

Family Law Practice Division 2013-14

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The Legal Services Commission's family lawyers, at its Adelaide and regional offices, provide advice and representation to people who qualify for legal aid in family law matters. The practice also provides specialist advice on child support through the Child Support Unit and, through its duty lawyer service, assists unrepresented parties at all sitting days of the Family Law Courts. In addition, the Family Dispute Resolution Unit and the Commission's child and family counsellors provide family law conferencing and general family dispute resolution services to clients.



Graham Russell, Manager
Family Law Practice Division.

Changes to the family law system

In the 2013-14 financial year there were some important changes to the family law system. The overwhelming majority of all applications are now filed in the Federal Circuit Court with the Family Court hearing the most complex cases, including cases involving allegations of sexual abuse or serious physical abuse. These cases are heard by the Family Court under its Magellan Case Management System.

During 2013-14 there was a focus on increasing collaboration between the family law and child protection sectors, in particular in relation to the flow of information. A pilot project is operating in the Adelaide registry of the Federal Circuit Court requiring a party in children's proceedings to file a Notice of Risk with every application or response in

a parenting matter, setting out any concerns for the safety of the child. This Notice was developed through consultation between Families SA, the courts and the Commission and an evaluation is being conducted with a view to national implementation of the scheme.

Community education

Members of the Family Law Practice Division have continued to be active in providing community education services to many organisations.

Independent Children's Lawyers have presented at the TAFE *Interagency Practice in Child Protection* course to staff of SAPOL and Families SA about their role and its inter-relationship with these agencies and the courts. The Division also contributes to the *Law for Community Workers* course. Both these courses are held at TAFE and transmitted to many country areas by video link. Additionally, the Division assists in the Commission's free legal information seminars.

Following the move to the new Gawler Place offices, the Commission held a series of family law education sessions. The sessions were presented to a live audience of the public and community workers as well as to participants online through a state wide internet webinar hook-up. All sessions were oversubscribed with

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online participants coming from Port Augusta, through to the Riverland, the South East and Yorke Peninsula. The feedback for these presentations was both favourable and immediate, including:

Thanks. I have found the sessions extremely interesting and useful to me both professionally and personally. I think they are a great idea and very accessible, especially to those working in the city. Thankyou for providing such a meaningful community service. I look forward to participating in future seminar programs.

The Division has also provided family law training and information sessions within the Commission and to external organisations such as the Women's Information Service, the Courts Administration Authority and Grandparents For Grandchildren.

Family law casework

The mandatory Continuing Professional Development scheme requires each legal practitioner to complete a minimum of 10 units of CPD activity each year in order to maintain a practising certificate. Members of the Family Law Practice Division attended a number of external training sessions and the Commission organised a number of internal training sessions that

were also open to family dispute resolution chairpersons and staff of community legal centres. These sessions included presentations on the role of family consultants and expert writers in the family law system, the New Zealand legal aid system, mental health awareness and suicide prevention training and guiding hearings for unrepresented litigants.

Monthly meetings of the Family Law Practice Division have included training on internal practices involving information technology, library services and safety procedures within the office.

During 2013-14 the Manager of the Family Law Practice Division attended tri-annual meetings with the judges of the Federal Circuit Court and regular meetings with the judges of the Family Court. In addition, the Family Law Working Group of National Legal Aid, which comprises the managers of each Commission's family law practice, met twice during the year to consider national matters. These meetings of the Family Law Working Group were also attended by Judge Baumann of the Federal Circuit Court and a representative of the Commonwealth Attorney-General's Department.

The Commonwealth provided extra funding during the year that was

used in three specific areas. Firstly, it was used to ensure sufficient funding to cover all requests for Independent Children's Lawyers made by the Family Law Courts. Secondly, work began on a low asset pool family dispute resolution conferencing program to give the opportunity to clients, who do not have access to legal aid or private lawyers, the opportunity to mediate an agreement in relation to relatively modest property settlements. Finally, the Commission established a program to enable parties represented by community legal centres or the Aboriginal Legal Rights Movement to access the services of counsel for defended hearings in the family law courts.

The Commission was represented at the funeral in August 2013 of Kemer Murray, former Judge of the Family Court and, at the time of her retirement in 2006, the longest serving judicial officer in Australia. Her Honour showed a great deal of support for the Commission and was popular among the practitioners who appeared before her over a long period of time.

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Independent Children's Lawyers (ICLs)

In the most difficult of parenting cases, the Family Law Courts may order that a child's interests be represented by an Independent Children's Lawyer (ICL) appointed by the Legal Services Commission. In 2013-14 the Commission made 352 ICL appointments. The Commission has continued to honour all ICL orders made by the courts.

During the year, the Commission continued to provide training forums for all in-house and private practitioners undertaking ICL work. In February, a session was held which included a panel presentation on *Ethics as they apply to ICL Practice*. The panel was chaired by Judge Cole of the Federal Circuit Court and included a member of the Ethics and Practice Committee of the Law Society and the Manager of the Family Law Practice Division.

The Australian Institute of Family Studies (AIFS) was commissioned by the Commonwealth Attorney-General's Department to conduct research on ICLs in the family law system. This research was comprehensive and examined processes and practices related to ICLs across Australia. The researchers conducted surveys with ICLs and professionals who work with ICLs (judicial officers, non-ICL legal practitioners, family consultants and other professionals), as well as interviewing parents and children who had been involved in a litigated matter with an ICL and examining the policy and practices of legal aid commissions in relation to ICLs. National Legal Aid, through the Family Law Working Group, assisted the researchers over a number of stages.

The final report was publicly released in November 2013. The report

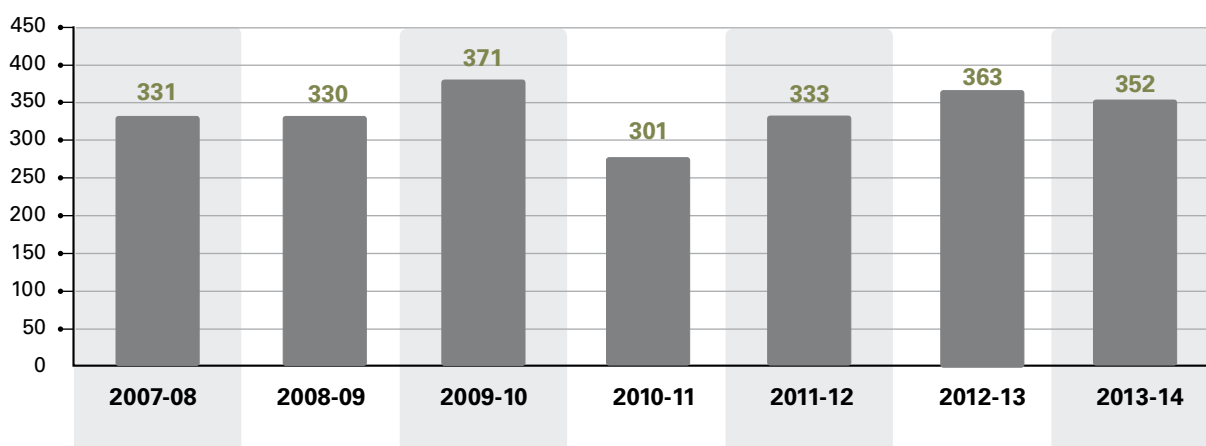


Graham Russell, Manager Family Law Division, addresses family consultants and independent children's lawyers

acknowledged the complexity of the role of ICLs and noted that the involvement of an ICL improved the outcome for a child in the most difficult of cases considered by the family law courts. National Legal Aid was particularly pleased to note a conclusion in the report that generally in-house ICLs were considered to be of the highest standard of practitioners on ICL panels.

The report did identify a number of issues that are currently being addressed by the Family Law

Number of ICL appointments 2007-08 to 2013-14



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Working Group to enhance this important family law work. As part of this process, National Legal Aid convened a National Stakeholders Meeting in March. There were 22 attendees, including the Chief Justice of the Family Court, a Judge and the Principal Registrar of the Federal Circuit Court, the Principal of Child Dispute Services in the Family Law Courts, the author of the AIFS Report, members of National Legal Aid's Family Law Working Group, representatives from the Attorney-General's Department and representatives from the Family Law Section of the Law Council. This Group will continue to meet to monitor action to be taken by National Legal Aid in response to the report.

Child Support Unit

The Child Support Unit offers free, independent, specialised advice in relation to all child support and maintenance matters. The Child Support Help Line operates each weekday to provide telephone advice to clients who contact the service. Free follow up appointments are arranged if needed. Representation is provided by staff of the Child Support Unit, subject to means and merit tests.

The Child Support Unit has maintained communications with

the Department of Human Services – Child Support through stakeholder engagement meetings and through regular contact with the Families Stakeholder Coordinator.

The Department has decided not to reconvene the valuable Child Support Legal Liaison Group meetings. As a result, the Child Support Unit has taken the lead in organising and hosting meetings of child support legal service providers, comprising representatives from community legal centres, AGS and CSU staff. Representatives of the Department have also attended.

In April 2014 the Federal Government announced a Parliamentary Inquiry into the Child Support Program. Staff of the Child Support Unit, together with representatives of interstate child support services, contributed to a submission made by National Legal Aid.

The Child Support Unit Facebook page has continued to provide information and raise awareness of the services provided by the Unit. A limited experiment with boosting posts by way of paid advertising produced positive results.

In the past year two solicitors from the Child Support Unit have undertaken roles in the family law duty lawyer service. Their expertise in child support law has proved

an advantage in this separate but associated aspect of family law.

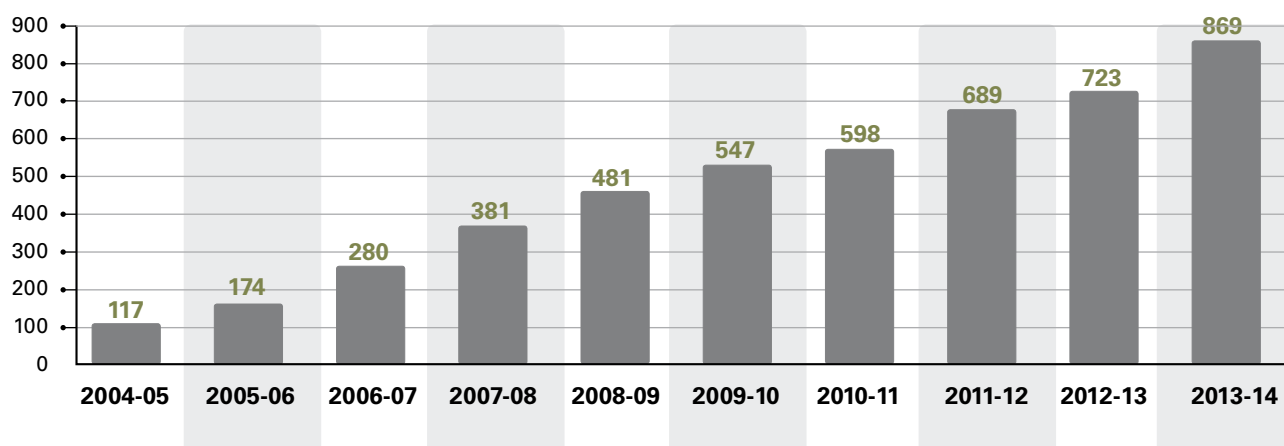
Staff of the Child Support Unit have maintained close contact with the family law and child support prison advisers in order to provide assistance to prisoners who have child support responsibilities. This has proved a valuable collaboration with many child support assessments being amended to reflect the client's circumstances as a result of this cost effective intervention.

The Unit has also continued to assist other areas of the Commission by providing training on child support law, including presentations as part of the Commission's free legal information sessions, the Law for Community Workers TAFE course and through attendance at the Adelaide Family Relationship Centre legal collaboration meetings.

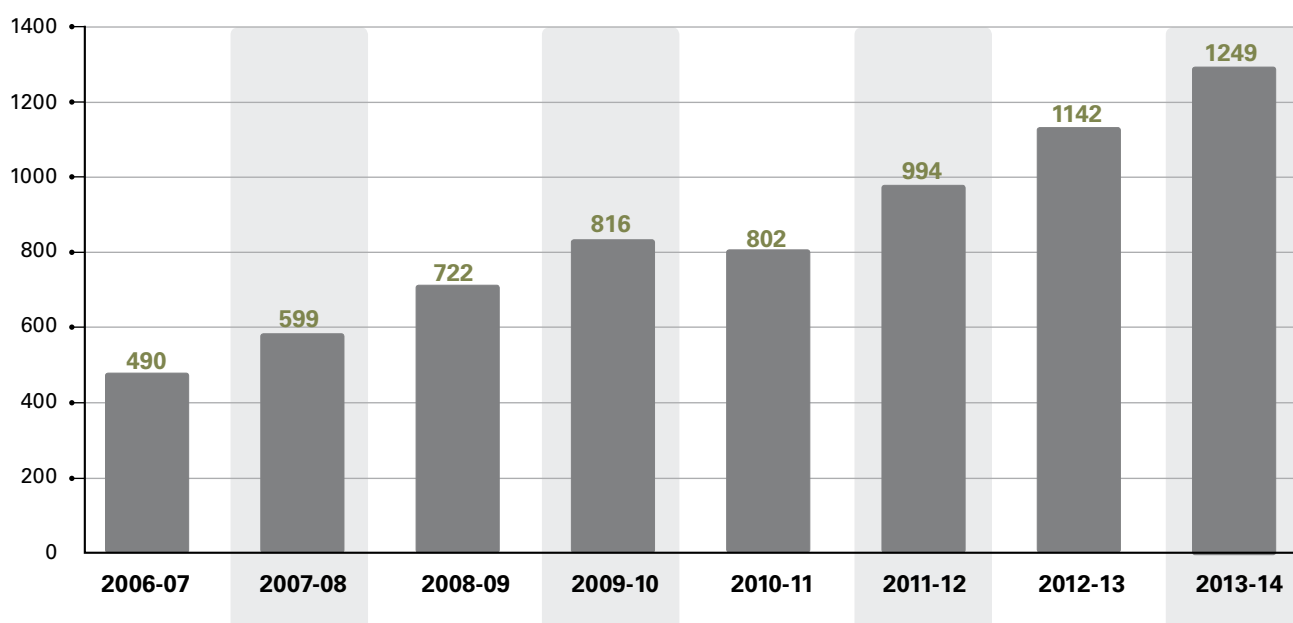
Family Dispute Resolution Unit

The Commission's Family Dispute Resolution (FDR) program had another busy year. This lawyer assisted dispute resolution program falls between the mediation offered by community based organisations, such as the family relationship centres, and litigation in the Family Law Courts. The dispute resolution model offered by this

FDR conferences 2004-05 to 2013-14



FDR files opened 2006-07 to 2013-14



program particularly assists clients in parenting disputes who have complex issues and who require the support and advice of legal representation during, and as part of, the negotiation process.

The FDR program is available both in the pre-litigation stage and also after litigation has commenced. In an increasing number of cases,

the courts refer a matter to the Commission's court ordered conferencing program in an effort to assist parties to achieve a negotiated finalisation of the dispute. These matters have initially by-passed the FDR pathway because of urgency or other factors that exempt parties from conducting FDR in the pre-litigation stage. There is a well defined referral process agreed to

between the courts and the FDR Unit. Notwithstanding the increase in these matters, which tend to be more complex, the settlement rate of conferences has remained fairly stable.

The FDR Unit conducted 869 conferences during this financial year, with 1249 new FDR files opened during the same period. The workload of the Unit continues to increase at

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Family law duty lawyer services by court type and work type 2013-14

Work Type	Family Court	Federal Circuit Court	No Court nominated	Total
Legal aid application	0	1	4	5
Advice	42	564	698	1 304
Consent order explanation	0	3	0	3
Adjourned/mention	1	6	1	8
Negotiations /draft terms	0	8	0	8
Minor legal assistance	2	34	12	48
Urgent hearing	0	2	0	2
Referral	2	12	27	41
Other	3	37	27	67
Total	50	667	769	1 486

a steady rate. This has been due, in part, to the improved conferencing facilities available after the move of the Commission's head office in September 2013.

Experienced family law practitioners, with dispute resolution accreditation, chair the FDR conferences. The practitioners attend continuing professional development training through the Commission and through the SA Family Law Pathways Network.

Independent Children's Lawyers regularly participate in court ordered FDR conferences. Family Assessment Reports provide a framework for settlement discussions.

The FDR program continues to be supported by the Commission's in-house child and family counsellor who assists with the child inclusive work undertaken in the program. Conferences for regional clients are offered through the Commission's regional offices and also at Mount Gambier and Whyalla.

The co-ordinator of the Unit attends the regular National Legal Aid Dispute Resolution Working Group meetings. In October 2013, this group met in Adelaide where a number of speakers from the Family Law Courts and the Drug and Alcohol Association of SA gave presentations.

Family Law Duty Lawyer

The Commission has two duty lawyers based at the Family Law Courts. These lawyers are present at the court each sitting day to assist unrepresented parties to manage their appearances in court, to assist clients in making applications for legal aid or to refer clients to private family law practitioners or other community services, as appropriate. This service has been strongly supported by the judicial officers of the courts. In this financial year, 1486 unrepresented clients were assisted by the duty lawyer program.

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Liaison

The Family Law Practice Division regularly liaises with other sections of the Commission dealing with family law issues as well as with external organisations.

The Family Law Practice Division continued its partnership with the Adelaide University Law School to provide specialist family law training to law students as part of their clinical legal education elective. The training is over a 13 week period and the student attends at the Commission's head office for a total period of 13 days. The placement is structured around the passage of a client through the family law system.

Students spend time with the Commission's Access Services program, (observing legal advice sessions and community legal education sessions), the Child Support Unit, the FDR Unit, (where they are involved in one of the Commission's lawyer assisted FDR Conferencing sessions), duty lawyers and Independent Children's Lawyers. In addition, students attend a number of sessions at the Adelaide Family Relationship Centre to gain an insight into the mediation services

that they provide. The sessions attended include a Child Focused Information session, an intake assessment and, if appropriate, a mediation. The program has been very successful and well received.

South Australian Family Law Pathways Network

The South Australian Family Law Pathways Network is made up of representatives from the major government and community based organisations in the family law sector including the Family Law Courts, the Legal Services Commission, the Family Law Section of the Law Society, Family Relationship Centres, other funded FDR services, Family Violence groups, the Child Support Agency, ALRM and Grandparents For Grandchildren. The Network receives ongoing Commonwealth funding to undertake projects.

The Commission continues to be heavily involved with the Network and the Manager of the Family Law Practice Division is currently the Chairman of the Network's Steering Committee.

The Network is successfully running an information and referral service, the "Pathways Kiosk" at the Family

Court. The Network's Project Officer, who was formerly a family lawyer in private practice, runs this service. The purpose of the Kiosk is to provide information to parties and their lawyers and the judges about family law services and, in appropriate cases, arrange bookings that are then supported by orders made in court for the attendance at these services by the parties.

The Network held its major conference *The Child's Voice* in May 2014. Most of the Commission's family lawyers attended together with a number of FDR chairpersons. The keynote speakers included Justice Berman of the Family Court and Judge Harland of the Federal Circuit Court who participated in a panel discussion following a complex case through the family law system. There were a number of other speakers from local agencies, including two of the Commission's family lawyers. The conference was fully subscribed and the feedback from attendees was highly complimentary.