

Submission to Family Law Council

Your details

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| Name/organisation <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i> | Dr Melanie Heenan Executive Director, Court Network |
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Confidentiality

Would you prefer this submission to remain confidential? **NO**

Submissions received may be published on the Family Law Council's webpage if provided in Word format, except where requests have been made to keep them confidential or where they relate to particular cases or personal information.

Developing and lodging your submission

Please note that your submission may address the questions in the call for submissions or a letter you received (simply provide the number of the question/s you are responding to), or provide any information you consider relevant to the Council's terms of reference about families with complex needs and the intersection of the family law and child protection systems.

Please provide your submission in Word format by email to: flcreference@ag.gov.au or by post:

Family Law Council Secretariat
c/o Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Executive Summary

With a mandate to provide emotional support, information and referral to court users appearing across the Family Law Courts, Magistrates' Courts and Children's Court, Court Network is uniquely placed to provide insight into the experiences of families with complex needs and their intersections with the various courts. With particular relevance to this submission, Court Network is currently located in the Melbourne and Dandenong registries of the Family Law Courts, 18 Magistrates' Court venues and the Children's Court in Victoria. Our services are also available to court users attending the Brisbane, Cairns and Townsville Magistrates' Courts.

In 2013-14, Networkers supported more than 160,000 people across Victoria and Queensland. Many of these people presented at the courts with multiple and complex needs and some had the added difficulty of needing to navigate their way around more than one court system.

Court Network welcomes the opportunity to contribute to the Family Law Council's review of Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems.

Drawing on the direct experience of our volunteer Networkers, our stakeholders, and research and evidence, our submission proposes a number of opportunities for improving responses to families with complex needs who are intersecting with multiple court jurisdictions. Whilst we acknowledge that the Council has already considered and documented many of the challenges that these families face when intersecting with the family law, child protection and family violence systems, as a service that has direct access to and feedback from court users, we felt that it was important to give court users a voice and bring to life the difficulties that they are facing when accessing the courts.

Summary of recommendations

Recommendation 1: Establish multi-jurisdictional courts to hear all matters relating to families with multiple and complex needs, including exploring options within existing courts and specialist models to enhance their ability to hear cross-jurisdictional matters for families with complex needs (where considered appropriate to do so).

Recommendation 2: Explore opportunities for greater collaboration between the Family Relationship Services and non-legal court based support services, such as Court Network to better support those families who are identified as requiring court intervention within the Family Law Courts.

Recommendation 3: Explore the feasibility of expanding the eligibility criteria for the Magellan list to include other safety and welfare concerns for children.

Recommendation 4: Establish an integrated and coordinated case management approach for families appearing before the courts with multiple and complex needs. This approach needs to be supported by a strong triaging process to assist in the early identification of these families by the courts and access to a range court-based support services to address a multiplicity of needs, including family violence, homelessness, drug and alcohol abuse, mental health, child abuse and financial issues.

Recommendation 5: Support Court Network's participation in future discussions around the development of an integrated approach to the management of cases involving families with multiple and complex needs.

Recommendation 6: Explore opportunities for greater information sharing between the courts and agencies working with families with complex needs.

Recommendation 7: Develop a workforce capability benchmark for working with families with complex needs, including core competencies required for all professionals working across the family law, family violence and child protection systems.

Recommendation 8: Develop and implement a comprehensive workforce development program to target all parts of the family law, family violence and child protection systems working with families with multiple and complex needs to ensure that all professionals have a sound understanding of:

- the various complexities that families may be facing and the underlying causes of these issues
- how to identify families with complex needs with cross-jurisdictional issues when they first appear at the courts and provide an appropriate response
- how to assess and manage the risks that families may be presenting with

- the relevant legislative frameworks, the various court, legal and non-legal processes, and the programs and services available across the multiple court jurisdictions to support families with complex needs.

Recommendation 9: Introduce cultural awareness training for all professionals working across the court systems to enhance the cultural responsiveness of all professionals working with families from CALD backgrounds.

Recommendation 10: Attention needs to be given to widening legal aid eligibility requirements for those families with complex needs accessing the Family Law Courts, and in particular those women who may be experiencing family violence.

Recommendation 11: Introduce a national non-legal court support services model, such as Court Network for all users of the Family Court of Australia and the Federal Circuit Court of Australia, in recognition of the:

- support needs of court users, particularly those people appearing before the courts unrepresented
- alignment with the principles outlined in the *National Strategic Framework for Legal Assistance 2015-20*
- the quality and cost-effective model that is offered by Court Network. .

Recommendation 12: Acknowledge and support the role of Networkers in providing an enhanced model of support for those people appearing unrepresented when attending a final hearing in the Melbourne and Brisbane registries of the Family Court of Australia and the Federal Circuit Court of Australia.

Recommendation 13: Acknowledge and support the complementary role and support offered by Court Network to the Family Law Courts in responding to the many challenges facing the Courts, including managing families with complex needs. Consideration should be given to re-instating the Court Network service at the Brisbane Family Law Courts and expanding the service to other Family Law Courts across Australia.

1. Introduction

1.1 About Court Network

Court Network was established in 1980, in a small court in the Melbourne suburb of Prahran after founder Carmel Benjamin AM saw a service gap for people in contact with the justice system. Over the past 30 years, the service has grown significantly with Court Network volunteers (Networkers) available in all major metropolitan and regional courts in Victoria, including the Children's Court, Magistrates' Court, County Court, Supreme Court, Coroner's Court, and the Victorian Civil and Administrative Tribunal. Court Network is also available in a number of Queensland courts, including the Supreme, District and Magistrates' Courts in Brisbane, Cairns and Townsville Supreme, and the Queensland Civil and Administrative Tribunal.

Since 1990, Court Network has operated in the Federal Circuit Court and Family Court of Australia in the Melbourne and Dandenong registries; and, since 2006, in the Brisbane Commonwealth Law Courts.¹

Court Network's service is an important component of accessing justice, particularly for vulnerable and disadvantaged court users who may be attending court for the first time, be unfamiliar with court rules and processes, lack knowledge about what is expected of them, feel frightened and unsafe, be representing themselves in a matter, be challenged in being able to understand and participate effectively in the court process, and/or be in need of someone to listen, provide support, and to assist in navigating the court systems.

Court Network operational model

Court Network operates across jurisdictions, being one of the only services to do so. Our free, non-legal court support service is delivered by over 400 volunteers who are trained to provide tailored support, information and referral services on an impartial and non-judgemental basis to all persons, including applicants, respondents, victims, witnesses and defendants, and their families and friends who attend court with them. Any court user is eligible to receive services from Court Network, and many court users aided by Court Network have no legal representation.

Court Network offers information, support and referral to court users via:

- Telephone referral and support services
- Pre-court: including tours of the court before hearings, explain procedures and how the courts operate, providing parties to family law proceedings with access to a secure waiting room for those feeling unsafe
- In-court: sitting with court users during court hearings (and in remote witness facilities), assisting people to feel safe whilst at court
- Post-court: enabling court users to understand the range of supports that exist outside of the court (such as specialist family violence services, mental health, drug and alcohol, and housing), referring people to other support services in their local area
- Information desks, staffed by Networkers, provide court information at selected courts.

Extensive and ongoing professional development is provided to Networkers to ensure quality and consistency in their practice. This is important in ensuring that the wider sector can have confidence in the complementary role that Court Network can play. Professionally qualified program managers are responsible for the overall management of the program, support and supervision of Court Network volunteers, and ongoing communication with court personnel and community agencies.

In the Family Law Courts, the Court Network service operates at the Melbourne registry five days a week, with three Networkers volunteering each day.² At the Dandenong registry, Networkers are available three days a week, with five volunteers across these days. Prior to the closure of the service at the Brisbane Family Law Courts, Networkers were available five days a week, with 20 volunteers across the week.

Networkers connect with court users requiring assistance predominantly through an active outreach style – 'working the floor' – on the day, introducing themselves to court users who are entering the court or waiting

¹ Court Network services ceased operations in the Brisbane Commonwealth Law Courts on 27 June 2014 following a decision by the Attorney-General not to extend funding to the service.

² The exception to this is on Fridays, when two Networkers are available at the Courts.

for their matter to be heard. They also accept referrals from court officials and service organisations (either on the day or prior to the court matter being heard). Court Networkers are highly visible and well-known to court staff and other services operating at the courts.

Many of the court users supported by Court Network in the Family Law Courts have no legal representation and would otherwise have faced court with little to no understanding of what was required of them or of other options that may exist in terms of gaining access to legal, community or social assistance.

Advantages of investing in Court Network

In May 2012, Court Network commissioned KPMG to undertake research to establish the 'value for money' of investing in Court Network as a provider of non-legal court support services. The research was focused on determining the value of volunteering assistance to the Commonwealth registries in Melbourne, Dandenong and Brisbane using a cost-benefit analysis. The research found that Court Network is creating real value at court. At a minimum, Court Network returns benefits of \$3.20 in Victoria and \$3.40 in Brisbane for every \$1 funded in the Commonwealth Courts.

The research also found that there were quantifiable benefits realised from Court Network's services including:

- The efficiency from court cases taking less time to hear on the first court date and in interim hearings efficiencies related to a reduction in the attendance rate for court cases (which refers to the number of times a court case returns to court for hearing)
- Efficiencies related to outside the courtroom for court staff in not having to manage issues that are outside their main duties
- Benefits related to the community, including savings to litigants who would need to take a leave of absence from work to repeatedly attend court hearings if not better prepared and informed about the financial and emotional costs of further filings
- The avoided legal costs to the community for court cases not requiring an unnecessarily long trial
- The value of time spent by Networkers providing unpaid support to court users.

The cost-benefit analysis undertaken by KPMG was conservative as it did not capture a range of other *qualitative* benefits generated by Court Network due to the short time-frame of the research. These benefits included:

- Court users experiencing greater wellbeing from:
 - the emotional support and safety provided
 - not being subject to any secondary trauma that results from being in court
 - being referred to the appropriate post-court support
- The time efficiency from Networkers locating court users and ensuring that they enter the correct courtroom. Without Networkers, court users could miss their court hearing, which may require a reschedule or entail a decision being made in their absence
- On the infrequent occasions where police are contacted, the avoided cost of police intervention to remove court users who have become disruptive, threatening or violence as a result of Networkers pre-emptively managing court users and being a calming influence on situations before they escalate
- The benefit to the community and government from having an improved public perception of the justice system
- The enhanced effectiveness of service providers such as duty lawyers and specialist support services
- Efficiency gains from directing/assisting court users on the forms and administrative tasks requiring to be completed. This includes the potential savings from Court Network's greater involvement with support court users to access the Commonwealth Courts Portal.

Other important benefits of the Court Network service were also identified by KPMG in relation to court users, court staff and legal services, including that Networkers:

- Are of greatest value to unrepresented litigants who do not have the information or support that they would otherwise receive from a lawyer and who may fail to effectively engage in the court process
- Improve the court experience for people in an environment that can cause anxiety, frustration and anger and in particular, play a key role in alleviating tensions and distress in cases involving family violence
- Improve people's perception of the court system by making the court process easier to navigate and providing information on how the justice system operates

- Enable court staff and duty lawyers to focus on their core roles and responsibilities and taking pre-emptive action to assist and manage issues and people before they become a significant matter that would otherwise require more drastic action.

People definitely feel better about the court system. You can see the difference in the way people feel before and after their time with the Networkers. Another woman today was crying about the outcome of her case, and she sat with the Networker for about 30 minutes in their area. I saw her again as she was leaving and you could see that she was happier and calmer.

Court staff

Good Networkers can make an important difference because clients become easier to work with and better prepared.

Service provider

The increasing service need for Court Network

KPMG found that there was a continuing service need for Court Network in the courts. Not only was Court Network perceived by stakeholders as being an essential part of the court system, but the research found that there was an increasing need for Court Network's service to be widely available to assist courts facing a number of challenges, some of which are being considered by the Council, including:

- Increasing number of court users with complex needs, including mental health issues, drug and alcohol misuse, family violence and cognitive impairments, who may have limited personal support and present with high levels of anxiety at court
- Changes in the mix and nature of court cases being heard in the Family and Federal Court registries, reflecting the changed contemporary environment and the increasing presence of issues affecting families, including family violence, family related conflict and child protection
- Greater number of unrepresented litigants who require increased assistance and support at court as a result of changed eligibility criteria for legal aid
- Increasing number of court users from culturally and linguistically diverse (CALD) communities and the shortage of interpreters, which tends to increase levels of anxiety and confusion amongst these court users.

1.2 This submission

This submission draws on the frontline experiences of volunteer Networkers who regularly work in the Melbourne and Dandenong Family Law Court registries; some of whom have the added experience of supporting families with matters being heard in the Children's Court of Victoria (CCV). The reflections and quotes from Networkers included in this submission highlights many of the challenges that families with complex needs face when dealing with the courts; many of which have been considered in the Council's Interim Report. This submission also includes some quotes provided by legal professionals and court staff on the value of Court Network's service in the Commonwealth Law Courts.

The focus of this submission is on identifying opportunities to improve responses for families with complex needs who are accessing multiple court jurisdictions. Court Network has considered previous submissions made to the Council by some of our stakeholders, including the Magistrates' Court of Victoria (MCV), CCV, Magistrate David Fanning from the Neighbourhood Justice Centre and Victoria Legal Aid (VLA) and makes reference to their proposals for reform where these are supported.

We have also considered the Council's findings in the Interim Report to the Attorney-General on the Terms of Reference and commend the Council on this work. Court Network is pleased to note the Council's acknowledgement of the need to also consider the intersections between the family law and family violence systems as well as the overlaps between the family law, family violence and child protection jurisdictions. In Court Network's experience, family violence appears to be an increasing issue for many women appearing before the Family Law Courts for parenting disputes and is concerned that if this dynamic is not understood by those working within these courts, then there is a real possibility that the courts may be placing women and children at greater risk of further violence.

Court Network encourages the Council to consider our submission to the Victorian Royal Commission into Family Violence. Many of our points raised in this submission are also relevant to the Council's current review.

1.3 Court Network's interaction with families with complex needs

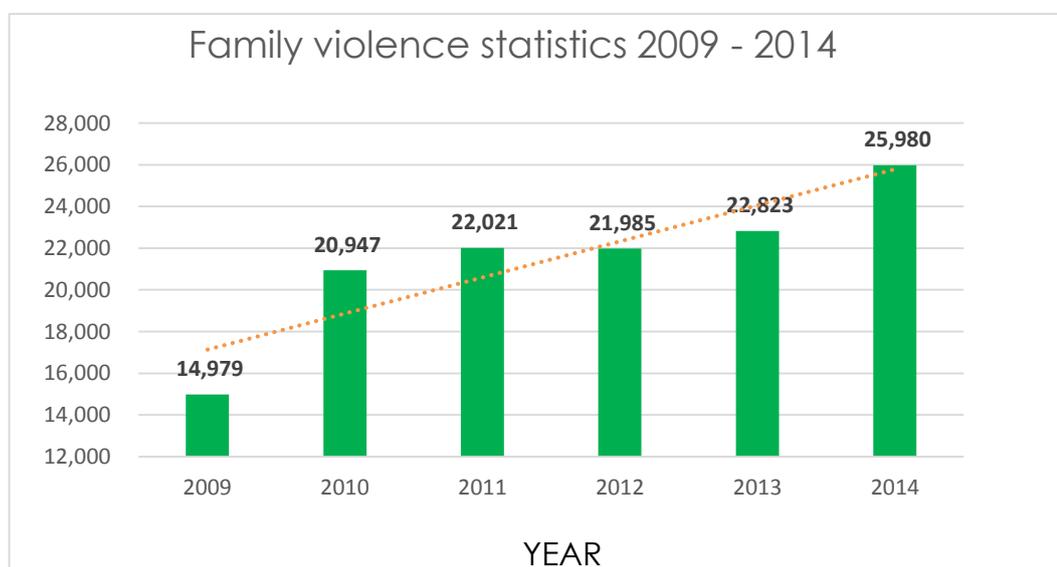
In Court Network's experience, people appearing before the Family Law Courts, Magistrates' Courts and Children's Courts are presenting with multiple and complex needs, including issues of family violence, child abuse, mental health and drug and alcohol abuse.

In 2013-14, Networkers provided support to approximately 110,000 people across all Victorian courts. Of these people supported, almost 26,000 attended the Magistrates' Courts with family violence issues, which accounted for more than 40 per cent of all people attending the Magistrates' Courts who were supported by Court Network (Table 1).

In the same financial year, Networkers supported just under 1,900 people with child protection matters being heard in the Children's Court, representing 59 per cent of all people supported in this Court.

41 per cent of all court users supported by Networkers in the Family Law Courts (Melbourne and Dandenong registries) were for matters involving parenting disputes and child contact issues.

Table 1: Number of people supported by Court Network with family violence issues in the Magistrates' Courts³



While Court Network's data shows that a significant number of people are being supported across the courts for matters involving family violence, child protection and parenting disputes, data from the Family Law Courts, MCV and CCV shows that the courts are increasingly dealing with more complex matters and that court users are presenting with multiple issues.

For example, in 2013-14, nearly 15 per cent of all Family Law Court applications involved a notice of child abuse, family violence or risk of family violence.⁴ Family violence related matters accounted for a significant proportion of the MCV's workload in 2013-14, with significant increases in the number of family violence related matters recorded in their civil, criminal and Victims of Crime Assistance Tribunal (VOCAT) jurisdictions. Many of the court users accessing the MCV's Court Integrated Services Program were also presenting with drug and alcohol use, abuse or dependence, mental health issues and long-term unemployment.⁵ In the

³ It is important to note that this data is likely to be an understatement of the number of people supported by Court Network who are impacted by family violence as it does not include data on those family violence related matters that are entwined in cases appearing in other court jurisdictions where Court Network operates, including the Children's Court, Victorian Civil and Administrative Tribunal (VCAT), County Court, Supreme Court and the Family Law Courts. For example, at VCAT where family violence is a feature of an increasing number of residential disputes.

⁴ Family Court of Australia, *2013-14 Annual Report*, http://www.familycourt.gov.au/wps/wcm/connect/314f3b1f-a1a6-40de-bd75-9528da306342/FCA_AnnualReport_2013_14.pdf?MOD=AJPERES.

⁵ Magistrates' Court of Victoria and Children's Court of Victoria, *Submission to the Royal Commission into Family Violence*, June 2015.

CCV, the number of primary child protection applications continues to increase each year as well as the number of court users presenting with family violence related matters across both the criminal and family divisions of the court.⁶

Court Network's data above does not include complex matters that are entwined in cases appearing in other court jurisdictions where Court Network operates. For example, in the Children's Court, we have only quoted the number of people supported by Networkers attending the court for child protection matters. There may other people supported by Networkers attending the Children's Court for family violence intervention order matters or criminal matters related to family violence or drug and alcohol use that are not captured in this data. Therefore one could easily assume that the actual number of people supported by Court Network with complex needs is likely to be much higher than the numbers quoted above.

⁶ Magistrates' Court of Victoria and Children's Court of Victoria, *ibid*; Children's Court of Victoria, *Annual Report 2013-2014*.

2. Opportunities to improve responses for families with complex needs

Court Network is supportive of approaches that seek to improve the experiences and outcomes for families with complex needs when dealing with multiple court jurisdictions and believes that any reforms should be consistent with the following three broad principles:

1. Court responses should be coordinated, streamlined and timely for all families with complex needs
2. Families should have timely access to a range of coordinated and integrated services and supports to address their legal and non-legal needs
3. Judicial officers, court staff, legal professionals and community services working with families with complex needs should have a sound understanding of the complexities facing these families and provide a professional and responsive service.

Court Network considers there to be a number of opportunities to improve court responses for families with complex needs; some of which have been previously identified by our stakeholders and acknowledged by the Council in its Interim Report to the Attorney-General.

2.1 Multi-jurisdictional courts to hear all matters relating to one family

Court Network is concerned by a range of cross-jurisdictional issues that families with complex needs face when dealing with the Family Law Courts, Children's Court and Magistrates' Courts. Families are left to navigate their way around the various court venues, which not only exist in separate buildings but also have very different physical environments. Some families are also having a range of matters heard simultaneously across multiple courts, which is leaving them feeling profoundly confused and disoriented.

Families are going back and forth between the courts for their various matters on different days of the week. It is very confusing for them.

Networker

Families must also deal with different services and professionals, depending on the court that they are attending. This lack of continuity can increase the risk of families needing to re-tell their stories time and again and in some cases, particularly where issues of family violence or child abuse may be present, can result in children and families being re-traumatised. In order to ease this challenge for families interacting with multiple court jurisdictions, the CCV has recommended that VLA reconsider its separate legal panel arrangements for child protection and family law proceedings and create panel arrangements that best support children and families irrespective of where their proceedings arise and are dealt with.⁷ Court Network is supportive of this proposed strategy as one way of improving continuity of legal services for families across the court systems.

Another concern for those families with complex needs accessing the Family Law Courts is the slow pace of court proceedings and delays in hearings. Networkers suggested that it was not uncommon for proceedings to be continuing some four or five years after they had commenced.

One woman had since moved interstate and had to travel back to Melbourne some six times over a four-year period to attend court hearings.

Networker

I supported a woman the other day where the earliest time for her next court hearing was April 2016. This woman had been attending the family courts for this particular matter since 2011.

Networker

⁷ Children's Court of Victoria, *Submission to the Family Law Council: Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, May 2015.

Not only is the slow pace of court proceedings dragging out the finalisation of matters and failing to provide families with some stability, Court Network is also concerned about the negative impact that lengthy court matters are having on people's health and emotional wellbeing. Networkers noted that they felt there were some instances where the length of the process was exacerbating people's and families' complex needs.

I remember supporting one woman with mental health issues. Over the years, you could see the impact that the process was having on her – she appeared to really deteriorate to the point where she presented in court as being a bit dishevelled.

Networker

Court Network also notes that the cost of court hearings is an additional complexity that many families face when dealing with the Family Law Courts.

I've had a number of people tell me that they have had to sell their house to attend this court. There have also been instances where elderly parents have sold their house to financially support their adult children going through the family courts.

Networker

Court Network believes that introducing multi-jurisdictional courts is one way to eliminate many of the issues that families face when dealing with multiple court systems. Notwithstanding the significant legislative changes that would need to be made to facilitate the introduction of multi-jurisdictional courts, Court Network is of the view that a multi-jurisdictional court model could provide a family with the opportunity to have all of their matters heard by the one court and one judicial officer, which could significantly improve the experiences and outcomes for families who intersect with multiple court jurisdictions for family law, child protection and family violence matters.

The Council has highlighted the centrality of family violence in matters where families are involved in more than one jurisdiction. Supporting data from VLA also suggests that families with complex needs commonly have their first point of contact with the legal system through the MCV for family violence intervention order matters. Court Network sees a number of advantages of expanding specialist family violence courts, consistent with best practice, across Magistrates' Courts as a means of undertaking multi-jurisdictional work.

Court Network is also supportive of other options to enhance or expand the jurisdictions of courts to hear a range of matters for families, where it is considered as being appropriate to do so. The Family Violence Court Division, which is a specialist family violence court currently operating in two Victorian Magistrates' Court venues, is to some degree, able to address the cross-jurisdictional issues that arise in state courts for those court users presenting with family violence matters. The MCV is however, limited in its ability to hear matters under the *Family Law Act 1975* and this would need to be addressed in order to provide a functional multi-jurisdictional court model for those families with family violence, child protection and family law proceedings.

The CCV's recommendation to make parenting orders under Part VII of the *Family Law Act 1975* where consent is provided by those families with matters already before the court⁸ is another option that Court Network supports, which would allow families with child protection matters to also have their family law matters dealt with by the one court.

Triaging and effective case management practices will be critical within a multi-jurisdictional court model. Court Network supports the MCV's view that these practices provide a structure for best practice when dealing with family related matters in the court and considers a multi-jurisdictional court model as one way to embed these practices into the court process. The ability to identify families with multiple and complex needs who have cross jurisdictional issues early on in the court process will ensure that families are linked in to the appropriate support services and receive relevant legal support and advice.

⁸ Children's Court of Victoria, *ibid*.

Recommendation 1: Establish multi-jurisdictional courts to hear all matters relating to families with multiple and complex needs, including exploring options within existing courts and specialist models to enhance their ability to hear cross-jurisdictional matters for families with complex needs (where considered appropriate to do so).

2.2 Fostering collaborative partnerships between services in the family courts

Networkers have strong working relationships with court staff and the various legal services available in the Family Law Courts, including legal aid and the Family Law Legal Service. Networkers are often the first point of contact for court users looking for legal services in the courts. They support court users to complete the relevant forms before seeing a duty lawyer and direct them to the Legal Aid office. This support by Networkers not only saves duty lawyers time, but also assists court staff in managing their workload and the volume of court users more easily.

Prior to Court Network, there was no service within the court to assist any litigants regarding information, directions, comfort, wanting somebody to talk to. They were confused, agitated, and would come to the counter. Staff at court have very defined roles and it was not the role of counter staff to provide this type of assistance.

Court/registry staff

Court Network and Family Law Assistance Program commonly cross-refer clients for provision of appropriate support. The two organisations work very cooperatively and enhance each other's effectiveness.

Service provider

Similar partnerships have also been formed between the Networkers and security staff operating at the family courts.

We have a good relationship with court security. We work closely with them to facilitate access to the secure room facilities for those parties who may be scared and feeling at risk.

Networker

Court Network is aware that families are encouraged or in some cases required to attend Family Dispute Resolution before applying to the Family Law Courts for a parenting order in an effort to resolve their own conflicts and avoid the need for court intervention. The Australian Government funds a range of Family Relationship Services, including counselling and problem resolution services, to assist families with their dispute resolution needs.

In the event that the families cannot resolve their matters amongst themselves or where there is a history or risk of family violence or child abuse, in which case dispute resolution is not deemed suitable, then these families proceed to the Family Law Courts to have their matters heard before a Judge.

Court Network sees a number of opportunities for greater collaboration and linkages between the Family Relationship Services and non-legal court support services, such as Court Network to better support those families who are identified as requiring court intervention. At present, there is little interaction between the two services and a general lack of understanding as to what each service offers clients. Developing a greater awareness and understanding of what each service provides to families attending the Family Law Courts would be a good starting point for fostering this relationship.

Recommendation 2: Explore opportunities for greater collaboration between the Family Relationship Services and non-legal court based support services, such as Court Network to better support those families who are identified as requiring court intervention within the Family Law Courts.

2.3 Enhanced access to coordinated and integrated services for families appearing before the family courts

The Magellan list is currently used within the Family Court of Australia to manage cases involving serious allegations of physical or sexual abuse of children. The model adopts a multi-disciplinary and coordinated approach between the Family Law Courts, legal aid and state child protection authorities and provides for cases to be intensively managed and overseen by team that includes a registrar, a judge and a family consultant.⁹

Court Network supports this model and suggests that there is greater scope for the courts to broaden the parameters of the list to include other safety and welfare concerns for children, particularly where there is a nexus between family violence risk indicators, such as emotional or psychological harm and neglect. This could open up the specialist list to deal with the family court notifications that do not proceed to the Children's Court for protective proceedings due to the higher threshold for child protection intervention. Court Network also supports Magistrate Fanning's views on the Magellan list as being "too narrow and out of step with modern thinking regarding the protection of children, which includes the cumulative harm emanating from chronic neglect involving emotional and physical components that do not reach the threshold for 'serious' when applied on an episodic basis like sexual abuse and serious physical abuse."¹⁰

Recommendation 3: Explore the feasibility of expanding the eligibility criteria for the Magellan list to include other safety and welfare concerns for children.

Building on the multi-disciplinary, case management model of the Magellan list, Court Network also sees value in introducing a similar integrated and coordinated case management approach within the Family Law Courts for those families with multiple and complex needs. Triaging will be critical in identifying these families at their first point of contact with the courts and referring them to a 'complex families' list where they could be case managed and linked into appropriate legal and non-legal support services. Access to court-based non-legal support services in the Family Law Courts would also enhance this type of model.

As it currently stands, Court Network is the only court-based non-legal service available in the Melbourne and Dandenong registries of the Family Law Courts to support court users. The absence of other non-legal support services in the Family Law Courts is a service gap and in Court Network's opinion, a missed opportunity to get families with multiple and complex needs linked into appropriate services to address their underlying issues. While Networkers will attempt to refer court users to community support services where a need is identified and it is appropriate to do so, engagement with services is likely to be enhanced for court users when they can access the services at court.

Court Network proposes the establishment of a multi-agency, multi-sector services HUB within the courts, with an integrated and coordinated case management approach for families appearing before the courts with multiple and complex needs. The HUB could be beneficial in assisting families to address their underlying needs and reduce the requirement for further court intervention. Court Network's submission to the Victorian Royal Commission into Family Violence noted that growing trend towards adopting highly coordinated, multi-agency and multi-sectoral approaches to service delivery that bring together a range of services and organisations with a common set of goals to provide more coordinated responses to violence against women. Court Network believes that a similar model would also be beneficial for those families with multiple and complex needs coming before the courts.

Recommendation 4: Establish an integrated and coordinated case management approach for families appearing before the courts with multiple and complex needs. This approach needs to be supported by a strong triaging process to assist in the early identification of these families by the courts and access to a range court-based support services to address a multiplicity of needs, including family violence, homelessness, drug and alcohol abuse, mental health, child abuse and financial issues.

Court Network is supportive of the Council's recommendation in the Interim Report to convene regular meetings of relevant stakeholder organisations to explore ways of developing an integrated approach to the management of cases involving families with multiple and complex needs. Court Network would

⁹ Family Law Council, *Interim Report to the Attorney-General: In response to the first two terms of reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, June 2015.

¹⁰ Magistrate David Fanning, *Submission to the Family Law Council: Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, June 2015: p12.

welcome the opportunity to contribute its learnings and experiences to any future discussions on developing an integrated approach to the management of cases involving families with multiple and complex needs.

Recommendation 5: Support Court Network's participation in future discussions around the development of an integrated approach to the management of cases involving families with multiple and complex needs.

2.4 Greater information sharing between courts and services

In order to improve outcomes for families with complex needs appearing before the family law, child protection and family violence systems, there is a need for the courts and the services working with these families to have greater access to relevant and available information. The risks associated with limited or no information sharing across court jurisdictions have been well documented in our stakeholders' submissions to the Council, including the unnecessary trauma arising from parents and children needing to re-tell their story time and again, and inconsistent or conflicting orders being made in the various jurisdictions.¹¹

Court Network is concerned that at present, the onus is on parties to court proceedings to disclose information to the courts about relevant orders made in other court jurisdictions. In Court Network's experience, many parties appearing before the family courts do not have legal representation and are experiencing high levels of stress and anxiety. They may not be aware of the importance of needing to disclose such information or may assume that the courts have access to decisions made in other jurisdictions,, which could have devastating impacts for those women and children who may be at risk of family violence. One strategy, as suggested by VLA, for removing the onus on court users to disclose information is to establish a database of orders that offers a single repository of family law, family violence and child protection orders that can be accessed by the relevant courts and state child protection authorities.¹² This would also reduce the likelihood of courts making conflicting or inconsistent orders.

Court Network sees a greater need for information sharing to occur between all services– both legal and non-legal – supporting families with complex needs. MCV's recommendation to introduce formal information sharing agreements for courts and agencies to share information in specified cases is supported by Court Network, including detailing what information will be shared and when, and the process and mechanisms of communication.¹³

Recommendation 6: Explore opportunities for greater information sharing between the courts and agencies working with families with complex needs.

2.5 Building workforce capability to respond appropriately to families with complex needs

Court Network sees a great need for workforce capability to be built across all professionals working with families with multiple and complex needs with cross-jurisdictional court matters. This is critical for ensuring that all players, including the judiciary, court staff, legal and non-legal support services, fully understand the various complexities that families may be facing and the underlying causes of these issues. Establishing a workforce capability benchmark for those working with families with complex needs will be a critical first step in the development of any workforce capability program. The workforce capability benchmark should identify core competencies required for all professionals working across the family law, family violence and child protection systems.

As previously suggested, it is imperative for professionals to identify families with complex needs with cross-jurisdictional issues as early on in the court process as possible. That way, families can be assured that they are receiving the most appropriate response and are linked in to the support services they need to navigate through the court process and address their underlying needs.

Assessing and managing risk is another important element in terms of workforce capability. In Victoria, the Common Risk Assessment Framework has been implemented across the family violence service system to provide all agencies working with women, children and men impacted by family violence with a consistent

¹¹ Victoria Legal Aid, *Families with Complex Needs: Submission to the Family Law Council's Terms of Reference*, April 2015; Magistrates' Court of Victoria, *Families with Complex Needs: Submission to the Family Law Council Terms of Reference*, April 2015.

¹² Victoria Legal Aid, *ibid*.

¹³ Magistrates' Court of Victoria, *ibid*.

and shared approach to assessing and managing risk. Adopting a common approach to assessing and managing the risk for families presenting to the courts with multiple and complex needs would be ideal, however Court Network acknowledges the different risk assessment tools used by professionals across the various court jurisdictions and service systems.

As identified by VLA, it is important for those working in one court jurisdiction to have knowledge and understanding of the other jurisdictions. Court Network is supportive of this and sees a need for this knowledge and understanding to be all encompassing to include the relevant legislative frameworks, the various court, legal and non-legal processes and systems, as well as the programs and services available to support families with complex needs.

Given the centrality of family violence for families with complex needs, Court Network would like to draw the Council's attention to its recommendation to the Victorian Royal Commission into Family Violence about the need for large-scale workforce capability building across the courts (and other key workforces) in relation to understanding the nature and dynamics of family violence. Court Network is concerned that those working in these courts may be inadvertently allowing power and control issues to be played out in family law matters due to a lack of understanding of the dynamics of family violence. Not only are women terrified by this experience, but they may also be at heightened risk of further violence.

We had a complex case the other day. A woman with a child was seeking to return home to New Zealand after fleeing from a violent partner. She was so anxious and wanting to return to the support of her family. The case dragged on all day, and the woman and child did not eat all day. By the end of the day, the case was adjourned to be heard back in Western Australia – where the woman had fled from in order to feel safe. The woman was just devastated. It's like a new form of family violence; where men use the court process to maintain control over the woman, and prevent her from feeling safe.

Networker

Recommendation 7: Develop a workforce capability benchmark for working with families with complex needs, including core competencies required for all professionals working across the family law, family violence and child protection systems.

Recommendation 8: Develop and implement a comprehensive workforce development program to target all parts of the family law, family violence and child protection systems working with families with multiple and complex needs to ensure that all professionals have a sound understanding of:

- the various complexities that families may be facing and the underlying causes of these issues
- how to identify families with complex needs with cross-jurisdictional issues when they first appear at the courts and provide an appropriate response
- how to assess and manage the risks that families may be presenting with
- the relevant legislative frameworks, the various court, legal and non-legal processes, and the programs and services available across the multiple court jurisdictions to support families with complex needs.

Court Network is also concerned that the courts are not culturally responsive and see value in introducing cultural awareness training. Given the increasing number of court users appearing across all courts from CALD backgrounds, Court Network sees value in this training occurring for all professionals working across the family law, family violence and child protection systems. The training should assist all professionals working across the courts to have a greater understanding of the various cultural groups accessing the courts and how to respond appropriately to these court users. Networkers identified that there was a particular need within the family courts for such training as the court process becomes quite awkward and difficult for these parties.

I supported an Indian woman the other day. I was asked by her male lawyer to come and sit with the woman as she was refusing to talk to him. She told me that she would only talk to a female lawyer.

Recommendation 9: Introduce cultural awareness training for all professionals working across the court systems to enhance the cultural responsiveness of all professionals working with families from CALD backgrounds.

2.6 Enhanced access to legal support and services

Access to legal services is considered by Court Network to be one of the key challenges that families with complex needs face, particularly when going through the Family Law Courts. Many parties appearing before the Family Law Courts are unrepresented in court hearings and this can cause much stress and anxiety for parties. In 2013-14, Court Network supported a total of 1,953 court users in the Family Law Courts. 6 per cent of the people supported by Court Network had legal representation, while for a large proportion, it was either not known or the person was not represented. For those women who may also be experiencing family violence, the lack of legal representation places them at a distinct disadvantage and with the prospect of having to cross-examine the very person from whom she seeks protection.

Court Network acknowledges that cuts to legal aid funding in recent years have resulted in funding eligibility requirements being significantly restricted. Despite many parties going through the Family Law Courts facing a range of complex needs and disadvantage and requiring legal representation during their proceedings, many parties' legal support is limited to trial preparation. The same also applies to those women experiencing family violence going through the Family Law Courts. It is only when their partner has breached a court order, that the woman is deemed eligible for legal representation for their court proceedings.

Families with complex needs have to manage their own legal matters. They do not comprehend that they are managing the process themselves.

Networker

The *National Strategic Framework for Legal Assistance 2015-20* identifies the need for legal assistance services to be accessible to people facing disadvantage and with the greatest legal need. Court Network is supportive of this identified outcome and sees opportunities for the current legal aid eligibility requirements to be revised, particularly in light of this framework.

Recommendation 10: Attention needs to be given to widening legal aid eligibility requirements for those families with complex needs accessing the Family Law Courts, and in particular those women who may be experiencing family violence.

Responding to the increased support needs of unrepresented litigants project

Court Network currently provides a strengthened response to people appearing unrepresented when attending a final hearing in matters involving children or high levels of vulnerability in the Melbourne registries of the Family Court of Australia and Federal Circuit Court of Australia. The response provides an enhanced model of support by specially trained Court Network volunteers with a focus on people whose access to justice is most compromised through not having adequate support to assist them throughout the final hearing stage. In-court support can be provided by Networkers over two consecutive days (by the same Networker) for final hearings heard over two days, and includes the opportunity for the Networker to sit at the bar table with the court user (with the Judge's permission).

The objectives of the project include:

- Increasing opportunities for unrepresented litigants in feeling prepared for the adversarial nature and procedural requirements of the proceedings and providing better information about their role and function within the court
- Streamlining the process for unrepresented litigants in accessing pre-hearing legal advice, developing pre-hearing and in-court support plans and coordinating the support/referral options related to other relevant services

- Providing comprehensive support to unrepresented people who require assistance, exploring the option of offering intensive in-court support and reducing the anxiety and distress often experienced as part of the rigours of giving evidence and being cross examined.

As part of the project, a specially developed resource booklet has also been designed to assist unrepresented litigants in navigating the court process, including basic information about how the court day is likely to proceed and what litigants need to know. The booklet is available online and in hard copy format.

Early evaluation findings for this project indicate unanimous support from project stakeholders and reaffirmation of the need for this project. During the first five months of the project's operation, 35 unrepresented litigants were supported¹⁴, with women representing the majority of unrepresented litigants supported (70%). Unrepresented litigants receiving support through this project were reportedly very relieved and appreciative of the support provided.

On offering support to an unrepresented litigant, the woman said "I'd love it". She literally clung to me, and she wanted me to come back after lunch.

Networker

The *National Strategic Framework for Legal Assistance 2015-20* acknowledges that in many cases, non-legal professionals are the first and only points of contact for people in need of legal support and suggests that there is a need for people to have improved access to opportunities for resolving legal problems how ever they make contact with the system. While Court Network does not provide legal advice to court users, the *Responding to the increased support needs of unrepresented litigants* project is an example of how our service provides comprehensive support to unrepresented court users in the absence of any other services.

Court Network believes there is a case for non-legal court support to be a core service in the administration of justice in the Family Court of Australia and the Federal Circuit Court of Australia, working alongside core legal services available in the courts. As previously stated in our submission, families are presenting at the courts with a range of complexities and there is a huge need for non-legal court support services to be made available to these families, particularly those who do not have legal representation. Court Network offers such a model to the courts, as described by a Family Court Judge.

I have been a judge for 28 years and so I have seen Court Network in the Coroner's Court, the State Magistrates' Court, and for 18 years in this Family Court. I can't imagine a modern court operating without this resource and in this court especially given the emotional overlay of the issues.

Family Court Judge

Recommendation 11: Introduce a national non-legal court support services program, such as Court Network for all users of the Family Court of Australia and the Federal Circuit Court of Australia, in recognition of the:

- support needs of court users, particularly those people appearing before the courts unrepresented
- alignment with the principles outlined in the *National Strategic Framework for Legal Assistance 2015-20*
- the quality and cost-effective model that is offered by Court Network.

Recommendation 12: Acknowledge and support the role of Networkers in providing an enhanced model of support for those people appearing unrepresented when attending a final hearing in the Melbourne and Brisbane registries of the Family Court of Australia and the Federal Circuit Court of Australia.

2.7 Complementary role of Court Network

As outlined in our submission, Court Network plays a significant and complementary role to court staff and services working within the courts. At present, Court Network is the only court-based non-legal service available in the Family Law Courts operating in Victoria to support court users. We are in the unique position of being the sole service provider with the mandate to provide emotional support for people attending

¹⁴ As of 12 August 2015, the project has provided intensive support to more than 60 unrepresented litigants.

court. Our Networkers spend time with court users appearing for family law, family violence and child protection matters, and are in a position to gather intelligence that can assist in the triaging and smoother running of the court process. The high visibility and strong collaborative relationships with the courts and other services means that Court Network is an integral service component at the court. Court Network is also able to provide post-court support and can to link court users into appropriate community support services to address a range of complex issues, such as family violence, mental health, and drug and alcohol abuse.

People [want to] kiss me at the end of the day and tell me what a difference I have made to their court appearance. Attending court is stressful for parties. I can help diffuse the anxiety that people are experiencing. People are overwhelmed by the whole process and I'm there to keep the process simplified and to keep them [emotionally] safe.

Networker

Often people are appearing in court alone. We offer them a smiling face, warmth and empathy. Just offering this support to someone speaks volumes.

Networker

In an environment where the Family Law Courts are facing a number of predicaments, including constrained resources, a more demanding workload in terms of managing the most difficult and complex family law cases, including cases involving issues of family violence and/or allegations of child abuse and cases involving mental illness and/or substance abuse¹⁵, and an increasing number of litigants representing themselves in court proceedings, it is more important than ever for capability to be increased within the Courts. Court support services, such as those offered by Court Network, are needed now more than ever to be widely available across the Family Law Courts to assist the Courts in responding to these challenges.

Recommendation 13: Acknowledge and support the complementary role and support offered by Court Network to the Family Law Courts in responding to the many challenges facing the Courts, including managing families with complex needs. Consideration should be given to re-instating the Court Network service at the Brisbane Family Law Courts and expanding the service to other Family Law Courts across Australia.

¹⁵ Family Court of Australia, *Op Cit*.