

June 2021



PRO BONO FAMILY LAW REVIEW NEXT STEPS REPORT

WWW.LAWACCESS.ORG.AU

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Index

Executive Summary	3
Introduction	4
Background	4
Consultation and Feedback	5
Appendix A - Law Access Family Law Guidelines	11
Appendix B - Stakeholder Feedback	15
Appendix C - Family Law Service Provided by CLCs	23
Appendix D - Feedback Received	29
Appendix E - Statistics	32

Executive Summary

The Law Access Pro Bono Family Law Review 'Next Steps Report' makes the following recommendations based on feedback received during an extensive consultation process undertaken with our stakeholders in 2020 and 2021:

Recommendations:

New initiative:

Law Access will collaborate with CLWA to investigate the option of facilitating a 'family law property virtual assistance service' initially on a pilot basis hosted by selected CLCs.

Current service delivery:

Law Access will continue to facilitate referrals for applicants to community support and other services such as financial counsellors and/or provide pro bono lawyers with referral information to assist applicants to connect with support services where appropriate.

Law Access will continue to assist CLCs with resourcing requests including staff secondments from law firms and assistance from barristers.

Law Access will continue to liaise with CLCs, LAWA and the private profession to facilitate sharing of knowledge, resources and training opportunities.

Law Access does not intend to re-introduce a formal deferred fee referral process but will continue to assist particularly vulnerable applicants who may benefit from a deferred fee referral as needed.

Law Access will continue to provide assistance for property settlements and care and protection applications only, in accordance with previous recommendations which were implemented on 24 March 2021.

Not recommended:

It is not proposed to establish an advice clinic staffed by a Law Access employed solicitor.

As CLCs and LAWA currently provide CLE for self representing litigants, delivering community legal education (CLE) clinics for self representing litigants is not a priority and Law Access does not intend progressing this strategy either.

Introduction

In mid 2020 a review was commenced into the family law pro bono referral service operated by Law Access. The review included the operation of family law service provision for children and property settlement matters within Law Access and considered the broader family law service environment, funding, and various strategies which could be implemented by Law Access with a view to further developing the service to more effectively respond to the needs of applicants seeking family law assistance.

The review did not include care and protection service provision as the intention is that, although numbers are low in this area relative to other family law matter types, applications will continue to be taken for these matters. There is significant unmet need in the care and protection area and Law Access has advocated for improved legal assistance in this area as a member of the Protection and Care Action Network since late 2018.

In August 2020 a Confidential Draft Options Paper 'Review of Law Access Family Law Pro Bono Referrals' (the Options Paper) was prepared by Law Access and circulated to our family law stakeholders for feedback.

Background

Current Law Access Family Law Model

- Family law matters have been treated as eligible matters for pro bono services since the inception of Law Access. Since 2017 the assessment of family law matters has been the responsibility of a dedicated Senior Family Lawyer (SFL), employed for two days a week.
- In November 2020, a junior lawyer already employed by Law Access two days a week was assigned to assist the SFL with assessing family law applications. The guidelines and assessment of matters has largely remained the same, although in the last 12 months there has been increased focus on considering referrals to community service providers - Community Legal Centres (CLCs) and Legal Aid WA (LAWA) - depending on the applicant's legal need and subject to LAWA and CLCs' eligibility requirements.
- Where a matter is assessed as suitable for pro bono referral, attempts are made to place the matter via one or more of the following methods - advertising in the Family Law Practitioners' Association bulletin, (and in some cases) Law Society Friday Facts, and/or direct email or phone call to lawyers who have taken matters previously or expressed an interest in doing so.
- CLCs, LAWA and other service providers have always been able to make referrals to Law Access. Since the introduction of the WA Pro Bono Model and training undertaken to promote that service to CLCs there has been an increased level of interest from CLCs in referring matters to Law Access. The conversion of family law applications to either placement with a service provider referral or pro bono lawyer remains relatively low so it is timely now to review the Law Access guidelines and in general the model for family law service provision to ensure that limited pro bono family law resources deliver maximum impact.

Current Law Access Guidelines – Family Law

The Options Paper set out the background of family law pro bono service provision at Law Access and the challenges associated with this area as opposed to other areas of law. The Paper also highlighted the benefits of providing a service in this area, including that as a service of last resort Law Access is making a contribution to addressing this area of high unmet need.

However, given the challenges of service provision in this area, The Options Paper canvassed whether Law Access should narrow its eligibility criteria.

The percentage of all family law matters successfully placed has remained relatively stable over the last six years. However, children's matters have been particularly difficult to place, and the placement rate is lower than for family law overall where the parties have been involved in Court proceedings for some time, and an Independent Children's Lawyer has been appointed. Many applicants also present with vulnerabilities such as mental health, family violence concerns and language barriers. These factors contribute to children's matters in particular being very resource intensive for family law pro bono lawyers.

Given Law Access' limited staffing resources and the lower conversion rate of children's applications to placement (with either a pro bono lawyer or service provider) in March 2021 Law Access made the difficult decision to temporarily suspend applications for children's matters.

Effective 24 March 2021, the Law Access eligibility guidelines were amended to reflect this change. See **Appendix A** for the previous and updated guidelines. At this stage it is proposed that the restriction on children's matters continue but with the rider that Law Access has discretion to amend its guidelines as appropriate.

It should also be noted that family law matters which were warm referrals to Law Access by a legal assistance provider or a private practitioner were more likely to be placed and at a ratio of 2:1. It may therefore be worth considering limiting applications in this area to warm referrals from private practitioners, LAWA, ALSWA and CLCs.

Law Access will continue to closely monitor family law referrals and factor in considerations such as the funding environment for LAWA and CLCs and any trends in referrals and enquiries to Law Access in the family law area when considering future guideline changes.

Consultation and Feedback

The Options Paper was circulated to the following stakeholders for feedback:

- Community Legal WA (**CLWA**) - CLWA circulated to all CLCs
- Family Court of WA (**FCWA**)
- Family Law Practitioners' Association WA (**FLPAWA**)
- Legal Aid WA (**LAWA**)
- Aboriginal Legal Service Western Australia (**ALSWA**)

Although care and protection matters are not the subject of this review, where information or feedback has been provided about service provision in this area, it has been included in this paper as it is relevant to family law service provision overall.

A summary of the key findings from the feedback received from stakeholders is included below. See **Appendix B** for the detailed feedback from stakeholders.

Family Law service provision by community legal services

The Options Paper provided a general outline of family law service provision by community legal services.

CLWA compiled a summary of family law services offered by CLCs which was provided to Law Access by Carrie Hannington, Policy and Projects Officer, CLWA following receipt of the Options Paper. See **Appendix C**.

Information and feedback from CLCs was also gathered via training and consultation sessions conducted by Law Access with CLCs as part of the rollout of the WA Pro Bono Model Project. This feedback is summarised in **Appendix D**.

Stakeholder Feedback – key points from Appendices B, C and D

Feedback was received by Law Access from stakeholders on potential strategies raised in the Options Paper. In addition other aspects of family law service were discussed during the consultation process and in WA Pro Bono Model training sessions and have been included below.

Potential Strategy - Should Law Access establish a fortnightly clinic staffed by a senior Law Access lawyer for initial triage and advice?

Recommendation – Law Access does not intend to pursue the establishment of a fortnightly clinic.

During the consultation process about the proposal to establish a fortnightly clinic the alternative idea of a virtual assistance service partnered with existing CLCs started to form and it is proposed to collaborate with CLWA and CLCs to develop a 6 month pilot of this initiative.

- There is interest generally in the concept of providing unbundled/specific task assistance or advice (subject to clear scope and eligibility guidelines). However, the majority of stakeholder feedback supports Law Access collaborating with CLCs to broker family law pro bono services rather than establishing a standalone service.
- Unbundled/specific task assistance or advice means services offered for a defined/specific task without the need for ongoing assistance, for example; drafting documents, negotiations, etc.
- Regional CLCs noted an increasing demand for family law and child protection assistance which they are unable to meet due to limited capacity.
- Some CLCs provide limited advice services in property settlement but document drafting is usually limited to children's matters.

- LAWA offers the Virtual Office advice service in selected metropolitan and regional locations for children and property matters, which includes appointments through its Client Services section with a focus on parenting and child support matters.
- The LAWA Dispute Resolution Program (DR) is also an option, subject to meeting eligibility requirements and funding being available. DR is however generally not available where the dispute is property only. LAWA grants of aid for children and property have been restricted for some time due to limited funding.
- The preference of CLWA and some CLCs is that Law Access partners with CLCs to develop or build on current CLC clinic arrangements rather than Law Access setting up its own stand alone service. This would build capacity in local CLCs, avoid possible duplication and enable Law Access to work to its strength which is its engagement with private lawyers.
- Some metropolitan CLCs have existing clinics staffed by private lawyers on a volunteer basis.
- One regional CLC does refer deferred fee matters to a local lawyer. However, the regional CLCs that provided feedback reported providing names of private lawyers to clients who would then make their own enquiries about payment options.

Of the regional CLCs that have provided feedback, none have a formal clinic arrangement but expressed an interest in their clients being linked with lawyers (from anywhere in the State) 'virtually'. This would resolve some of the current issues with running their own clinics locally including the low number of private practitioners in particular regional areas and the possibility of conflicts of interest arising.

Given some CLCs have no or limited expertise in family law property there is an opportunity for one off pro bono advice sessions, as well as a need for extended appointments of approximately two to three hours to enable tailored advice and other assistance such as document preparation to provide the most benefit.

Potential strategy - Is there a role for Law Access and pro bono lawyers to deliver community legal education (CLE) clinics for self representing litigants?

Recommendation – As CLCs and LAWA currently provide CLE for self representing litigants, this is not a priority and Law Access does not intend progressing this strategy.

- There were mixed views on whether CLE would be useful. CLWA mentioned the National Legal Aid AMICA resources available online (designed for parties who can work together on separation issues) and suggested more materials are needed for self-representing parties in property matters.
- Law Access has been told that private firms do private CLE sessions for clients and other interested parties. An example is a session held on how to "get the most out of" a child mediation" session.
- Concern was expressed by a stakeholder that CLE that is too general may not be useful and that more benefit would be obtained from targeted CLE or where it is paired with a pathway into advice or other assistance. As an example the LAWA Virtual Office service does incorporate CLE into advice sessions for family law property matters.

- The CLCs that provided feedback, report providing CLE in varying ways to meet local community need including information sessions to individuals and service providers and via online communications such as newsletters and Facebook.
- LAWA provides extensive online resources to self representing parties as well as some CLE.

Potential strategy – Would pro bono lawyers be more likely to take Law Access referrals if relevant wrap around services were offered?

Recommendation – Law Access will continue to facilitate referrals for applicants to community support and other services such as financial counsellors and/or provide pro bono lawyers with referral information to assist applicants to source non-legal support services where appropriate.

- Although the provision of wrap around services was seen as positive for parties and adding value, the feedback is that Law Access does not have a role in brokering these arrangements.
- CLCs are in a good position to provide wrap around services as they are co-located or have links with relevant services such as financial counsellors.
- It was reported that private lawyers generally have their own network of professionals that they refer fee paying clients to. However, lawyers would benefit from having information about community support and other referral options for applicants in receipt of pro bono assistance. This could be provided to lawyers individually or more broadly, for example via FLPA bulletins.
- Law Access will continue its current practice of referring applicants to relevant community support and financial counselling services should the need arise during the assessment of matters.

Potential strategy – Should Law Access re-introduce a formal deferred fee referral process for family law referrals?

Recommendation – Law Access does not intend to re-introduce a formal deferred fee process but will continue to assist particularly vulnerable applicants who may benefit from a deferred fee referral as needed.

- Historically Law Access facilitated deferred fee placements as vulnerable applicants often found it difficult to negotiate these arrangements themselves.
- More recently, these placements have only been made in exceptional circumstances, for example where a person is elderly or there is a high level of family violence, as 'brokering' deferred fee arrangements has become problematic for Law Access. There have been occasions where practitioners who are taking a matter for initial pro bono advice, then seek to represent a client under a cost agreement or deferred fee arrangement. In some cases the expectations of the practitioners and the Law Access applicants are at odds and it has led to confusion and miscommunication.
- Deferred fee referrals should only be made in exceptional circumstances. Given the potential for miscommunication, the scope and nature of a referral to both the Law

Access applicant and the pro bono solicitor must be carefully considered and very clearly explained.

- Where an applicant is particularly vulnerable Law Access will facilitate a pro bono referral for initial advice, with the lawyer and applicant to negotiate terms (including any fees payable) for ongoing assistance.
- Where a referral is made and a pro bono lawyer is requested to consider a pro bono arrangement, the expectation is that the lawyer will consider a significantly reduced fee and that any fee charged is relative to the financial benefit likely to be received by the applicant.
- FLPA provides details of practitioners who undertake work on a deferred fee basis on their website and where appropriate Law Access will refer applicants to the FLPA website so that applicants can source their own deferred fee lawyers.

Suggestion- Additional pro bono resources sought by CLCs

Recommendation – Law Access will continue to assist CLCs with resourcing requests including staff secondments from firms and assistance from barristers.

- Several CLCs expressed an interest in assistance being provided to their centres by barristers for family law and care and protection work. Law Access can assist with these types of referrals.
- CLCS were also interested in accessing interstate barrister assistance where a party had proceedings in another jurisdiction. Law Access could try to facilitate this provided the option of funding through the relevant legal aid service had been exhausted.
- CLWA expressed an interest in secondments of private firm lawyers to CLCs to assist with family law matters. The lawyers would be supervised by family law practitioners and would not need to come from family law firms. However, some CLCs expressed a preference only for lawyers with relevant experience for a family law placement due to limited capacity to train and supervise secondees. Law Access will advertise requests for family law secondments but while family law firms may be prepared to assist at a clinic it is unlikely they will have capacity for a formal secondment arrangement.
- A regional CLC requested assistance with inspection of court documents in Perth to avoid the need to transfer matters to their local area. These are requests that Law Access can consider for referral.

Suggestion- Training and resource materials sought by CLCs

Recommendation – Law Access will continue to liaise with CLCs, LAWA and the private profession to facilitate sharing of knowledge, resources and training opportunities.

A number of CLCs requested assistance with:

- Training- in areas such as recovery order applications, interim hearings, preparing briefs for barristers and general advocacy training.
- Templates - including for certain orders and to assist self-representing parties prepare trial documents. Law Access understands that LAWA is considering the development of resources, such as a trial documents kit, to assist self-representing parties in parenting matters.

Statistics

See **Appendix E** for statistics and observations on finalised applications and outcomes.

Appendix A



ACN 602 771 068

Information Sheet for Family Law Applications

BEFORE SUBMITTING YOUR APPLICATION PLEASE NOTE THE FOLLOWING:

- Applicants may apply for family law assistance but there is no guarantee that Law Access will be able to place the matter as we rely on lawyers being willing to provide services on a no fee basis.
- There is a high demand for pro bono (no fee) family law assistance.
- Many people self-represent in family law proceedings with the support of self-help kits, and one off or limited help from community legal services or private lawyers (on a full fee or deferred/reduced fee basis).
- A high number of family law applications are assessed by Law Access as unsuitable to try to refer for pro bono assistance.
- Even where Law Access assesses a matter as suitable, it is often difficult to find a lawyer to assist pro bono. An eligible applicant is more likely to have their matter placed for pro bono assistance where the lawyer is requested to provide a discrete service ie: advice only, or to assist with a specific task (for example limited document preparation). Please be aware that even then we are unable to guarantee placement.

Law Access Eligibility Criteria (Applicants must satisfy all criteria below and address these criteria in their application)

- **Means test** – Law Access applies a strict means test – as an indication, only applicants on very low incomes or receiving Centrelink benefits will be financially eligible.
- **Vulnerable applicant test** (see below).
- **No other service option** - Is unable to access assistance from a Community Legal Centre or Legal Aid WA, (or has had assistance terminated, but only because the service has no capacity or limited funds) and has no capacity to fund a lawyer on a private fee paying basis (ie: full fee or reduced/deferred fee basis).
- **Reasonable prospects of success test** - The matter has a reasonable prospect of success, ie: the applicant is likely to achieve the outcome they are seeking.

Vulnerable Applicant

Test - A vulnerable applicant is unable to progress their legal matter without assistance from a lawyer because of the impact of one or more of the following personal circumstances:

Phone: (08) 6488 8725 | Fax: (08) 9324 8699
 Email: lawaccess@lawaccess.org.au | Website: lawaccess.org.au
 Please address all correspondence to Law Access, PO Box Z5345, Perth WA 6831



ACN 602 771 068

- Cultural and/language barriers
- Literacy barriers
- Family violence/power imbalance - family violence is behaviour towards a family member that is violent, threatening or controlling, or causes the family member to be fearful
- Disability – a cognitive impairment, such as an intellectual disability or an acquired brain injury, a serious health condition or physical disability
- A diagnosed psychiatric or psychological illness
- Homelessness or risk of homelessness

Other Information

- It may be difficult to place children and property matters, where the matter has been in the Court system for some time. These matters take significant time to assess and are the most difficult for Law Access to place.
 - In some cases, applicants previously in receipt of a grant of aid may be eligible for further limited assistance at certain stages of the matter- applicants should check their Legal Aid WA correspondence to see if this is an option.
 - Where there is an allegation of family violence, assistance may be available via the Family Violence Ban Cross Examination Scheme, managed by Legal Aid WA. If a personal cross-examination ban notice or order is made by the Family Court of WA, application can be made for a lawyer under the Scheme.

For further information: <https://www.legalaid.wa.gov.au/find-legal-answers/family/family-violence-and-your-safety/family-violence-cross-examination-ban>

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Law Access – General Aims and Guidelines for Assistance – Family Law Considerations (effective 24 March 2021)

The Law Access – General Aims and Guidelines for Assistance set out the overarching considerations for assessing all applications. The Guidelines set out considerations specific to family law which may be amended from time to time by Law Access to reflect operational requirements, the funding environment and other relevant considerations.

- **Children's matters** – Law Access does not currently accept applications for children's matters. If an enquiry is received regarding a children's matter a referral can be made to LAWA (for either advice or if appropriate a grant of aid, or reconsideration if aid has been refused) or to a CLC.

The rationale for this approach is that as a service of last resort Law Access tends to receive applications for matters where a grant of aid has been terminated, proceedings are on foot and have been for sometime and an ICL has been appointed. Law Access does not currently have an effective referral pathway for these matters.

- **Child Support** – Law Access will not usually assist in child support matters, as these are generally able to be dealt with by the parties themselves. Where legal assistance is required LAWA or a community legal centre providing specialist child support assistance may also be able to assist a party.

If there are complex legal issues, issues of public interest, or vulnerability issues for the applicant, Law Access can assist.

- **Property settlement** – Law Access will assist with property settlement matters, except where the following exists:

a) **Very low, no equity, or negative equity property pools** – an applicant in these circumstances may require the services of a financial counsellor to negotiate debt arrangements and otherwise may be appropriate for a referral to a community based service (CLC, and any property service offered by LAWA);

b) **Where there is sufficient equity in the property pool** (as a guide more than \$250,000 net equity) that the applicant would be in a position to fund a lawyer on either a fee paying basis upfront or on a deferred fee basis. Should there be significant vulnerability Law Access may facilitate a referral for one off pro bono advice.

c) Law Access will not assist in the above circumstances but will have the discretion to waive the above where it assesses that **there is significant vulnerability such as extreme family violence**.

Law Access – General Aims and Guidelines for Assistance – Family Law Considerations
(last updated October 2020)

There are additional considerations specific to family law matters:

- Children's matters - If an Independent Children's Lawyer has been appointed, Law Access is less likely to approve an application relating to children, as the ICL will be representing the children's interests. This is in line with the LAWA position. If there are particular reasons why a parent applicant needs their own representation, (due to for example high level of family violence, significant mental health issues etc) then an application will be approved although in that circumstance it may be worth considering first whether the applicant should be assisted to make an application to LAWA or to seek a reconsideration (if they were previously in receipt of a grant of aid).
- Child Support - We will not normally assist in child support matters, as they are usually adequately dealt with by the parties personally. If there are complex legal issues, issues of public interest, or vulnerability issues for the applicant, we can assist.
- Property settlement - The above considerations, along with difficulty in placing matters, mean that we will not usually assist in property settlement applications where there is no risk to the children, and no complicating public interest or vulnerability factors, over and above those frequently experienced.

Appendix B – The following stakeholders provided feedback and consent to their feedback being included in the Paper

Family Court of Western Australia

- Law Access proposed to FCWA the option of exploring formalised, direct pro bono referrals from the Court to Law Access for applicants to obtain advice and assistance with Court ordered conferences.
- A review of Federal Circuit Courts interstate indicated that there is no equivalent pro bono referral process in place for family law matters.
- While general information about the Law Access pro bono referral service can be provided through the Registry, FCWA did not consider the jurisdiction suitable for formalised direct referrals from the Court to Law Access.

Family Law Practitioners' Association of Western Australia

- Law Access providing some initial advice rather than just triage is a good idea.
- Junior private lawyers do currently participate in CLC night clinics.
- Engagement of private legal professionals - if they are helping out at CLCs might make placements easier.
- Law Access could set up a clinic and lawyers volunteer to do a few hours work. Two to five years experience would be the right profile for pro bono work. Discrete and well defined commitments like this or discrete events like conciliation conferences are likely to be attractive to the profession. FLPA agrees that it is best not to duplicate existing services and that any clinic should be in partnership with CLCs.
- FLPA continues to provide ongoing support and promotion of Law Access to its members.
- FLPA can also provide short higher level updates from Law Access to members reminding members of the service, opportunities to get involved and providing a brief update on applications received/matters referred/links to impact or case studies. The frequency of these updates to be confirmed.
- The regular FLPA advertisements will be amended to emphasise that lawyers expressing an interest in receiving a brief have no obligation to accept it and may review it and return it if it is not a good match for them.

Community Legal WA

- CLWA asked why referrals for ongoing pro bono advice and assistance were trending downwards and Law Access explained that as most CLCs can't represent clients on an ongoing basis this was their main area of need.
- Law Access emphasised that this is because:
 - the number of family lawyers in Perth is small compared to the demand for pro bono assistance in this area.
 - many family lawyers have taken a referral from Law Access over time, some of which are still ongoing.
 - most family lawyers are reluctant to go on the record in matters where the scope is unclear and the matter could take a very long time to resolve – they would prefer pro bono referrals

with a defined scope e.g. legal advice and assistance at mediation, or assistance with preparing documents for filing in a particular matter, or advice on an offer of settlement etc.

- Law Access is keen to refine its triage and referral process to ensure it partners with legal assistance providers to maximise the impact of the limited family law pro bono resources available.
 - Bolster what CLCs do in the area of advice and early intervention, for example, assisting to locate additional pro bono lawyers for early intervention advice clinics.
 - Focus on particular areas of unmet legal need, for example family law assistance for FDV survivors and CALD clients.
 - Areas that we agreed were worth investigating were supporting clinics for unbundled legal advice (in partnership with existing CLCs working in the area).
 - Encourage large law firms to send staff on secondments to CLCs to undertake family law work.
 - Providing more information for self-represented parties in property law (e.g. National Legal Aid's online resource AMICA)
- CLWA suggested pro bono lawyers could appear as amicus curiae, or with duty lawyer status, in some instances where they did not wish to go on the record.

Aboriginal Legal Service WA

Child Protection and Care Legal Matters (Children's Court WA)

- Generally protection and care duty clients are 'well looked after' in the Perth metropolitan area with duty lawyer at the Perth Children's Court – LAWA has a dedicated duty lawyer service there, WLSWA/ Djinda also have a lawyer there four mornings a week for women, ALSWA has a lawyer or phone service for Aboriginal respondents, and Ruah Legal Service is available. In regions there is no ALSWA duty lawyer service but in major centres there are different organisations covering protection and care including AFLS, CLCs e.g. KCLS and Pilbara CLCs and LAWA. ALSWA will assist – but are not 'on the ground' as the lawyers are based in Perth.
- Children's Court Pilot – ALSWA understands this is at capacity with 30 cases (at time of speaking). This is a small program in relation to number of children involved in proceedings – ALSWA understands there are approximately 900 children in protection related proceedings.
- ALSWA suggested that when Law Access receives an application, check if the applicant can be linked with other services first or whether they're eligible for a grant of legal aid. Even if a grant of legal aid is terminated it may be possible to seek an extension if circumstances change, e.g. there is a court event where the applicant would benefit from representation (i.e. matter might settle etc.) or if there is legal merit.
- ALSWA family unit have four lawyers for the whole of the State. Priority given to protection and care matters, this is a decision made because of the crisis

point reached – whilst less than 7% of children in WA are Aboriginal children, 56% of children in care are Aboriginal children. This is a priority. A child in Departmental care may not be in the care of a family member and even if with a family member may not be an Aboriginal family member, children are missing out on connection with culture and country as well as their family. In family law matters (i.e. Family Court) the child will at least generally be with a parent or family member and the dispute is between the family rather than the state and the family.

- Note – ALSWA often have conflicts of interests – can only assist one family member.

Family law matters (Family Court WA)

- Due to size of the ALSWA family unit and prioritising protection and care matters, at this time ALSWA will only assist with family law matters where the client has tried LAWA and other services and there are no other services to help, plus no conflict, plus have capacity and there are exceptional circumstances.
- An example where ALSWA would consider helping (if have no conflict and have capacity) is if a non Aboriginal parent is trying to keep the children away from an Aboriginal parent/ family.
- ALSWA deal with very few property matters. Might consider where economic disadvantage but have limited resources. Acknowledged that very few services to help with property matters.
- ALSWA make referrals to CLCs and LAWA for children matters. Will provide people with referrals for property advice as these arise. Refer to AFLS/ CLCs for regional parties.
- Clinic – if can't organise face to face with another agency then Clinic could be useful – would need to be practical and centered on the issues faced.
- LAWA mediation (Dispute Resolution) preparation tools could be useful resource for applicants to prepare for seeing a lawyer for legal advice – by pre-completing these forms/ tools there will be more time for the lawyer to give consideration to the issues and advice – less time on obtaining the information from the client.
- Partnering with CLCs good option.

Other

- CLE – maybe monthly clinic where can get information on process and documents/ information required for property matters with referral to advice from there.
- Wrap around services – need for these, including social supports. Assists lawyer where complex needs/high needs clients have supports in place such as counselling and other social supports. When referring good to be able to say to lawyer that social supports are in place – lawyer can focus more on the legal issue and less on the social issues.
 - Referrals for social supports/ counselling for Aboriginal people – ensure they are offered Aboriginal controlled organisations/ services – e.g. Wungening/ Yorgum/ Derbarl Yerrigan or other local Aboriginal medical services/ Aboriginal mediation services etc.
- Deferred fee arrangements – would need to have clear and simple cost agreement. (Did explain that Law Access is not involved in negotiating costs – that is done between lawyer and applicant. Law Access may refer to lawyers who do fixed/reduced/deferred fee where a party has savings or significant property pool involved).

- ALSWA very keen to ensure regions are factored into any proposal for a new service model.
- Resources and training - LAWA has an area dedicated to resources and training and does provide training to community legal lawyers.
- Suggested linking with Family Law Pathways Network as that operates state wide and agencies including CLCs participate.
- Systems change – the adversarial / process and document driven systems in the Family/ Children's Courts are not working for many Aboriginal families – need to give self determination to Aboriginal people – consult and hear from Aboriginal people, much research already done on this to be considered, for example, Bringing them Home Report, SNAICC (Family Matters), look to more of a family conferencing (AFLDM)/ more talking / less paper and procedures models may be needed. We need to follow Aboriginal peoples' lead on how best to resolve disputes in the child protection and family law systems.

Legal Aid WA

- The LAWA Property Pilot reached capacity shortly after launching in early 2020 with 100 matters. However the Pilot has recently been extended for a further 18 months by the Commonwealth.
- The Australian Institute of Family Studies will be evaluating the Pilot.
- Firms had a notable drop in work but more recently this has stabilized. There is still a very high reluctance to take on pro bono work.
- Negative equity property matters are increasing.
- Expert report costs are higher in Western Australia than elsewhere.
- The Family Court WA mediation pilot was discussed. The Court is setting aside a day for mediation for property and children's matters where applicants don't meet the criteria for late intervention LAWA DR grants.
The Court do not appear to be assisting with mediation where the parties would otherwise be eligible for the LAWA Dispute Resolution (DR) program e.g. matters where no ICL involved and at least one party unrepresented.
- LAWA fund DR for property in very limited circumstances.
- LAWA understands that many of the parties involved with the Family Court Mediation program have not had significant advice. LAWA through the duty lawyer service provides some limited advice.
- AMICA - Law Access can promote AMICA which is currently free - suitable for "missing middle". Developed by Legal Aid South Australia- if they use online DR system AMICA generates a Form 11 and Minute of Consent Orders.
- Parties have found it beneficial from a self help perspective - there is a link to AMICA on the LAWA website.
- LAWA said the feedback from the Court is that a lot of the people they are dealing with have had very limited if any legal advice and are trying to work their way through the system themselves (i.e. high impact area). For context an extract of data about self representation from the Family Court of Western Australia's website has been set out below.

https://www.familycourt.wa.gov.au/_files/Publications_Reports/FCWA_Annual_Review_2019.pdf

TABLE 2 - Self-Representation

		2019	2018
Final Order	Parenting	47%	49%
	Financial	24%	27%
	Parenting and Financial	32%	32%
Consent Order	Parenting	47%	57%
	Financial	37%	40%
	Parenting and Financial	42%	48%
Divorce		79%	81%

Albany CLC

- Albany CLC does provide advice and ongoing assistance (representation in limited cases) in both children and property.
- Ongoing support is subject to service capacity and consideration of risk profile of client. Assist with divorce subject to an income/asset test.
- Also provide duty lawyer services at the FCWA circuits through FASS programs.

Locations – Albany, Katanning.

Options Paper - Key Points

- It seems important that Law Access is encouraged in their work to expand support for people trying to navigate the family law system. Albany CLC see a key risk of alienation if the sector takes a 'delineation' concern to discussions of new provision of services for these people (and is potentially hostile to said providers).
- Do not support the direct provision of advice by Law Access solicitors without appropriate partnerships to the public.

Assessment of Options in Paper

- Law Access has a number of key strengths – some outlined in the paper, some known anecdotally –
 - Engagement with the broader private legal sector
 - Engagement with key stakeholders (FCWA, LSWA, FLPWA)
 - State-wide, non-demographically/topically limited service reach
- Do not see direct provision of services as a historical strength (while noting the points that this has been done, where referrals cannot be made, in the past) of Law Access, and instead strongly recommend consideration of Law Access expanding their role as gateway to low/no cost services to include the legal assistance sector.

Strategies for Limited Family Law Pro Bono Service Availability.

- It would be valuable to understand the numbers of general public requests for pro-bono support vs legal assistance provider requests (i.e., requests that originated from, or with support of a CLC).
- It would seem from the paper that there is a number from the general public that have not sought support first from a CLC. In these instances, it would make sense to instead connect said applicants directly with a relevant CLC.
- Recommend that consideration is given to applications for family law pro bono either being required, or having preference where legal assistance has been sought from a funded provider.

Access to Legal Assistance Services

- Law Access is in a strong position to extend their work by connecting people with legal advice by 'linking up' networks of legal assistance providers, as well as private providers.
- The above strategy would require that Law Access is supported by the CLC sector (and indeed ALS/FVPLS) to understand what services are available, with what requirements, etc. The work alongside this discussion paper to clarify family law services of the sector is wise in that regard.
- There are 'gaps' in family law services provided by the legal assistance sector, whether that be location and/or demographic in nature (i.e., Kimberley CLS does not provide advice on property settlements). In these scenarios, we would propose that –
 - Where gaps are identified that are due to skills, Law Access might assist with upskilling solicitors in those organisations through connecting with pro bono support for training purposes.
 - Where gaps are identified due to capacity, Law Access and the location / demographically relevant providers may partner to provide frontline support with a view to resolving capacity issues over time. (i.e., Law Access solicitors, and potentially pro bono support, may provide short term assistance to build the broader sectors capacity in family law).
 - Where gaps are systemic (i.e., through lack of relevant location/demographically relevant provider or other limits of otherwise relevant provider) Law Access may partner with another service to extend reach to said need. We note that this may be controversial, but note that it may be necessary to ensure wholly connected services.
- The discussion paper does not adequately identify CLC service delivery, and it is critical that this map is clear before Law Access consider what services may 'fill' gaps.

Access to CLE & Wrap Around services

- Agree in general with the points around CLE. However note that there has been some historical work of the sector in delivering CLE to self-represented litigants which was, on review, found to not always have strong benefits (hence its discontinuation by the Courts). Provision of CLE is something that can be done well by the broader sector, and delivered both regularly in person, as well as made available digitally. However, much of this is already adequately undertaken by LAWA.
- We strongly agree with the suggestion that Law Access may be able to leverage pro bono networks to provide financial counselling support to other providers' clients.

Fremantle Community Legal Centre

- FCLC do property matters all the way to trial now (not a pilot anymore) for those who meet their criteria and where there is a sufficient asset pool they charge a deferred fee. This keeps a property lawyer employed. Also do children's matters to trial. **
- The criteria are: either senior, no income, FDV survivor, will assist with out of area also but only if FDV. **
- Do a lot of "wrap around" legal services for survivors of FDV including criminal injuries compensation (which could be referred out to pro bono lawyers).
- Have a list of lawyers to refer deferred fee matters out to.
- Means assessment is annual income less than \$70,000. If more than that they have discretion to offer a fee for service.
- FCLC were interested in pro bono counsel and there was some discussion about at what stage would they start instructing a barrister. (Suggested to them earlier better to try to get it to settle?) They also keen to try to obtain barrister's opinions on some matters before progressing.
- Also pro bono counsel would be helpful for settling docs for trial and if possible representation at trial (Principal Lawyer and other lawyers there are appearing themselves.) Some are also doing the interim arguments.
- FCLC involved in children's matters where ICL or SEW appointed. They prefer to help the whole way than to dip in and out of a matter (e.g. Law Access pointed out grant of aid would be given to interpret SEW report).
- FCLC would be interested in pro bono legally assisted mediation for property. Law Access asked if LAWA DR doesn't already do this? FCLC not sure that there is sufficient LAWA DR property funding.
- Interested in mediation clinic – were not aware of the UWA mediation clinic. Want to do more one-off advice and lawyer assisted mediation with pro bono lawyers.
- FCLC discussed the fact that no grants of aid are available for CLCs. LAWA used to pay for conflict advice to CLCs but not sure if that still happens. FCLC was one of the few who used to bill them.
- What are other CLCs doing? Some are doing property advice and aware of one CLC that may not do property advice directly but has a Clinic and documents not done at the Clinic. For those CLCs only able to currently do initial property advice it would be good to have training available to assist with providing ongoing property assistance.
- It would be good for CLCs to use an expanded definition of "crisis related" legal assistance for FDV survivors to include property. FCLC have overall lower numbers of advices per year because they do more intensive casework rather than one off.
- FCLC does not charge for any negative equity property matters and the rates charged are LAWA rates or below and can be waived.
- FCLC liked the options being canvassed by Law Access. Could canvass the idea of briefing a pro bono barrister to see if that may be appealing to stakeholders. Would like that option discussed within the CLC arena in the future.

** All extensive work is dependent on staff capacity and the service's resources, done following thorough merit-based assessment but not guaranteed as a matter of course.

MIDLAS

- MIDLAS do not have adequate funding or resources to provide representation for clients in FCWA. They do their best to 'go beyond' just initial family law advice. For example, they assist clients with drafting initiating documents or if they have reached an agreement, with drafting Form 11 Applications for Consent Orders. They also provide advice to self-represented litigants for discrete matters, such as preparing them for a Conciliation Conference, or other specific Court events/hearings. For example, they recently assisted a client with an upcoming costs hearing (with the benefit of legal advice and negotiation, this hearing was ultimately vacated). Another recent example was assisting a client with drafting their trial affidavit – the result of this was that once filed, negotiations commenced between MIDLAS' client and the other parties' lawyers, and the matter was ultimately settled before trial.
- MIDLAS has seen a number of matters settle (or at least have had the issues in dispute significantly narrowed) with the benefit of legal advice. This ultimately reduces the strain on the Family Court. It is overwhelmingly apparent that CLCs simply do not have the funding to provide a more fulsome service to the public. Whilst MIDLAS does everything it can, they are still bound by issues of capacity and resources. Accordingly, there is such great value to the community and our overburdened family law system in the Law Access' Pro Bono Model.

Appendix C

Family law services provided by CLCs

The information below, supplied by Community Legal WA is a snapshot of the range of family law services provided by community legal services in Western Australia and may change from time to time due to funding, service capacity and operational requirements. Information about current family law service provision is available at <https://www.communitylegalwa.org.au/Pages/FAQs/Category/clc-location>

List of Community Legal Centres in WA that offer Family Law Services

CLC	Location	Services
Kimberley Community Legal Service	Offices Broome and Kununurra	<ul style="list-style-type: none"> Family law children's matters Family law as part of part of specialist FDV services funded under the Commonwealth Women's Safety Package.
Pilbara Community Legal Service	South Hedland Newman Karratha Roebourne	<ul style="list-style-type: none"> <u>keeping women safe program</u> and domestic violence outreach service incorporate family law Divorce, <u>Children's matters, limited assistance in property matters</u> Family law services also as part of FDV legal services
Goldfields Community Legal Centre	Kalgoorlie	<ul style="list-style-type: none"> Divorce, family law children's matters, advice only in property matters Family law services also as part of FDV legal services
Regional Alliance West (Gascoyne, Murchison, Midwest)	Geraldton Carnarvon	<ul style="list-style-type: none"> Divorce, family law children's matters, advice only in property matters Family law services also as part of FDV legal services
Peel Community Legal Service	Mandurah Outreach – Waroona and Pinjarra	<ul style="list-style-type: none"> Family law property information sessions Children's matters as part of general front line services. Family law services also as part of FDV legal services
Wheatbelt Community Legal Centre	Northam Moora Merredin	<p><u>Provides family law advice as part of front-line services:</u></p> <ul style="list-style-type: none"> advice, information and assistance re divorce and provides family law advice as part of front-line services

CLC	Location	Services
South West Community Legal Centre	Bunbury Busselton Bridgetown Collie Harvey Manjimup Margaret River Narrogin	<p>Advice re:</p> <ul style="list-style-type: none"> • Children's matters and parenting Plans/Orders • Location and Recovery Orders • Passport and Travel applications • Divorce • Property Settlement • Injunctions and breach of Court Orders <p>No ongoing family court representation, but support self-represented clients. Duty Lawyer at FCWA circuits,</p> <ul style="list-style-type: none"> • Family law services also as part of FDV legal services
Albany Community Legal Centre	Albany Denmark Katanning Mount Barker	<p>General legal assistance in family law:</p> <ul style="list-style-type: none"> • Children • Divorce • Property settlement • Family law services also as part of of FDV legal advice <p>Advice and ongoing assistance provided (representation in limited cases) in both children and property. Ongoing support is subject to service capacity and consideration of risk profile of client. Albany CLC assists with divorce subject to an income/asset test, and also provides duty lawyer services at the FCWA circuits through FASS programs.</p>
Gosnells Community Legal Centre	Gosnells Armadale	<p>Advice re:</p> <ul style="list-style-type: none"> • Children's matters and parenting Plans/Order • Location and Recovery Orders • Passport and Travel applications • Divorce • Property Settlement • Injunctions and breach of Court Orders <p>No ongoing family court representation but support self-represented clients. Family law services also as part of FDV legal services.</p>

CLC	Location	Services
Fremantle Community Legal Centre	Fremantle catchment and surrounding border regions	<ul style="list-style-type: none"> • Family lawyers offer minor assistance, legal advice, document drafting, representation and information to priority clients in areas that include: • parenting, financial/property law and divorce • One family lawyer is dedicated to advising victims of abuse on their property matters solely. • second family lawyer is available for extremely complex matters only as this lawyer is the coordinator of the service as well. • third family lawyer carries the bulk of family law matters (in addition to general legal advice on a range of legal areas). • FV lawyer assists all victims of family and domestic violence with FVRO applications and family law.
Midland Information, Debt and Advocacy legal Service (MIDLAS)	Swan City Council LG area	<p>Advice and document drafting, including advanced document drafting (eg trial material), and ongoing assistance in legal matters (save for representation in the Family Court of Western Australia).</p> <ul style="list-style-type: none"> • Family law children's matters • Family law property matters • Family law divorce matters • State Administrative Tribunal guardianship applications • Family violence matters, including family violence restraining orders and representation at Midland Magistrates Court • Violence restraining orders for people with disability, including representation at Midland Magistrates Court • Disability discrimination matters
Sussex Street Community Legal Centre	Provides VRO/FVRO advice as part of front line services	<ul style="list-style-type: none"> • Advise on divorce and separation • Advise on children's issues and parental rights and responsibilities • Advise on care and protection of children • Family law advice as part of FDV advice.

CLC	Location	Services
Northern Suburbs Community Legal Centre	Mirrabooka Joondalup	<p>Mirrabooka - family law (divorce, children, property).</p> <p>Joondalup - family law (divorce, children, property – pro bono).</p> <p>WREN – funded under the Commonwealth Women’s Safety Package; specialist FDV Service/Health Justice Partnership - provides family law (divorce, children, property – pro bono), as part of wraparound specialist FDV service.</p>
Southern Communities Advocacy Legal Education Service Inc. (SCALES)	Rockingham	Offers family law advice and representation as part of specialist FDV service funded under the Commonwealth Women’s Safety Package; specialist FDV Service and WA CLSP program service includes legal, advocacy, financial counselling, tenancy.
Women’s Legal Service WA	Perth metro State-wide (phone) Pilbara	<p>Mainstream family law services, including in context of FDV:</p> <p>Property</p> <p>Children’s matters</p> <p>Divorce</p> <p><u>Family Law (Property) Legal Clinic</u> about family law financial matters. This can include property settlement and spousal maintenance. The Legal Clinic runs once a month or so and the one-hour appointments are usually with private family lawyers who generously donate their time to volunteer at our Service.</p> <p><u>Women’s Legal Service BHP project</u> provides assistance in parenting matters (advice, ongoing assistance and representation) where:</p>

CLC	Location	Services
		<ul style="list-style-type: none"> • Client is mother or other female family member with standing to participate in Family Court proceedings; and • Family and domestic violence is a significant issue in the matter; and • Client not eligible for a grant of assistance from Legal Aid or their matter has transferred from the Children's Court to the Family Court. <p><u>Safe as Houses program</u> collaboration between WLSWA, TWA and Street Law, wraparound service to women and children homeless or at risk of homelessness as a result of FDV. WLSWA provides family law (focus on property) advice.</p>
Citizens Advice Bureau	Branches in Armadale, Bunbury, Busselton, Fremantle, Joondalup, Kwinana, Mandurah, Midland, Perth, Rockingham.	Family law services include divorce, children's and property matters, Family (children and property) mediation.
Aboriginal Family Law Services	Kununurra, Broome, South Hedland, Carnarvon, Geraldton, Goldfields	Specialist FDV Services for Aboriginal victim/survivors of FDV in regions – includes family law advice and representation in all regions (children's matters).
Albany Family Violence prevention Legal Service	Albany and Great Southern Region	Specialist FDV Services for Aboriginal victim/survivors of FDV – includes family law advice and representation in all regions. (children's matters).

CLC	Location	Services
Marninwarntikura Fitzroy Women's Resource centre	Fitzroy Crossing and region	Specialist FDV Services for Aboriginal victim/survivors of FDV – includes family law advice and representation (children's matters).
Djinda Service	Perth metro	Operates in conjunction with Relationships Australia: Specialist FDV Services for Aboriginal victim/survivors of FDV in Perth Metropolitan region - includes family law advice and representation (children's matters)
The Humanitarian Group	Perth metro, state-wide phone service	Service for CALD clients – refers family law matters
Youth Legal Service	Perth metro	N/A
Street Law WA	Perth metro	Refers family law matters and is partner organisation in Safe as Houses program.
Tenancy WA (TWA)	Perth metro, state-wide phone service	Refers family law matters and is partner organisation in Safe as Houses program.
Welfare Rights and Advocacy Service	Perth metro, state-wide phone service	Assists clients with Centrelink matters including in FDV program. Refers family law matters.
Mental Health Law Centre	Perth metro, state-wide phone service	Provides free legal advice and representation to people who experience a mental health illness, refers family law matters.
Consumer Credit Legal Service (WA)	Perth metro, state-wide phone service	Perth metro, state-wide phone service Provides free legal advice and representation to clients who have experienced financial abuse. Refers family law matters.

Appendix D

Feedback received via WA Pro Bono Model training sessions with CLCs conducted during period August to November 2020.

The CLCs below have consented to their feedback being included in this Paper.

Albany CLC

- The Centre doesn't have any existing pro bono relationships. Some local firms have assisted from time to time, but ordinarily they agree to assist on a deferred fee basis.
- Family law – useful to have example/precedent trial affidavits that can be provided to self-represented litigants.

MIDLAS

- MIDLAS seeks assistance with family law matters where barristers and lawyers can provide pro bono assistance.

Pilbara CLS

- Pilbara CLS has four office locations – South Hedland, Karratha, Newman and Roebourne.
- For family law – advice only, no representation with focus on parenting arrangements and divorce. Provide some limited information for property settlement matters.
 - Property Settlements – de facto and matrimonial – information detailing the process the FCWA applies to determining the division of assets between the parties. Provision of PCLS fact sheets and resources from the FCWA website. Referrals to WLS where applicable.
 - Divorce – advice as well as information regarding the process, service and use of Comcourts portal as well as provision of resources from FCWA website. Document assistance and assistance with the filing of application on Comcourts portal.
 - Child matters – advice on one off or series of discrete advice basis. Assisting self-represented litigants with court documents - (interpretation and preparation).
- Protection and care includes representation assistance – the scope of the service is up and until the pre-hearing conference stage

RAW (Regional Alliance West)

- Family law is a significant area of law for the service.
- RAW does not have capacity to represent clients in court but has some limited capacity to assist self-representing family law clients e.g.: with explaining court processes / orders, settling draft court documents.
- RAW would usually only assist with preparing court documents in situations where the client's only means of financial support is a Centrelink benefit AND there has been significant FDV (including financial abuse) and / or disability or mental health issues.

- In relation to property settlement matters, assistance is limited to offering monthly information sessions and information kits, which either party can attend / receive and an initial advice appointment to one only of the parties (where there is no conflict of interest.)
- RAW modified a family law workbook (initially created by North Queensland Women's Legal Service) to fit with WA law, which is part of its information kit and can be used by both parties to work out their property settlement entitlements themselves or as a background to seeking further legal advice on their entitlements.
- RAW will provide a copy of the workbook to Law Access.
- RAW does not provide advice on property settlement entitlements. It only provides advice on processes and property settlement methodology.
- RAW has identified that the areas of unmet legal need in the area of family law property settlement are as follows:
 - Advice on entitlements;
 - Family Court representation;
 - Drafting of superannuation splitting orders. [This last point will become even more of an issue once the laws for superannuation splitting are extended to cover de facto couples.]
- There is significant family law expertise within RAW but in terms of giving advice on entitlements and court representation, RAW has no capacity to dedicate the time required to these particular tasks.

Ruah Legal Services

- Ruah Legal Services (RLS) launched a new Care and Protection service in early September 2020. This is an integrated service with two lawyers and two key workers.
- RLS does not provide assistance for family law matters.
- The Care and Protection service may need to refer family law property matters, where there is family and domestic violence, to Law Access.
- The Department of Communities is responsible for updating care plans for children in their parental responsibility, and parents can challenge care plans in the SAT if they have issues with them. RLS does not have capacity to assist with review of care plans before the SAT. Law firms may be able to assist RLS clients with review of care plans in the SAT.
- The Mental Health Law Centre (MHLC) is a specialist service of Ruah Legal Services.
- MHLC has five practice areas, but does not have capacity to assist clients with tenancy law matters. Law firms may be able to provide pro bono assistance to MHLC clients with tenancy matters.

Wheatbelt CLC

- The Centre does family law, child protection, family violence and civil law matters (including criminal injuries compensation) and a small amount of criminal law. With criminal law will assist where no duplication or cross over with LAWA duty lawyer. For example, will assist if there is a co-accused or a conflict for LAWA.

-
- A significant amount of the matters are family law and family violence (including FVROs) and child protection matters. Clients often present with a number of related issues.
 - In relation to child protection matters, the Centre attempts early intervention through being engaged in pre-birth planning and signs of safety meetings for care and protection matters. However, involvement in early intervention measures is very time consuming and it takes a lot of time to educate the clients. Have had good success with this approach – the CLC is local - it can support clients to make contact with the Department, clients feel heard and are empowered, they are more likely to engage with Department requirements and the CLC has been able to support clients to achieve reunification.
 - Family law matters - Magistrates don't hear family law matters locally (although it is possible) so all matters are dealt with by the Family Court in Perth.
 - The Centre does a lot of ongoing representation work across three different courts/court circuits – Jurien Bay, Northam/Merredin/Southern Cross and Narrogin. Wheatbelt CLC is the only CLC where the Courts serviced are managed by three different Courts (Midland, Albany and Joondalup).
 - Wheatbelt report long delays with final FVRO matters being listed for trial – approximate 11 months wait.
 - The Centre is trying to recruit a new lawyer with experience (as more pressure on service which has a small team if have to supervise a junior lawyer). The CLC has not had the budget increases of other Centres and financial restrictions add to the difficulty in recruiting.
 - There is a high Indigenous population in the region.
 - Key areas where Law Access could receive referrals from Wheatbelt CLC (for either discrete/one-off legal advice or ongoing assistance) are in criminal injuries compensation matters, credit and debt matters (where the Consumer Credit Legal Service is conflicted, at capacity or it involves a public interest matter), protection and care and wills and estates matters.
 - Wheatbelt CLC does find it challenging to deal with urgent matters as the service can be booked several weeks out. In those circumstances where no capacity may suggest another service such as LAWA but they can't always assist.

Appendix E

Statistics

The statistics on applications referred over the last five financial years are set out in Appendix A of the Options Paper. Please note that the statistics in the Options Paper **compare the number of finalised files in a period (which may include applications opened in a prior period as well as the current period) with the total number of new applications received in the same period.**

Since preparing the Options Paper, Law Access has reviewed this approach and now compares any outcomes on finalised files with the total finalised files for the relevant period.

Based on this new approach, below are statistics on application outcomes over the last two completed financial years and the current financial year (to 30 April 2021) for all applications finalised in the relevant year (whether opened in that year or a prior period).

There are some limitations with Law Access data currently as no breakdown is available for aspects such as why matters are unsuitable for referral and the stage of matter. There are various reasons why a matter is unsuitable for referral including means, lack of merit, the matter is not an eligible matter type, or it is too complex to reasonably expect a pro bono lawyer to assist.

Family – All Matter types

TOTAL		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	32	29	26
	Deferred/ Reduced Fee	9	0	0
	Referred to Service Provider	4	21	13
	<i>Total Placed</i>	45 32.1%	50 26.6%	39 27.1%
Not Placed	With Merit	4	13	6
	UTA - Unsuitable	67	84	58
	Withdrawn	24	41	41
	<i>Total Not Placed</i>	95 67.9%	138 73.4%	105 72.9%
TOTAL		140	188	144

1. Application numbers in 19/20 are significantly higher than for 18/19. This may be because applications numbers rose in 19/20 following the introduction of online applications in December 2020.
2. In March 2021 Law Access suspended applications for children's matters due to difficulties placing these matters (see further information under Family – Children below). The number of applications have reduced since this change in guidelines but this is also likely to see the trend of UTA – Unsuitable (58 this year to date from 84 in 19/20) continue to track downwards.
3. For the financial year to 30 April 2021, 559 applications have been received for all matter types (civil, criminal and family) and 169 matters have been placed (pro bono and with service providers) with 39 of these being for family law matters.

Warm referrals

4. Since 1 July 2020 statistics have been kept on all warm referrals to Law Access, including from CLCs and LAWA. Of 106 warm referrals across all matter types (family and non family) from 1 July 2020 to 30 April 2021, 66 were placed.

- There were 71 warm referrals in areas other than family law and 35 warm referrals in family law – 30 of the family law referrals were from LAWA and CLCs.
- There were 30 family warm referrals from CLCs and LAWA in this period (28% of all warm referrals), of which 14 were placed. There were five warm referrals from law firms or non-legal assistance services of which two were placed. This compares to 109 family law applications received from individuals in the same period of which only 25 were placed.
- Family law matters which were warm referred to Law Access had a placement rate double the placement rate of applications received directly from individuals.

Family – children

Family - Children		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	9	5	2
	Deferred/ Reduced Fee	1	0	0
	Referred to Service Provider	0	4	5
	Total Placed	10 23.3%	9 19.6%	7 15.2%
Not Placed	With Merit	0	0	1
	UTA - Unsuitable	28	26	24
	Withdrawn	5	11	14
	Total Not Placed	33 76.7%	37 80.4%	39 84.8%
TOTAL		43	46	46

- Relative to the total number of family law applications, the numbers placed (pro bono/deferred fee and with service provider) are lower for children's matters.
- Community legal options such as LAWA and CLCs are well placed to assist parties pre Court, and in the early and mid stages of Family Court proceedings.
- Anecdotally, the majority of applicants to Law Access seeking parenting assistance are involved in protracted proceedings, generally with an ICL appointed and approach Law Access when they no longer have a grant of aid or a CLC no longer has capacity to provide ongoing assistance.
- These matters are time intensive for Law Access staff to assess due to the volume of documents to be reviewed and if assessed as appropriate, are then difficult to place. The numbers of applications have remained consistent but there has been a downward trend in placement rate. For the current financial year to date 15.2% have been placed, and in 19/20 and 18/19 19.6% and 23.3% placed respectively.
- In the 19/20 and current financial years approximately half of total referrals made for children's matters have been to either LAWA or a CLC for discrete assistance

Family – Children and Property

Family - Children & Property		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	4	4	4
	Deferred/ Reduced Fee	1	0	0
	Referred to Service Provider	1	3	1
	Total Placed	6 27.3%	7 22.6%	5 38.5%
Not Placed	With Merit	1	3	1
	UTA - Unsuitable	11	15	2
	Withdrawn	4	6	5
	Total Not Placed	16 72.7%	24 77.4%	8 61.5%
TOTAL		22	31	13

1. 38.5% of matters in the current financial year have been placed (pro bono or service provider) based on five finalised matters to date. 22.6% and 27.3% of matters were placed in 19/20 and 18/19 respectively.
2. Application numbers in this category were higher in 19/20 than 18/19 and the FY to Apr 21. It is not clear why numbers were significantly higher in 19/20 although there was a general increase in applications following the introduction of the online application process in December 2020.
3. Although application numbers are down for the FY to April 21, the conversion rate of applications to placement improved from 22.6% last financial year to 38.5% for the current financial year to date.
4. Should Law Access continue with the current guideline change and not assist with children's matters, Law Access will take a pragmatic approach and endeavor to provide referrals for parenting issues where raised by an applicant as part of an application to Law Access for property settlement or consider requesting a pro bono lawyer provide some assistance when attempting to place.

Family – Property

Family - Property		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	19	17	20
	Deferred/ Reduced Fee	7	0	0
	Referred to Service Provider	2	11	2
	Total Placed	28 41.2%	28 30.8%	22 37.9%
Not Placed	With Merit	2	9	3
	UTA - Unsuitable	24	33	16
	Withdrawn	14	21	17
	Total Not Placed	40 58.8%	63 69.2%	36 62.1%
TOTAL		68	91	58

1. 37.9% of property only matters have been placed (pro bono/service provider) this year to 30 April. In some cases there is sufficient equity in the property pool that the matter is appropriate for a deferred fee arrangement. In those cases the applicant is made aware by Law Access that a deferred fee may be appropriate, but the initial referral is for pro bono advice and possibly some further limited no fee assistance.
2. Anecdotally property settlement applications to Law Access are made earlier, generally prior to any court proceedings and have been easier to place with pro bono lawyers.

Family – child support

Family - Child Support		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	0	0	0
	Deferred/ Reduced Fee	0	0	0
	Referred to Service Provider	0	1	2
	Total Placed	0 0.0%	1 33.3%	2 33.3%
Not Placed	With Merit	0	0	0
	UTA - Unsuitable	0	2	3
	Withdrawn	0	0	1
	Total Not Placed	0 0.0%	2 66.7%	4 66.7%
TOTAL		0	3	6

1. A low number of applications are received for this matter type. There are three funded community law services (LAWA and two CLCs) providing child support services. Where appropriate referrals are made to these services.

Family – care and protection

Family - Care & Protection		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	0	2	0
	Deferred/ Reduced Fee	0	0	0
	Referred to Service Provider	0	1	1
	Total Placed	0 0.0%	3 37.5%	1 10.0%
Not Placed	With Merit	0	1	1
	UTA - Unsuitable	1	2	4
	Withdrawn	1	2	4
	Total Not Placed	2 100.0%	5 62.5%	9 90.0%
TOTAL		2	8	10

1. There are relatively few care and protection applications and only three placed in 19/20 and one in the current financial year. However, over the last three years the numbers of applications have increased.
2. Anecdotally, applicants find it difficult to remain engaged with Law Access after making an application. Law Access has reviewed its process for closing Care and Protection matters ensuring that attempts to establish and maintain contact are made by phone and email/mail prior to considering file closure.
3. Of the eight UTA/withdrawn matters this financial year four obtained a grant of aid either by self referral or Law Access recommending they apply for aid. One applicant was refused on means, one refused on merit, and two were presumed withdrawn due to no contact.
4. Law Access understands that LAWA continues to have funding constraints in this area. A number of CLCs report that they assist applicants, particularly in the earlier stages of proceedings. Law Access could therefore consider promoting warm referrals in this area, particularly to CLCs who may have limited capacity to assist an applicant ongoing or where a matter is proceeding to trial.

Family – violence restraining order

Family - Violence Restraining Order		2018-19	2019-20	FY to Apr-21
Placed	Pro Bono	0	1	0
	Deferred/ Reduced Fee	0	0	0
	Referred to Service Provider	1	1	2
	<i>Total Placed</i>	1 20.0%	2 22.2%	2 18.2%
Not Placed	With Merit	1	0	0
	UTA - Unsuitable	3	6	9
	Withdrawn	0	1	0
	<i>Total Not Placed</i>	4 80.0%	7 77.8%	9 81.8%
TOTAL		5	9	11

1. Family law violence restraining order proceedings are not an eligible category for Law Access as other services such as LAWA and CLCs are options for assistance. Where the applicant is vulnerable Law Access will assist with a warm referral to another service.
2. There has been an increase in the UTA category this financial year. All applicants were provided with referrals. Four of the ten applicants did not meet the means test. However, where applicants meet financial eligibility criteria Law Access will endeavor to make referrals to LAWA and CLCs.
3. Law Access will be reviewing its website to improve the 'visibility' of ineligible matter types.



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