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Family Dispute Resolution in Australia: The Under-Servicing of Indigenous, Migrant and Refugee Families Experiencing Family Violence

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ABSTRACT

Improving access to legal services for Indigenous, migrant and refugee women is critical to addressing family violence. In this context, Family Dispute Resolution (FDR) has long been discussed as a solution for separating families. This paper presents key findings of a research evaluation of an Australian Government \$8.37 million pilot project designed to deliver Legally Assisted Culturally Appropriate Family Dispute Resolution (LACAFDR) to separating families experiencing family violence, where parents were from Indigenous and culturally and linguistically diverse (CALD) backgrounds. Drawing on 216 interviews and two separate large-scale client datasets, key findings show that even with additional funding, mainstream Family Relationship Centres continued to under-serve Indigenous and CALD families. The paper discusses this under-servicing in the broader context of the key barriers that Indigenous and CALD clients face when accessing family relationship, family violence, family dispute resolution and legal services from mainstream Family Relationship Centre (FRC) providers.

1 | Introduction

The Australian Law Reform Commission's (ALRC 2019) review of the family law system described the problems with the family law system, including difficulties with enforcing parenting orders; the high rate of families returning to court following orders being made; concerns about the costs and stress of responding to multiple contravening applications; and the need for improved measures to support highly conflicted parties implement parenting arrangements (ALRC 2019). In a worst-case scenario, resolving family settlement matters through the Family Court can re-traumatise survivors of family violence and escalate power imbalances (Roberts et al. 2015). In this context, Family Dispute Resolution (FDR) is increasingly seen to offer separating families an alternative decision-making process to the family court system (Moloney, Kaspiw, et al. 2013; Moloney, Qu, et al. 2013).

Family Dispute Resolution Practitioners (FDRPs) are required to be independent and impartial (Cooper and Field 2008). Family Dispute Resolution (FDR) is defined by the *Family Law Act 1975* (Cth) as a process conducted by independent practitioners to assist separating families resolve their disputes and organise arrangements with respect to children and simple property matters. The objectives of FDR activities are to assist couples in managing issues and resolving disputes relating to separation and divorce, to improve their post-separation relationships, and to do so in ways that correspond with the best interests of children. When parties have reached agreement, they may enter into a parenting plan, a written agreement between parents that deals broadly with: who the child lives with, time with each parent, communication between parents, maintenance payments, processes for changing the plan and any other aspect of the care, welfare or development of the

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child or parental responsibility (*Family Law Act 1975* (Cth), ss 63C (1), (2)).

In cases involving violence or child abuse, FDR is not compulsory, and parents may wish to resolve their dispute in court. However, where it is appropriate, parents may choose to resolve their disputes out of court, even where there has been violence.

In 2006, the Australian Government established Family Relationship Centres (FRCs) across Australia to offer FDR, amongst other services (Attorney General's Department 2017, 2019). Research has repeatedly demonstrated that Indigenous and Culturally and Linguistically Diverse (CALD) families are substantially under-represented amongst those accessing FDR services (Armstrong 2010a; Cunneen et al. 2005; Shah-Kazemi 2000; Sauvé 1996). For instance, in 2009 only 9% of FRC clients came from a non-English speaking background (Armstrong 2010a, 9), and analysis of Family Law Services suggests there is potential 'unmet need with Indigenous and CALD communities' (KPMG 2016, 6). Research suggests that staff delivering family support programmes often lack confidence in engaging with clients from CALD backgrounds, in part because of language and cultural barriers, along with prescriptiveness of FDR processes and the framework for reaching parenting agreements (Armstrong 2009; Kaspiew et al. 2009; Urbis Keys Young 2004). One of the main reasons that Indigenous and CALD families are routinely judged by service providers to be 'inappropriate' for family resolution is due to the presence of family violence (Ojelabi et al. 2011).

Family violence is an epidemic in Australia across all socio-economic, demographic and cultural backgrounds. The term family violence is used in this research, as opposed to domestic violence, as it incorporates an understanding of the impact violence can have on children and extended family members. This has historically been understood as particularly important for Indigenous peoples as it better reflects experiences of violence within their broader family unit, and the way that this violence 'reverberates around extended families and communities' (S. Yates 2020; Olsen and Lovett 2016; Stubbs and Wangmann 2017). Accordingly, family violence offers a more inclusive framing of the problem, and one better able to accommodate some of the violence experienced by Indigenous, elderly or disabled survivors (S. Yates 2020, 9).

Violence is often a major factor in the separation of families. Analysis of post-separating parents found that 85% of women and 56% of men reported family violence and/or child abuse in their relationship, with most women participants selecting family violence as the primary reason for separation (Bagshaw et al. 2011; Australian Institute of Health and Welfare (AIHW) 2019). Women are overwhelmingly the survivors of family violence, with Indigenous and CALD women more likely to experience violence compared to the total Australian population, and Indigenous women more likely to be hospitalised due to assaults from domestic violence (AIHW 2019). Indigenous women who experience family violence are 34 times more likely to be hospitalised than other Australian women (Department of Social Services (DSS) 2016). Further estimates suggest that up to 90% of incidents of violence against Aboriginal women go undisclosed (DSS 2016; Willis 2011).

While prevalence estimates are incomplete, evidence suggests that women who have resettled in Australia as migrants and refugees may experience higher rates of family violence than other Australian women (Vaughan et al. 2016; Vaughan et al. 2015; Cleak et al. 2015; Ghafournia 2011; El-Matrah et al. 2011; Bartels 2010; Raj and Silverman 2002). Refugees have often fled countries where they experienced extreme trauma and may have spent time in detention centres that seriously impact mental health, which can increase rates of family violence. Many migrant and refugee women also face specific barriers in accessing family violence prevention services, including: language barriers; lack of knowledge about services or legal rights; fear of police or family separation; social isolation; shame and concerns about social stigma and fear of being isolated from their community (Vaughan et al. 2015, 2; Bartels 2010; Sokoloff 2008). Migrant and refugee women are less likely to report family violence to police and less likely to access preventative services (Allimant and Ostapiej-Piatkowski 2011; Zannettino et al. 2013).

Given the research suggesting the under-representation of CALD and Indigenous families in FDR, in 2017 the Australian Government announced a new pilot programme to deliver Legally Assisted Culturally Appropriate Family Dispute Resolution (LACAFDR) to separating families experiencing family violence from Indigenous and CALD backgrounds. Legally assisted, culturally appropriate family dispute resolution that involves families that have experienced family violence, and coordination of services by the FRC across partner agencies has been described as 'the cutting edge of family law practice' (Kaspiew et al. 2012, x). The LACAFDR programme provided funding of \$8,376,000 to FRCs in eight pilot locations. The Attorney-General's Department commissioned the Australian National University to evaluate the LACAFDR programme which operated from 2017–2021 (see McDonnell and Wright 2020). This paper draws on academic literature to contextualise the original evaluation findings, showing the persistence of under-servicing of Indigenous and CALD client groups in the context of barriers to access to services. The research also used an innovative mixed-method approach of privileging client voice through interviews, supported by large-scale data sets. In producing this research, the team worked closely with the eight LACAFDR pilots, which are located across diverse urban, regional and remote communities: Sunshine FRC (VIC), Broadmeadows FRC (VIC), Tamworth FRC (NSW), Toowoomba FRC (QLD), Bankstown FRC (NSW), Mt. Gravatt FRC (QLD), Darwin and Alice Springs FRC (NT), and Perth Metro FRC (WA) (see Figure 1).

The paper firstly introduces Family Dispute Resolution (FDR) and the LACAFDR programme. Secondly, it describes the methodology consisting of 216 interviews and two separate large-scale client datasets. Third, it discusses the key research findings based on analysis of client data. These findings demonstrated that even with an additional \$8.37 million of funding, Indigenous and CALD families remained significantly underserved in the LACAFDR pilot locations and in FDR more broadly across Australia. Finally, the paper discusses the significant, enduring barriers that CALD and Indigenous families face in accessing mainstream FDR, family relationship, family violence and legal services in Australia. Overall, the paper aims to assist government, services, academic and practitioner

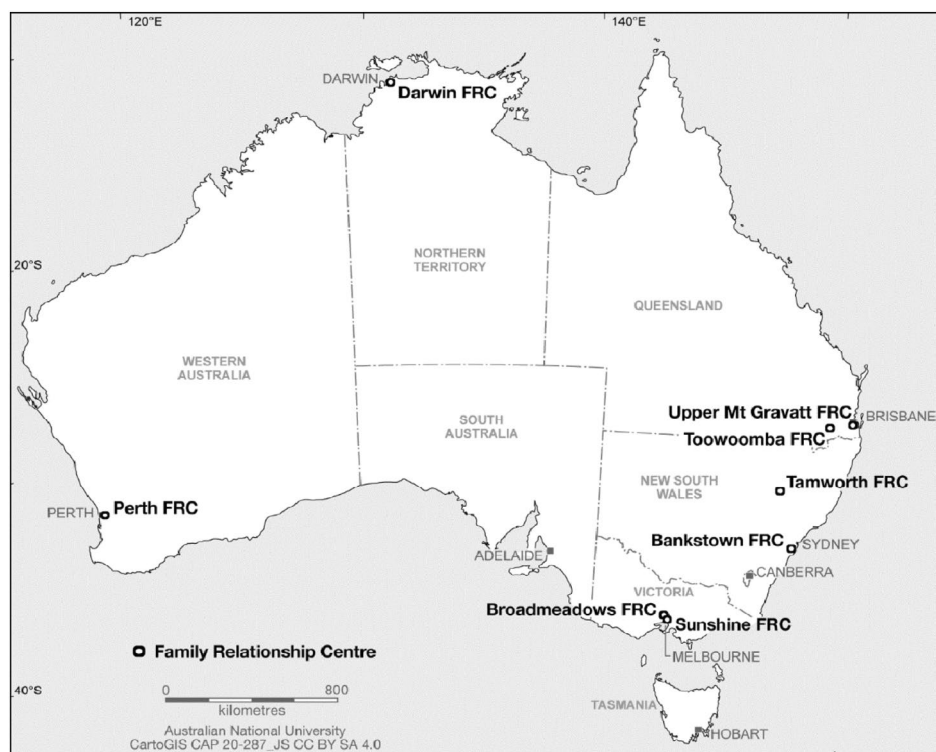


FIGURE 1 | Location of FRCs funded in the LACAFDR programme 2017–2021.

engagement in addressing future service delivery barriers for CALD and Indigenous clients.

The LACAFDR programme was intended to be flexible, to enable services to ensure cultural appropriateness for CALD and Indigenous families. It also removed the costs associated with accessing FDR. Many funded FRCs offered services to culturally diverse populations for the first time (see Table 1). For example, while the population in Sunshine was 13% Vietnamese, the Sunshine FRC previously serviced almost no Vietnamese clients (McDonnell and Wright 2020). Similarly, the Indigenous client base in Tamworth and Toowoomba FRC was, according to agency representatives interviewed, virtually non-existent before the LACAFDR programme. The LACAFDR programme also differed from usual FRC practice in that pilot sites specifically targeted families that had experienced family violence, meaning that all clients in the programme were either perpetrators or survivors of violence.

The term, ‘Cultural and Linguistically Diverse’ is widely utilised by the Australian Government and service providers to categorise a diverse set of cultural and linguistic communities in Australia. The CALD acronym is problematic as it tends to reinforce the idea that communities that have complex service delivery needs and that are ethnically and linguistically diverse can be grouped together under a homogenous identity. We prefer the terms ‘migrant and refugee’ to capture ‘the fact that immigrating to another country has fundamental consequences for families’ (Vaughan et al. 2016, 10). However, the term CALD is used at various points in the paper, in part to reflect the focus on funding and service delivery in the LACAFDR programme and the policy demarcation around specific ‘groups’.

Across Australia, there is a wide diversity amongst Indigenous people. We recognise that many groups of Aboriginal and Torres Strait Islander people prefer more local terms, including, for example, Koori, Murri, Arrernte, Anangu, Yolngu, and Kamilaroi, and, further, that some people and groups prefer the use of Aboriginal, Aboriginal and/or Torres Strait Islander, or First Nations. We prefer to use specific localised terms to mark respect for Aboriginal people and to recognise their enduring connections to Country. However, to reduce identification of clients we do not use localised terms and mainly use the term ‘Indigenous’ to include all Aboriginal and Torres Strait Islander peoples. However, at certain points, to maintain consistency with research participants’ voices we use the term Aboriginal.

2 | Methodology: Privileging Client’s Voices

The research methodology included detailed qualitative fieldwork at each pilot site and development of detailed quantitative analysis of datasets. The research focused first on qualitative interviews, to privilege the voices of clients (see McDonnell and Wright 2020). The research team visited the eight pilot sites over 2 years, spending at least 1 week embedded in each FRC. In total, 216 open-ended interviews were collected during field visits across the eight pilot sites: 80 interviews with clients, 66 with FRC staff and 70 with staff in partner organisations (see Table 1). A research limitation is that client lists for interviews were devised by the services being evaluated; as such, they are potentially more likely to represent clients that services considered to have had a positive experience in FDR, or the clients that were easier to follow up with. We balanced this bias by asking clients what barriers might exist for other clients from their cultural background accessing the service and how the service

TABLE 1 | Services funded in the LACAFDR programme, target client group, total funding received, and interviews conducted.

Location	Service agency	Total funding	Service area	LACAFDR target client group	Interviews conducted
Sunshine, Melbourne (VIC)	Relationships Australia (Victoria) Inc.	\$907,375	Sunshine – servicing the surrounding areas of Wyndham, Melton, Bacchus Marsh, Maribyrnong and Brimbank	Vietnamese	Staff: 6 Clients: 11 Partners: 8
Broadmeadows, Melbourne (VIC)	MacKillop Family Services Limited	\$1,046,875	Hume City Northern Outer Melbourne	Arabic, Turkish, Indian and other Central, South and Southeast Asian ethnicities	Staff: 8 Clients: 9 Partners: 6
Bankstown, Sydney (NSW)	CatholicCare	\$839,825	Canterbury-Bankstown	Arabic, Vietnamese, Mandarin, Turkish, Serbian and other South and Southeast Asian ethnicities	Staff: 8 Clients: 7 Partners: 12
Tamworth ^a (NSW)	Centacare New England North West	\$943,500	Tamworth – servicing the surrounding areas of Inverell, Tenterfield, Moree, Narrabri, Gunnedah and Armidale	Aboriginal (predominantly Kamilaroi nation), Chinese and Malaysian ethnicities	Staff: 5 Clients: 8 Partners: 10
Upper Mount Gravatt, Brisbane (QLD)	Relationships Australia (QLD)	\$1,040,000	Upper Mt. Gravatt – servicing the surrounding areas of Holland Park, Yeronga, Rocklea, Acacia Ridge and Sunnybank	Chinese, Vietnamese, and other South Asian ethnicities	Staff: 10 Clients: 11 Partners: 9
Toowoomba (QLD)	The Corporation of the Roman Catholic Diocese of Toowoomba	\$1,479,827	Toowoomba – servicing the surrounding areas of Darling Downs and Maranoa	South Sudanese, Aboriginal and/or Torres Strait Islander	Staff: 8 Clients: 11 Partners: 10
Perth (WA)	Relationships Australia (Western Australia) Inc.	\$1,453,654	Perth City – servicing the surrounding areas of Kwinana, Canning, Kalamunda, Gosnells, Cockburn, Cottesloe, Claremont, Bayswater and Bassendean	Unclear	Staff: 8 Clients: 10 Partners: 8
Darwin ^a (NT)	Relationships Australia – Northern Territory Inc.	\$664,944	Darwin City - servicing the surrounding areas of Palmerston, East Arnhem, Daly, Tiwi, West Arnhem, Litchfield, Barkly, Katherine and Alice Springs	Aboriginal (from 51 different language groups)	Staff: 13 Clients: 13 Partners: 7
					Total staff: 66 Total Client: 80 Total Partner: 70 Total Interviews: 216

^aThese FRCs provided LACAFDR services across a regional area and via a number of service outlets. Relationships Australia NT in Darwin also provided LACAFDR services in Alice Springs and Katherine. Centacare in Tamworth also offered LACAFDR to clients in Armidale, Narrabri and Glen Innes.

could be improved. Additionally, in interviews with partner organisations, we asked who they might refer to the FRC and the LACAFDR programme, which clients they would not refer, and what stops them from referring these clients.

In terms of our positionality, our disciplinary backgrounds are across public health, law and anthropology. Siobhan McDonnell is a settler scholar of Afro-Caribbean and European ancestry who lives and works on the lands of the Ngunnawal/Ngambri people in Kanberri (Canberra, ACT). Alyson Wright is a settler scholar of European ancestry and currently lives in Garramilla (Darwin NT) of Larrakia people. Alyson was living in Mparntwe (Alice Springs, NT) on Arrernte people's country at the time of the field research.

Australian Government Department of Social Services (DSS) DEX data was requested for all clients receiving FDR. The analysis included data from all FRCs that were funded under the LACAFDR programme (and other FRCs for comparison). This mandatory set of administrative data items in DEX used in the analysis were contained in two datasets: 'client data' and 'attendance data' from January 2015 to 30 December 2019. Datasets were merged via client identification numbers. Descriptive information drawn from the client dataset included date of birth, age, gender, Indigenous status, country of birth, CALD status, household income, homelessness and employment. Variables from the attendance dataset (client FDR process and service information) were: intake and assessment; dispute resolution undertaken; legal practitioner assistance to formalised agreement; type of section 60I certificate issued (McDonnell and Wright 2020). All DEX data outputs were reviewed and approved by DSS staff (see McDonnell and Wright 2020). There were significant limitations to DEX data and issues of data quality, including the lack of variables to identify clients in LACAFDR-specific programmes or to identify clients who experienced family violence.

Due to concerns about the timely availability and limitations of DEX data, we requested data from FRCs regarding LACAFDR clients. Data items were developed in consultation with services and in response to their suggestions that DEX data was insufficient for capturing all their services to clients. We analysed this data to describe clients, their case management, referral pathways and the outcomes associated with mediation. We used this dataset to explore areas considered important in the delivery of the LACAFDR programme, but not currently reported in the DEX system. We asked FRCs to report on case management referrals and support provided. The data provided by services included clients engaged in the LACAFDR programme from 1 July 2017 until 31 December 2019. Where relevant, we tested for significant associations between admission to the LACAFDR programme and programme outcomes. We also tested whether results were sensitive based on broad family groups (CALD, Indigenous and mixed families) and if outcomes differed between Indigenous and CALD clients. For the analysis, DEX data is used to compare services funded for LACAFDR and other FCR services; however, when reporting outcomes of parenting plans, the data provided from FRCs funded by LACAFDR to researchers is used.

In developing this methodology, it was ledged from the outset that most clients interviewed would be either survivors

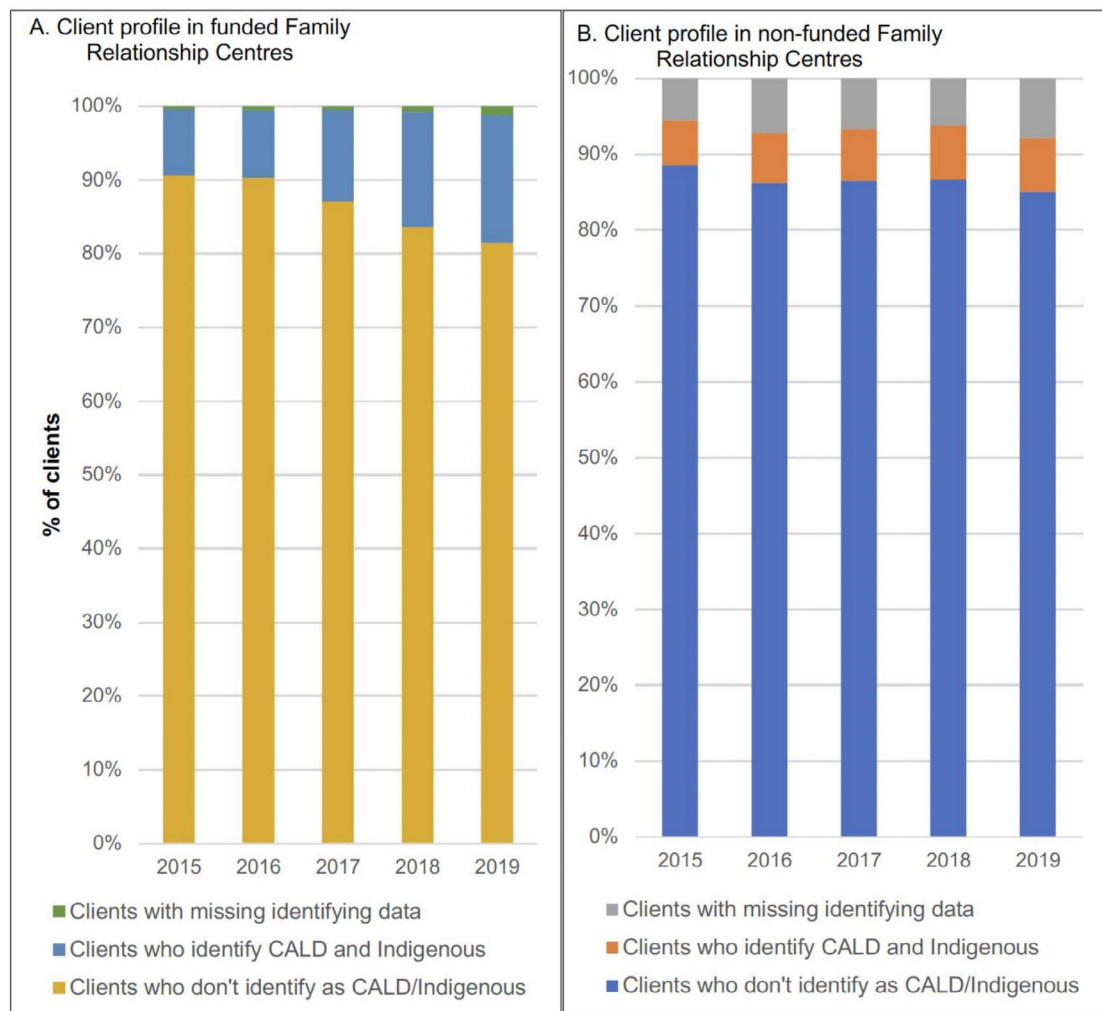
or perpetrators of violence, requiring careful ethical considerations. Each client, service provider and stakeholder interviewed gave their informed consent to being interviewed, and to the storage and subsequent use of any interview data. Ethics approval for the conduct of the research was provided in April 2018 (protocol number 2017/848). An Expert Reference Group was formed to guide the research, including an Indigenous Chair and Indigenous representatives, as well as those with expertise in migrant/refugee research. The reference group met at key strategic points in the project, including in the initial evaluation design, data analysis, and later stages of drafting the final evaluation report (see McDonnell and Wright 2020). The research was also guided by a Steering Committee, made up of representatives from all the service delivery pilot sites involved in the LACAFDR programme, as well as representatives of the Attorney General's Department (AGD). Steering committee members provided important feedback about evaluation methodology, fieldwork timing, updates on each of the pilots and referral numbers.

The research was also guided by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Indigenous Studies (AIATSIS 2012, 2020). The AIATSIS Guidelines are based upon respect for the rights of Indigenous Australians, including rights to self-determination, including the full and fair participation in any processes, projects and activities that impact on them, and the right to control and maintain their culture and heritage. In accordance with guidelines, project governance included a collaborative partnership with the Tangentyere Women's Family Safety Group (TWFSG). The TWFSG governs and directs the work of the Tangentyere Family Violence Prevention Program (TFVPP), is committed to preventing family violence in Town Camps and in the wider Alice Springs community, and provides female Town Camp residents with a voice and action on family violence issues. The TWFSG reviewed and provided expert input on key research findings. Two workshops were designed by the research team to ensure evaluation findings were relevant to Indigenous families and to build accountability to Indigenous people and communities. These discussions informed research findings.

3 | Key Findings: The Under-Servicing of Indigenous and CALD Families Experiencing Family Violence by FRCs

The *Operational Guidelines for Family Relationship Centres* (2017) require services be provided to 'all families regardless of race, religious background, language or ethnic background'. Despite these guidelines, research has repeatedly demonstrated that Indigenous and Culturally and Linguistically Diverse (CALD) families are substantially under-represented amongst those accessing FDR services (Armstrong 2010a; Cunneen et al. 2005; Sauvé 1996; Shah-Kazemi 2000). Therefore, a key research question was whether the funded FRCs were delivering FDR services to Indigenous and CALD families.

Figure 2 reports the proportion of clients who identified as CALD or Indigenous in LACAFDR-funded (Figure 2A) and all other FRCs (referred to here as 'non-funded' services) (Figure 2b)



*Data source: DEX, Department of Social Services

FIGURE 2 | FRC client profiles: LACAFDR-funded services (A) and non-funded services (B).

from 2015 to 2019. The proportion of CALD and Indigenous clients increased in funded services compared to non-funded services. There was an 8.3 percentage point increase in the servicing of Indigenous and CALD clients in funded services (from 9.0% in 2015 to 17.3% in 2019), whereas in non-funded services it increased only marginally (up 2.0 percentage points, from 5.9% in 2015 to 7.9% in 2019).¹ Overall, 8% of clients who identify as either Indigenous or CALD were receiving FDR services from FRCs in 2015–2019, potentially representing a significant underservicing of these Australian families relative to the proportion of the population.

The increase in the proportion of CALD clients was significant: increasing by 5.2 percentage points from 2.4% of all clients in 2015 to 7.6% of all clients in 2019. In 2015, the overall number of Indigenous clients was 185, which increased to 369 clients in 2019, representing a 1 percentage point increase from 4.9% in 2015 to 5.9% in 2019. The proportion of Indigenous clients did not increase at the same rate as the CALD client group and was higher initially prior to the LACAFDR programme. This indicates that the LACAFDR programme was not engaging Indigenous clients in FDR services to the same extent as CALD

clients. However, DEX data cannot distinguish between clients in LACAFDR and mainstream FDR services. Accordingly, for programme-specific outcomes reported below, we have used the data provided by the FRCs involved in LACAFDR. A further limitation is that DEX data does not indicate whether the family had experienced family violence; however, during fieldwork it was frequently commented by staff that most families attending FDR (regardless of ethnicity or cultural background) reported experiencing family violence.

As of 31 December 2019, the eight LACAFDR funded services reported servicing 2155 clients. Just under half were from a CALD background (47%, $n = 1018$ clients), 28% ($n = 596$) were Indigenous clients and a quarter of clients (25%, $n = 541$) were unclassifiable. It is important to note that services used broad definitions of ‘CALD’ clients. Most defined a CALD client as a person who speaks a non-English language within their home or someone born in a non-English speaking country. However, we also interviewed a large number of LACAFDR clients who were fluent English-speakers and second-generation Australians with migrant family backgrounds, or clients defined as CALD from New Zealand, South Africa (English speaking), Britain, Germany or France. In many

TABLE 2 | Analysis of all LACAFDR closed cases as at 31 December 2019.

Analysis includes closed cases to 31 December 2019	CALD	Indigenous	Mixed	Missing	Total
% (n)	N = 496	N = 321	N = 124	N = 126	N = 1067
Type of case					
Single-party engaged	35.1% (174)	51.1% (164)	0.0% (0)	50.0% (63)	37.6% (401)
Multi-parties engaged	64.9% (322)	48.9% (157)	100% (124)	50.0% (63)	61.0% (666)
Involvement in the process					
Closed without mediation	67.7% (336)	83.2% (267)	51.6% (64)	84.9% (107)	72.5% (774)
Closed with mediation	32.3% (160)	16.8% (54)	48.4% (60)	15.1% (19)	27.5% (293)
Section 60I certificate issued					
One person refused or failed to attend	21.0% (104)	22.7% (73)	9.7% (12)	19.8% (25)	20.1% (214)
Deemed not appropriate for mediation before or at mediation	12.1% (60)	5.9% (19)	20.1% (25)	6.3% (8)	10.5% (112)
Genuine effort made by both	14.5% (72)	5.0% (16)	14.5% (18)	4.0% (5)	10.4% (111)
Attended, but genuine effort not made	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)
No certificate issued	35.3% (175)	56.1% (180)	47.6% (59)	32.5% (41)	42.6% (455)
Missing	16.9% (84)	10.4% (34)	8.1% (10)	37.3% (47)	16.3% (174)
Parenting plan made					
Verbal	6.5% (32)	≤2.8% (≤9)	≤5.6% (≤7)	4.0% (≤5)	5.0% (53)
Partial	10.7% (53)	3.1% (10)	16.1% (20)	4.0% (≤5)	8.2% (88)
Full	5.0% (25)	≤2.8% (≤9)	≤5.6% (≤7)	4.0% (≤5)	2.9% (31)
No parenting plan or missing	77.8% (386)	93.5% (300)	75.8% (94)	91.3% (115)	83.9% (895)

Note: Small cells ($n \leq 5$) have been confidentialised.

cases, it was difficult to identify how a specialised culturally appropriate programme was warranted for these families.

3.1 | LACAFDR Provided Extremely Limited Outcomes for Indigenous and CALD Families

While there is significant potential for legally assisted and culturally appropriate family dispute resolution to assist families, we found that client experiences in funded services were unsatisfactory and resulted in limited outcomes for many Indigenous and CALD families. Although LACAFDR pilot sites were specifically funded to serve Indigenous families, the data obtained from these sites indicated that only 7% of all cases, or a total of 21 Indigenous families, were able to reach a parenting plan, the legal outcome associated with FDR (see Table 2). In comparison, 23% of CALD families engaged in LACAFDR made a parenting plan (Table 2). Both CALD and Indigenous families are less likely to finalise a parenting plan than all other families who go through standard FDR (28%).

A key finding was that none of the FRCs in the programme significantly adapted their mainstream FDR model to meet the cultural needs associated with Indigenous, refugee or migrant communities. Across all families engaged in LACAFDR, over

40% were issued with a section 60I certificate which justifies entering family court (see Table 2). Just over half of Indigenous clients in the LACAFDR programme (51%, $n = 164$) left the service following intake or prior to mediation and 82% of client cases were closed without mediation, indicating that services were inadequate for Indigenous families. Many Indigenous staff in the FRCs reported concerns with families not feeling a sense of place and connection in the FDR. A staff member in one funded service who was responsible for delivering child-focused sessions responded to questions about adapting parenting programme resources to different cultures by saying:

In terms of cultural map-ability, our training is able to be mapped to particular cultures and family systems because it operates on the attachment-based model. So it is able to transfer because attachment exists in the same ways between different cultures... *So it is difficult to say how does that parenting programme account for differences in culture, other than to say the way the parent applies is where the cultural considerations come in to play (emphasis added).*

Another staff member commented that they did not refer their clients to parenting programmes or other supports, because

clients' English skills were not sufficient, and concepts used in the programmes were "a Western perspective of families" (FDR staff interview). Perhaps well-intentioned, views such as these can burden families to adapt learnings from programmes to their culture, and also assume concepts, ideas and values are transferable between cultures and languages.

Even where a parenting plan was established in an FDR process, they were often not subsequently followed, particularly in the context of family violence and coercive control. Clients described processes where mediation resulted in parenting plans that were not followed:

Client A: Yes, we reached an agreement, but he didn't really follow the agreement and so he would just come over to us to visit the child, but all this time every day he just came in all the time to the house. He didn't follow that Agreement.

Client B: We sort of like reached an agreement, but as soon as we left here [the FDR office], he wasn't very compliant with what he'd agreed on. So when we came for the second mediation, we also talked about that and he gave his own excuses... Because I knew that most of the things that he was agreeing to he wouldn't be able to do.

Client C: Now we've reached a point where it wasn't working because he was returning him an hour or two late. Because now he's reached a point where he can actually drink cow's milk, so he would just keep him away for longer, which was very upsetting to me, and also upsetting to my son as well because he sort of doesn't understand then why his mum's not there and he's constantly asking for me.

A number of client accounts in all services suggested that often parenting plans (which mark successful FDR outcomes) are not complied with. While funded services are not responsible for post-agreement enforcement, they are responsible for ensuring parenting plans are realistic and workable. Additionally, clients' stories identify that more culturally attuned definitions of success may shift FDR practice models towards more inclusive and sustained engagement with families, rather than compliance alone. Clearly, parenting plans as a sole measure of success in FDR are inadequate, particularly where follow-through is low.

4 | The Substantial, Ongoing Barriers to the Delivery of FDR to Indigenous and CALD Families

A key finding is the substantial underperformance of mainstream services with respect to Indigenous and CALD families both in the LACAFDR program and in FDR servicing more broadly across Australia (McDonnell and Wright 2020). Drawing on the 216 interviews conducted during this project, we found significant and ongoing barriers faced by Indigenous and CALD families in accessing FDR services. Historical factors and trauma related to loss of identity can create very real

barriers to Indigenous and CALD families accessing FDR services. A key evaluation finding is that many Indigenous families, and a significant number of CALD families, consider mainstream FDR services provided by FRCs to be culturally unsafe (McDonnell and Wright 2020). Several Indigenous clients expressed discomfort with the adversarial framing of disputes and the lack of involvement of extended family or community-based supports, which they felt made processes culturally inappropriate or ineffective. CALD families often reported issues with interpreters or lack of use of interpreters at pre-mediation sessions (McDonnell and Wright 2020). While a detailed discussion of cultural safety is beyond the scope of this paper, a brief discussion of interconnected barriers to access is included below.

4.1 | Lack of Culturally Safe Service Delivery

A culturally safe service environment is one where all people can feel spiritually, socially, emotionally and physically safe. In their report on working with families with complex needs, the Family Law Council describes a culturally safe service as creating:

An environment, which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity and truly listening

(Family Law Council 2016, 97).

The Family Law Council goes on to describe the importance of developing culturally safe and competent training for family law professionals who are dealing with Aboriginal and Torres Strait Islander and CALD families (Family Law Council 2016, 100). Culturally safe practices include actions which recognise and respect the cultural identities of people, and provide services that meet their cultural needs, social expectations and rights. The 2006 Family Law Act amendments include recognition of a child's culture as the basis for an assessment of what was in the best interests of the child, including a child's right to enjoy their culture. As a result, family courts are required to consider the children's rights to maintain connection with culture, and kinship and child-rearing practices amongst different cultural groups (Family Law Council 2012, 7). These legal requirements are important considerations not only for the courts, but also for services offering 'culturally safe' FDR.

Indigenous, migrant and refugee families often have complex needs and may present with histories of trauma due to 'loss of identity, kinship ties and belonging, as well as disconnection to family and, in some cases, the loss of children through involvement in child protection systems' (Family Law Council 2016, 9). Migrant and refugee clients are often extremely concerned about government oversight, and with engaging in services related to child protection, police, courts, taxation, immigration and housing departments (Sawrikar and Katz 2008). These concerns can be exacerbated where people from refugee or migrant backgrounds have travelled from source countries

where they have experienced state-sanctioned violence or authoritarian regimes that have made them distrustful of government oversight (Darebin Community Legal Centre and Fitzroy Legal Centre 2018, 3). A Vietnamese outreach worker working with the Vietnamese community to build relationships with the FRC described this fear of government oversight as a barrier to people accessing the service: ‘Vietnamese people are scared of us. They think that we might be a government department’. Similarly, a Vietnamese Community Legal Centre lawyer noted that:

Vietnamese people can be very suspicious of the process and they are unfamiliar with mediation... Vietnamese people have a huge fear of authority, and of being powerless in the process.

This lack of trust in government oversight can arise from past trauma, including refugee experiences of asylum, but also from practical considerations such as hidden assets that families do not want to be taxed or power and control of other family members, such as in-laws.

A significant barrier to Indigenous families accessing FDR services is the real and palpable fear that their children will be taken away, or that a partner will end up incarcerated due to disclosure of family violence. These issues can be compounded by the institutional ‘whiteness’ of service organisations and their professional staff (see discussion in McDonnell and Wright 2020; Armitage 2024; Langton et al. 2020; Willis 2011). Lack of cultural awareness or bias (unconscious or otherwise) can influence assessments made about the safety of parenting arrangements for children, particularly in some Indigenous families. A lawyer with Aboriginal Legal Aid describes some of the problems his clients face in engaging with the local FRC:

Organisations like this one need Aboriginal people working for them, not necessarily in mediation but in the organisation because otherwise they look overwhelmingly white...White people don't always recognise that children are being cared for even when they move between different family members, it's an aspect of parenting that not every culture shares.

For this lawyer, lack of understanding led to inappropriate assessments that Aboriginal children were unsafe or not appropriately cared for. Their quote must be interpreted with reference to the deeply concerning increase in rates of Indigenous child removal over the last decade. The concerns expressed by Indigenous people around the removal of children is not just an assumed fear; it is also a pressing reality. The rate of removal of children from Aboriginal and Torres Strait Islander families has rapidly escalated over the last decade. In 2007–08 there were 9070 Aboriginal and Torres Strait Islander children in out-of-home care. By 2016–17 this figure had increased by 80% to 17,664 children (Australian Productivity Commission 2018; Funston and Herring 2016).

The enduring legacy of the forced removal of Indigenous children means that many Aboriginal and Torres Strait Islander families are resistant to engaging with family legal or relationship services (McDonnell and Wright 2020; Langton et al. 2020; Armitage 2024; Willis 2011). As one Indigenous client stated:

Our mob is frightened about the repercussions if they go and see government agencies. They are still frightened that their kids will be taken.

Similarly, a former FRC Aboriginal staff member stated that:

We are mandatory reporters. The Aboriginal community has had a hard time with FaCS [Department of Family and Community Services] and they are frightened.

Across all pilot sites that serviced a significant proportion of Indigenous families, both clients and Indigenous staff suggested that fear of the forced removal of children remains a significant and enduring barrier to Indigenous people, both in terms of accessing FDR services, and detailing levels of family violence experienced.

4.2 | Lack of Awareness About FDR

A major barrier for CALD and Indigenous clients is a lack of knowledge about available services (Maher and Segrave 2018; Vaughan et al. 2015; Bartels 2010; Sawrikar and Katz 2008; Sokoloff 2008). Lack of knowledge was mentioned repeatedly during interviews with clients, partner organisations, and other community-based organisations. For example, one client stated:

People don't know about the service. They don't know how to find places like this for support.

Barriers caused by a lack of awareness about services may be further compounded if Indigenous and CALD clients have low levels of literacy and limited English skills. During our first workshop in Alice Springs, we showed women from the TWFSG a picture of the FRC and asked if they knew what services were provided. We found that all the women in the room, who were specialist family violence advocates, responded that they did not know about the Family Relationship Centre.

Within the pilot program locations, representatives of community-based CALD and Indigenous organisations repeatedly reported a lack of awareness about the LACAFDR program, and FDR more broadly. As one specialist Arabic service provider commented:

Before I was a professional worker I wouldn't have known about the service. A lot of women are struggling, and they really need to know that the service exists.

Another client who works for a major Aboriginal organisation described her surprise in learning that the service existed:

I was the supervisor at the front counter at that stage of a [major Aboriginal organisation], so the organisations that we work with, we have to be on top of everything... I had no idea the service existed until I go here.

This quote suggests a lack of outreach between FRCs, CALD and local Aboriginal organisations, at least in the pilot locations where these interviews were conducted.

4.3 | Language Barriers and Other Practical Difficulties in Accessing FDR

Language barriers remain a major access issue for clients, particularly for newly arrived migrant and refugee women who can feel isolated, especially so if they have not been able to attend English-language programs (Kaspiew et al. 2012; Vaughan et al. 2015, 2; Sawrikar 2015; Bartels 2010; Sokoloff 2008). While interpreters play a role for individual clients who have already accessed a service, there is a need for services to promote themselves and engage the community in appropriate languages, as expressed by two clients:

Client A: I think to help the community, that [they need] to spread the word of this service... if I didn't go through Victoria Legal Aid, I wouldn't have known this existed and this was offered.

Client B: People with young kids and migrants who've come over, they feel stuck. Stuck in the sense that their English is limited, and they don't know who to reach out to... my mum, she doesn't speak English very well, right? If she had any sort of issues, she wouldn't know where to go, she wouldn't have a clue. Even as part of the Arabic community in Brisbane, she wouldn't know, because they don't know.

These quotes demonstrate how language barriers interact with other barriers to access, including the way that migrant communities remain separate and distinct, and therefore require specific access and outreach strategies and programs so as to access services.

Telecommunication and transport limitations as well as actual service access issues can also be major barriers to accessing FRC services, particularly in regional locations but also in urban settings. In rural and remote areas, clients reported travelling hundreds of kilometres to a major centre to access services (Aboriginal and Torres Strait Islander Legal Service (QLD) 2018; Central Australian Women's Legal Service 2018). Urban clients often reported challenges with catching public transport or finding parking locations. These access issues can become even more complex when FRC's require a large number of meetings prior to FDR taking place. As one Legal Aid lawyer in a regional location noted:

It's a time-consuming process. They want them to come along to do six sessions before mediation, but that's almost impossible if the client doesn't live in town. And the process requires that level of commitment from both parties.

Most regional FRCs are located in a town centre, which can create access issues across a widely dispersed regional population. Developing appropriate models of outreach where there are high needs (but a low population base) is a challenge for these FRCs. Evidence from regional areas suggests that, beyond the major service centre, smaller towns can be quite politically fractured, meaning that FRCs need to be careful who they build local partnerships with, as this will potentially affect the use of the service. However, there is also a lot of criticism amongst regional populations, and particularly Indigenous populations, of 'fly-in/fly-out' (otherwise termed 'seagull') models of service delivery. FRC staff reported that lack of childcare access can also prevent service access, particularly for mothers. These barriers are compounded when mothers have many carer responsibilities and are also working.

4.4 | Families Wanting to Stay Together and a Sense of Shame About Family Separation

Amongst both CALD and Indigenous families, there is often a cultural expectation that families will stay together, so that separation becomes a source of shame (Armitage 2024; Lumby and Farrelly 2009; Armstrong 2010a; Vaughan et al. 2015; Bartels 2010; Sokoloff 2008). FRCs aim to support all families, including those wanting to stay together. This often conflicts with the current FDR process provided by FRCs, which is designed to resolve disputes between separating couples. Efforts to reconcile or reduce conflict within families are usually not considered part of FDR practice. Research amongst CALD groups suggests there are often cultural expectations that families will stay together, and many families report that they want to stay together, despite conflict or violence (Vaughan et al. 2015; Armstrong 2010b). Similarly, Indigenous FRC staff members commented that many Indigenous families don't want to separate and therefore do not meet the LACAFDR program guidelines. One Indigenous staff member told us:

We've got the criteria of separating, where I know most Aboriginal families, they might have a blue or whatever, but they don't want to separate ... I've been in forums and that where they [the parents] don't want to separate, where we are saying we can't really generally help then.

A significant cohort of families are looking for services that move beyond couples counselling and provide mediation to support families to resolve conflict and improve communication within the family or the extended family. In Australia, Smyth et al. (2017) have argued that there has been a lack of public policy attention on efforts aimed at strengthening couples and families before major problems develop. In many cases, families who experience family violence and who separate may later reconcile.

Clients from CALD and Indigenous backgrounds are also concerned that they will be judged by Anglo-Australian professional staff. There is also a deep uncertainty amongst migrant, refugee and Indigenous communities about whether professional staff and mediators will understand their problems or be sensitive to cultural or religious differences (Ojelabi et al. 2011; Armstrong 2010b). Often, couples from CALD backgrounds will seek the support of religious leaders and extended family members when facing difficulties. They may often be advised to reconcile and stay together, which may further compound their feelings of shame and inadequacy when the relationship fails. Many clients described the impact of their separation on children, their extended family and broader community relationships. For example, one elderly man who had decided to separate from his wife stated: “The impact of our separation is enormous. There are big effects on our children and grandchildren”. Clients from particular cultural backgrounds discussed the reputational shame associated with accessing services related to family separation:

Oh, definitely there's a barrier, because with the Vietnamese culture, it's all about face value, it's all about reputation. If you're accessing these kinds of services, it's kind of like bringing shame upon yourself as well as your family, because you are not capable of resolving your own problems. And so that actually prevents a lot of people from using this kind of service.

Within the Vietnamese community, this concept of shame is closely related to the desire to keep problems private and within the family. One Vietnamese male client described the importance of keeping things private, saying:

...in the Vietnamese tradition, the people tend to keep to themselves and to their family issues. They don't want to be close to other people and everyone's trying to resolve the matter within the family...Vietnamese people are not open like the Westerners. They try to keep it to themselves or within the family boundaries.

These quotes suggest the importance of creating culturally safe pathways into services, and for building understanding amongst FRC staff so that they recognise these existing cultural norms for managing family disputes.

For many Indigenous and CALD families, extended family members, parents or in-laws can be living with the family or heavily involved in relationship matters between couples. Couples, particularly those who are younger or have young families, can feel ashamed to share their conflict with other family members and parents. Some interviewees confided in the evaluation team that they were hiding their separation from other family members or continuing to live together because they were worried about the shame separation might bring to the family. This shame can occur both when extended families live in Australia or when families live overseas. For example, an Indian client shared with

us her experiences of talking to her parents in India about separation and family violence:

You get all emotional. I tried to express it to them [my parents], but it doesn't come across in the right way because...They judge you... It's very common in our culture that okay, every marriage has a problem, just deal with that and you don't go around and tell people about it. You don't wash your dirty linen in public and then hang it out to dry for everyone to see.

This client's story demonstrates the challenges for CALD women who are isolated and who face significant social stigma associated with separation.

4.5 | Close-Knit Communities and Fear of Gossip

Another major barrier to CALD and Indigenous clients accessing FDR is fear that their personal stories will be ‘gossiped about’ or ‘will get out in the wider community’ (see McDonnell and Wright 2020; Lumby and Farrelly 2009; Carlson and Farrelly 2009). Many specialised migrant and refugee service providers described this as a major barrier:

Service Provider 1: Vietnamese people want to keep family problems private. They might approach elder members of the family to discuss problems or a priest or monk.

Service Provider 2: Some people don't want to go to any cultural worker in their own community, because you don't want your story to be spread. Lebanese people don't want to discuss their personal life in front of other people.

Fear around the lack of confidentiality associated with FDR services also extended, in some cases, to the use of interpreters (Sawrikar 2015). This was particularly the case where clients were members of linguistic groups that had only a small number of interpreters, and when agencies were engaging interpreters to provide face-to-face services rather than phone-based translation.

Aboriginal clients who were living in regional locations amongst closely connected communities reported that because ‘everyone knows everyone’ they were concerned that their use of the service would result in community gossip, ‘that their story will get out in the community’ (see McDonnell and Wright 2020; Lumby and Farrelly 2009). One client described entering an FRC in a regional location:

When we first came and met with the FDR team, I was worried about being in the small town because so many of us are related. Sometimes it means that stories travel like wildfire. But it was good, when I saw her, Aunty [Aboriginal community engagement staff member]. She understood kinship connections.

This quote suggests that even in close-knit regional towns, FRCs can overcome these apprehensions around client stories being shared, as people begin to understand the practice of the service and trust the Aboriginal staff involved.

5 | Conclusion

This paper shows the inadequacy of mainstream services providing family dispute resolution to CALD and Indigenous families who have experienced family violence. While there is significant potential for legally assisted and culturally appropriate family dispute resolution to assist Indigenous and CALD families who have experienced family violence in resolving disputes, the research shows that client experiences in mainstream FRC services were unsatisfactory and resulted in very limited outcomes for a large number of clients. The \$8,376,000 funding for the LACAFDR programme increased the provisioning of FDR to CALD and Indigenous clients, but there remained a significant underservicing of Indigenous families and limited outcomes for all families. Although pilot sites were specifically funded to serve Indigenous families, data from the sites indicated that only 21 families (7% of cases) involving Indigenous families were able to reach a parenting plan, the legal outcome associated with FDR. In comparison, 23% of CALD families engaged in LACAFDR made a parenting plan. Both CALD and Indigenous families were less likely to finalise a parenting plan than all other families who go through standard FDR (in total, 28% of these families complete a parenting plan). While services funded for LACAFDR were encouraged to adapt their services and programmes offered to clients, few did so in culturally appropriate ways; rather, they attempted to add extra supports for families to fit into the existing FDR model. Interviews with staff revealed that defaulting to conventional models was easier and timelier for services than rethinking the model of FDR (McDonnell and Wright 2020). However, ideas of adapting the model to ensure it was more culturally relevant were present in the staff and communities that were interviewed (McDonnell and Wright 2020).

Numerous entrenched barriers continue to exist for Indigenous and CALD populations accessing FDR services within mainstream FRCs. In addition to structural barriers and a lack of knowledge about existing mainstream FDR providers, a number of cultural safety barriers influence the trust that Indigenous and CALD clients place in mainstream services. The research highlights, for example, how Indigenous families remain extremely concerned that their children will be removed, or that partners will be incarcerated as a result of reporting family violence. Lack of trust in services, coupled with concerns about government oversight, means it is likely that the level and extent of family violence may be underreported in both Indigenous and CALD communities. Without trust, clients either do not access or do not stay in a service. The LACAFDR programme shows that many Indigenous families feel unsafe with mainstream FRC providers. Over half the Indigenous clients in the LACAFDR programme (51%, $n = 164$) left the service following intake or before mediation, suggesting that current service provision is not meeting the needs of Indigenous families.

The LACAFDR findings demonstrate that even with significant additional funding, there remains a significant and critical underservicing of Indigenous and CALD families by mainstream FRC providers. Significant sector-wide structural and systemic reform is needed to adequately service the needs of Indigenous, refugee and migrant families who are separating, as well as those who are experiencing family violence, in Australia. Future structural reform of the family law system must support greater diversification in services funded to provide family dispute resolution, including reducing the reliance on mainstream Family Relationship Centres. In relation to Indigenous and CALD families, structural reform of the family law system must offer communities and community-controlled organisations the opportunity to define and develop models of family dispute resolution that embed community governance structures into models of service delivery, and in particular, decision-making around the types of culturally safe dispute resolution services employed.

Author Contributions

Alyson Wright: writing – original draft, validation, visualization, formal analysis, project administration, data curation, resources, software.
Siobhan McDonnell: conceptualization, investigation, funding acquisition, writing – original draft, methodology, validation, visualization, writing – review and editing, formal analysis, project administration, data curation, supervision, resources, software.

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Conflicts of Interest

The authors declare no conflicts of interest.

Data Availability Statement

The data that support the findings of this study are available from Australian Government/DSS. Restrictions apply to the availability of these data, which were used under license for this study. Data are available with the permission of Australian Government/DSS.

Endnotes

¹The observable difference was statistically significant when combining all years of service, but also across the years (Table 2). At the end of the research period (2019), Indigenous and CALD clients were 1.3 times (95%, CI 1.29–1.49, p -value < 0.001) more likely to access the funded services than non-funded services.

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