

26 August 2010

Attention: Zhen Ye
NADRAC

By email: nadrac@ag.gov.au

Dear Colleagues,

Re: Confidentiality, Admissibility, Practitioner Immunity and Conduct Obligations in ADR Processes

The Women's Legal Centre (ACT & Region) thanks you for the opportunity to make a submission in respect of the issues paper.

The Women's Legal Centre (ACT and Region) Inc ("the WLC") is a Community Legal Centre accredited by the National Association of Community Legal Centres. The Centre has been operating successfully in Canberra since 1996. Its objectives are to:

- provide accessible, timely and accurate information, advice and assistance on legal and related matters to women in the ACT and region;
- raise awareness in the community about the law and the legal system as it affects women; and
- identify and challenge barriers to women's access to justice.

The mainstay of the Centre's work is providing legal advice and assistance to women about individual matters. The Centre does this by operating an advice line each day; seeing clients face-to-face; and operating an evening advice service on Tuesday evenings where clients are given appointments with specialist volunteer solicitors.

As we do not have the resources to represent women throughout the whole of their matter, we are most usually intermittently involved in matters. For example, we may give initial advice and referral, give legal advice to women who are participating in FDR processes, assist women acting for themselves to negotiate with other parties, prepare their documents and/or prepare for Court.

We wish to make comment in respect to Family Law question 5 under 1.2 Issues for consideration.

SHOULD THE Family Law Act be amended to allow family dispute resolution practitioners to provide additional information to the courts to assist with the courts' case management/risk assessment in subsequent litigation? If so, how could this be done?

It is critical to have a consistent approach to assessing family violence and other risk factors across the Court and FDR sectors, starting from consistent definitions.

It is the view of the WLC that it is not feasible to provide a partial release from confidentiality given the potential impact upon parties of any “additional information” given to the Courts. From a natural justice perspective, the parties should be given an opportunity to cross-examine any third party who is giving information to the Court which information potentially impacts upon a decision of the Court.

If it were the case that the FDR practitioner could (or was obliged) to provide information to the Court beyond that provided in the section 60I Certificate (or similar), this would impact upon the advice our solicitors would give to clients when assisting them to prepare for participation in FDR. This may in turn impact upon the way in which clients engage in full and frank discussions in the ADR process.

Yours faithfully,
WOMEN’S LEGAL CENTRE

Rhonda Payget
Principal Solicitor