.

In the employment context, a 2021 study by the Australian Human Rights Commission reported that over a quarter of respondents experienced age discrimination in the previous two years and almost a third were aware of other people experiencing age discrimination in the workplace. Research by EveryAGE Counts establishes that the key settings where ageist attitudes prevail are the workplace, provision of healthcare, aged care and family and local community settings. In relation to the provision of healthcare, the Final Report of the Royal Commission found that people receiving aged care, particularly those in residential aged care, do not consistently receive the health care they need and, that in many cases, care is substandard. Substandard care can occur in routine areas like provision of adequate food, medication management, dental and skin care, as well as in complex care, such as the management of chronic conditions, dementia or palliation. Notably, the Commission found that those who run the aged care system do not seem to know about the nature and extent of substandard care and have made limited attempts to find out.

Relationships Australia is committed to advocating for the recognition of the rights of older persons. We have joined the EveryAGE Counts Campaign and the Rights of Older Persons Australia network. We consider that ageism underlies yawning policy and service delivery gaps, including in the 'postcode lottery' of availability of services that can help older people affected by abuse or neglect, and reflected in short-term funding envelopes for elder abuse services that come nowhere close to matching the prevalence of abuse and neglect of older people (Qu et al, 2021).

²⁰ ALRC Report 2017 (n 39) 78. See also Qu et al, 2021.

 $^{^{\}rm 21}$ ALRC, 2017; see also Dow & Brijnath, 2019, pp 143-159.

²² AHRC 2021a, 35-44.

²³ EveryAGE Counts, 'The drivers of ageism: Foundational research to inform a national advocacy campaign tackling ageism and its impacts in Australia' (Full Report, 2017) 9. See also EveryAGE Counts, 'Ageism Report 2021' (Full Report, 2021); Leah Nemiroff, 'We can do better: Addressing ageism against older adults in healthcare' (2022) 35(2) Healthcare Management Forum 118-122.

²⁴ Royal Commission Report 2021, 7-13.

²⁵ Royal Commission Report 2021, 69-73.

²⁶ Royal Commission Report 2021, 72.



Finally, Relationships Australia notes that the Terms of Reference for this review omits any reference to the National Plan to Respond to the Abuse of Older Australians 2018-2023, although specific mention is made to the National Plan to End Violence Against Women and Children, Australia's Disability Strategy and the National Framework for Protecting Australia's Children. This is, regrettably, a clear instance of the invisibility of the legal assistance needs of older people.

Meaningful legal remedies are necessary to address the grave asymmetries of knowledge and power and to hold perpetrators accountable. Remedies will not be meaningful, however, if legal advice and representation is out of reach of most older people.

Independent Children's Lawyers

Independent Children's Lawyers have experienced chronic under-funding simultaneously with high expectations from children, their parents and judicial officers. The 'function creep' for ICLs is well-documented. The 2014 AIFS study²⁷ found that ICLs were increasingly expected, and relied upon, to undertake case management and litigation management functions, especially in matters in which both parties were self-represented.

The recently-passed Family Law Amendment Act (No. 1) 2023 imposes on ICLs new duties to meet with children and to be engaged in matters under the Hague Convention on the Civil Aspects of International Child Abduction.²⁸ In the absence of sufficient funding, it is difficult to be confident that the intention of these amendments – to amplify the voices of children – can be achieved. There is a risk that, without proper funding of these functions, the amendments will exacerbate the dissatisfaction and distress of children and their parents without achieving the aim of better recognising children as rights-bearers (especially pursuant to Article 12 of the Convention on the Rights of the Child). At very the least, it is probable that, over time, 'exceptional circumstances' (for not appointing an ICL) will be found to exist in an increasing proportion of cases, simply to ease the pressure on ICLs and legal aid commissions, thus undermining the policy intent of the amendment.

Family Wellbeing Hubs

Relationships Australia recommends that the next Partnership Agreement be sufficiently flexible to accommodate multi-disciplinary service provision, including legal assistance, from within hub models (Recommendation 7). In recent submissions advocating for family law reform, Relationships Australia has advocated for service provision via Family Wellbeing Hubs, as an efficient way to support personcentred and place-based service delivery. Hubs models are well-established internationally and in Australia, and have proven successful in fostering collaboration between service providers from across a

²⁷ Kaspiew et al, (2014).

²⁸ In commenting earlier this year on an Exposure Draft of the amendments, Relationships Australia also recommended that ICLs be appointed for all applications under section 67ZC in relation to special medical procedures. Government did not accept this recommendation, but it remains the position of Relationships Australia that (sufficiently-resourced) ICLs are vital to protect the best interests of children in respect of whom authorisation for special medical procedures are sought.



range of professional disciplines. We will advocate for establishment and upscaling of hubs in our engagement with the Independent Review of the Family Relationship Services Program.

The next National Partnership Agreement should support multi-disciplinary hubs (which may be in bricks and mortar, or entirely online, or a mix of these models). This would be consistent with the recommendations of the ALRC and Joint Select Committee inquiries into family law, as well as the 2015 and 2016 Family Law Council reports. Relationships Australia envisages that the Hubs would extrapolate from the original concept of FRCs as 'front doors'. The concept of Family Wellbeing Hubs would enable updating the Family Relationship Centres to better meet the diverse needs of contemporary families, and allow realisation of efficiencies of scale.

Conclusion

Thank you again for the opportunity to make this submission. Please do not hesitate to contact me if we can contribute further to your inquiry, at ntebbey@relationships.org.au / 02 6162 9300, or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au.

Kind regards

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