



**Australian Government**

**Attorney-General's Department**

**Civil Justice Division**

# **A NEW ACCREDITATION SYSTEM**

## **FAMILY DISPUTE RESOLUTION PRACTITIONERS**



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## **A NEW ACCREDITATION SYSTEM FOR FAMILY DISPUTE RESOLUTION PRACTITIONERS**

**The Australian Government Attorney-General's Department is seeking feedback on the proposed implementation of a new accreditation system for family dispute resolution practitioners under the *Family Law Act 1975*.**

**This paper sets out a range of issues for your consideration. Comments and feedback are sought by Wednesday 20 December 2006. Please send your comments to:**

**Email: [the family dispute resolution feedback mailbox](#)**

**or**

**Family Pathways Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600**

# A NEW ACCREDITATION SYSTEM FOR FAMILY DISPUTE RESOLUTION PRACTITIONERS

## 1. Introduction

The Australian Government's current reforms to the family law system are the most significant in 30 years. Almost \$400 million over four years has been provided to assist Australian families by:

- helping to build strong, healthy relationships and where possible, assist preventing separation
- where separation does occur, helping parents agree on what is best for their children rather than fighting in the courtroom, through the provision of information, advice and dispute resolution services, and
- establishing a central entry-point to the family law system to provide a doorway to the services families need and assistance to them.

A key component of this system is the establishment of 65 Family Relationship Centres (Centres) as the first point of contact for families requiring assistance. Centres are supported by the Family Relationships Advice Line and Family Relationships Online. The Family Relationship Advice Line and Family Relationships Online commenced operation on 1 July 2006 with the first 15 Family Relationship Centres opening for business on Monday 3 July. The remaining 50 Centres will commence operation over the next two years along with another 60 new services funded under the Australian Government's Family Relationship Services Program. These services will operate along side the approximately 150 services already funded under the Family Relationships Services Program.

These Australian Government funded community-based services operate within a wider system of services including those in the community and private sectors, as well as services funded by state and territory governments (such as legal aid commissions, community justice centres or community legal centres). All provide assistance and support to families requiring advice or referral, facing separation or divorce.

A key determinant of the success of the family law reforms will be the ability of Australian families to access *timely* assistance provided by *qualified* practitioners capable of delivering quality services – wherever in the system the services are provided.

The Australian Government intends to introduce a new accreditation system for *family dispute resolution practitioners*<sup>1</sup> to promote quality service provision in line with the recent reforms to the family law system and their responsibilities under the *Family Law Act 1975*.

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<sup>1</sup> The Family Law Act 1975 contains explicit requirements for accreditation only in respect of family counsellors (s10C) and family dispute resolution practitioners (s10G). It is not intended, at this stage, to introduce mandatory accreditation requirements for family counsellors or other family relationship professionals such as children's contact service workers or family relationship educators.

The proposed new accreditation system is also aimed at responding to calls from practitioners for a system that recognises the professionalism of those who provide services within the family relationships sector.

This paper raises a number of key questions about how a new accreditation system could be implemented and seeks feedback about the best way forward.

## **2. Setting the Scene**

### *The Family Relationship Sector Workforce*

The rapid expansion of Australian Government funded family relationship support services over the period 2006-07 to 2008-09 is expected to increase the demand for qualified family relationship professionals. In particular, a key source of increased demand for family dispute resolution services is expected to result from the introduction, from 1 July 2007, of the requirement for separating parents with parenting disputes to undertake compulsory dispute resolution, and to make a genuine attempt to resolve their dispute, before being able to lodge an application in the courts for a parenting order.

The expansion of family relationship support services is occurring in the broader context of an Australian workforce that is generally facing skills shortages, where the population is ageing and there is a concern that without sufficient skilled workers many businesses will have difficulty in continuing to produce their current level of output, let alone in expanding their output<sup>2</sup> to keep up with needs.

The Community Services and Health workforce (of which family dispute resolution practitioners form a part) is ageing, with almost 50% of the current workforce aged over 45<sup>3</sup>, predominantly female, often part-time and faces pressure due to low remuneration levels and barriers to entry such as the length and cost of training.<sup>4</sup>

Within this broader context the Australian Government is seeking to ensure that a qualified and viable family dispute resolution *workforce is maintained* and that new practitioners are *encouraged to enter* the family relationships workforce to meet the expected increased demand for family dispute resolution services as a result of the recent reforms to the family law system.

There is also anecdotal evidence that it is becoming more challenging for organisations to attract sufficient numbers of qualified family dispute resolution practitioners.

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<sup>2</sup> 'Workforce Tomorrow' Department of Employment and Workplace Relations Commonwealth of Australia 2005 p3

<sup>3</sup> *ibid* p11

<sup>4</sup> Community Services and Health Industry Skills Council: Submission to the Productivity Commission Issues Paper May 2005

## *Quality in the Current Family Relationships System*

The Australian Government is keen to put in place a new system that assists people seeking family dispute resolution services to receive *quality* services whether these are accessed in the community, private or government funded sector, or whether they are provided in metropolitan areas or in regional or remote areas of Australia.

The family dispute resolution sector comprises a range of practitioners with different educational backgrounds and work experiences. Many of these practitioners hold formal qualifications obtained from tertiary institutions such as universities or through the vocational education and training sector. Many have had other training (including that obtained ‘on-the-job’), while others may not hold any formal qualifications but have had many years of experience providing these services.

Family dispute resolution services funded through the Family Relationship Services Program are required, through their funding agreements with the Attorney-General’s Department or the Department of Families, Community Services and Indigenous Affairs (FaCSIA), to ensure that the practitioners they employ meet certain requirements as to qualifications, skills and experience.

All other family dispute resolution practitioners are required to meet requirements set out in Regulation 83 (formerly Regulations 60 and 61) of the Family Law Regulations 1984. Regulation 83 broadly requires these practitioners to:

- have an appropriate degree, diploma or other qualification (in, for example, law, social work, psychology)
- undertake specific mediation or dispute resolution training
- have engaged in some supervised practise, and
- undertake at least 12 hours of education or training in family dispute resolution each calendar year (with no more than 12 months elapsing between periods of training).

## *What are the Problems with Quality in the Current Family Relationships System?*

Currently there are no *nationally consistent* standards<sup>5</sup> to provide a benchmark for the qualifications, skills and training required of family dispute resolution practitioners. While Regulation 83 provides a starting point, there is a great deal of variation in the skill and experience of practitioners who fall within its ambit.

While the Australian Government ensures, through its funding agreements, a level of standards for family dispute resolution practitioners who work for services funded under the Family Relationship Services Program, there is no such ability to regulate

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<sup>5</sup> Noting that some jurisdictions, for example, the Australian Capital Territory, have developed standards which apply generally to mediators

compliance with Regulation 83 for individuals or services that do not receive Australian Government funding.

Similarly, other government funded organisations, such as legal aid commissions, community justice centres and community legal centres, have processes (including training) in place to ensure a certain standard of service provision from the practitioners they employ.

However, there is currently no capacity for ensuring that individuals or organisations providing family dispute resolution, who do not receive any form of government funding, comply with Family Law Regulation 83. Many of these individuals or organisations voluntarily ensure that they, or their employees, meet the requirements of Regulation 83, and other quality or ethical standards that may be required by relevant professional associations. However, the potential remains for practitioners to hold themselves out as a family dispute resolution practitioner without necessarily having the qualifications or experience to do so.

### *Principles for establishing a new accreditation<sup>6</sup> framework*

To ensure that the new accreditation system facilitates the delivery of quality services by skilled practitioners without creating workforce disincentives the discussions and options set out later in this paper are underpinned by three key principles:

- *simplicity* – the new accreditation system must be simple for practitioners to encourage their participation, facilitate a smooth transition from the current system to the new arrangements, and does not tie up individuals or services in unnecessary ‘red-tape’ in demonstrating that they meet any new requirements
- *cost-effectiveness* – the new system must not be costly for individual practitioners or organisations to participate in, and must not be so time consuming that it acts as a disincentive to participate
- *flexibility* – a ‘one size fits all’ approach will not be sufficient to meet the needs of the diverse range of practitioners that comprise the family dispute resolution workforce.

The development of a nationally consistent accreditation system is occurring at a time of significant change for the sector including the implementation of new services and changes to service delivery (such as compulsory dispute resolution).

For this reason, this paper does not include discussion about a ‘fully optioned’ accreditation model (such as those that exist in the child care and migration agent sectors), with a separate accrediting body and independent complaints and review mechanism. It instead focuses on a ‘first-step’ approach that seeks to address the problems in the current system, and implement one that can be monitored and built upon, if necessary, as the new family law system becomes established.

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<sup>6</sup> For the purposes of this paper ‘accreditation’ means a process of formal and public recognition and verification that an individual meets, and continues to meet defined criteria.

### **3. The New Accreditation System**

#### *Transitional Arrangements*

While the Australian Government is intending to introduce a new accreditation system, time will be required for family dispute resolution practitioners to meet any new standards that are introduced.

To ensure that family dispute resolution services can continue on an uninterrupted basis from 1 July 2006, and that there will be ‘accredited’ practitioners available from 1 July 2007, transitional arrangements have been put in place to ensure that family dispute resolution practitioners who either work for a service funded under the Family Relationship Services Program<sup>7</sup> or who otherwise meet the requirements of Family Law Regulation 83 are ‘taken to be accredited’ during the transitional period. The transitional period runs from 1 July 2006 to 30 June 2009.<sup>8</sup>

A full description of the transitional arrangements is at [Attachment A](#).

#### *A Framework for a New Accreditation System*

The recent changes to the Family Law Act also include a framework for the new accreditation system.<sup>9</sup> This framework enables new Accreditation Rules to be made as part of the Family Law Regulations 1984.

The Accreditation Rules can deal with a range of matters relating to the accreditation of family dispute resolution practitioners including:

- the standards that are to be met by persons seeking to be accredited
- how accreditation is to be recognised, for example, by the establishment of a register
- the standards and other obligations that accredited persons must continue to meet in order to remain accredited, and
- a process for handling complaints about accredited persons.

The following sections of this paper deal with these and other matters relevant to a new accreditation system for family dispute resolution practitioners.

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<sup>7</sup> These services are required to meet contractual obligations relating to qualifications, supervision, training and staff appraisal of their family dispute resolution practitioners

<sup>8</sup> Family Law Regulation 82

<sup>9</sup> Section 10A

## 4. Key Issues

### *Compulsory Dispute Resolution and Accreditation*

From 1 July 2007, a new requirement for parents with new parenting issues to attend compulsory dispute resolution (subject to certain exceptions including family violence or child abuse) will commence. Parents who are able to resolve their own parenting issues will not be required to attend family dispute resolution.

In circumstances where parents are required to attend compulsory dispute resolution, these services must be provided by an *accredited* family dispute resolution practitioner.<sup>10</sup>

Where parents are unable to resolve their parenting dispute through the dispute resolution process and one or both want to file an application for a parenting order with the court, the dispute resolution practitioner will have a legislative responsibility to issue a certificate<sup>11</sup> that states that:

- dispute resolution was not attended because of the refusal or failure of the other party to attend, or
- dispute resolution was not attended because the dispute resolution practitioner considers it would not be appropriate to conduct the dispute resolution having regard to certain matters<sup>12</sup>, or
- the parties attended family dispute resolution and made a genuine effort to resolve their issues, or
- the parties attended dispute resolution, but that one or more of the parties did not make a genuine effort to resolve the dispute.

This certificate will be required if a parent, or other relevant person, decides to make an application to the court for a parenting order.

Parents will be able to attend family dispute resolution services at a range of services including Family Relationship Centres, or at any other community, private or government-funded service (such as legal aid commissions, community justice centres or community legal centres) that have accredited family dispute resolution practitioners.

### *Registration of Accredited Family Dispute Resolution Practitioners*

From 1 July 2007 parents and others seeking family dispute resolution services will need to be able to locate an accredited family dispute resolution practitioner or an organisation that employs accredited family dispute resolution practitioners. The courts will also need to know that family dispute resolution certificates that have been

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<sup>10</sup> The definition of 'family dispute resolution practitioner' appears in s10G of the *Family Law Act 1975*

<sup>11</sup> sub-section 60I(8) *Family Law Act 1975*

<sup>12</sup> Family Law Regulation 63

filed with an application for a parenting order have been issued by an accredited family dispute resolution practitioner.

A range of options exist for ensuring that accredited family dispute resolution practitioners are able to be identified in an easily accessible manner. These include:

- (i) an entirely self-regulated system whereby family dispute resolution practitioners are able to advertise (for example, in the Yellow Pages) as being an accredited practitioner
- (ii) self-registration on a central database managed by an appropriate organisation, or
- (iii) requiring practitioners to provide evidence that they do, in fact, meet the relevant accreditation requirements (as set above) from 1 July 2007 on a central database managed by an appropriate organisation.

The diverse nature of the professionals who comprise the family dispute resolution workforce (including mediators, social workers, psychologists, lawyers, barristers and others) means that there is currently no one body representative of the whole family dispute resolution workforce that could establish and maintain a register.

An option that avoids the involvement of any one body in registering practitioners would be for practitioners to self-regulate in relation to their accreditation status. An entirely self-regulated system would mean that individuals assert that they meet the accreditation requirements by simply advertising themselves as doing so. Individuals who falsely advertise themselves would run the risk of being penalised under the Family Law Act.<sup>13</sup> Such a system would provide an increased level of protection through the application of a financial penalty for those making false claims about their status as an accredited practitioner, but may not provide sufficient confidence for parents and others that the practitioner they see, in fact, meets accreditation requirements.

The second option of self-regulation, but on a central database, would not necessarily provide any more reassurance for parents and others that the practitioner they see does, in fact, meet accreditation requirements in the absence of any form of explicit checking or regulation by the body that holds the registration data base.

However, requiring practitioners, to provide evidence (for example, in the form of a statutory declaration) that they comply with accreditation requirements, represents a change beyond the current position where there is no explicit checking of practitioners beyond those who work for government funded services. This approach would provide the greatest reassurance to parents and the courts that a practitioner does, in fact, comply with the accreditation requirements.

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<sup>13</sup> Sub-section 10K(2) of the Family Law Act provides the statutory power to make it an offence for a person to hold themselves out to be an accredited practitioner or to mislead others into believing that they are an accredited practitioner.

In the absence of one industry based body that currently represents this workforce as a whole, it would be possible for the Attorney-General's Department to provide this facility as a neutral body with national policy responsibility in relation to family dispute resolution.

**Issue 1:** Is the establishment of an internet based registration system managed by the Attorney-General's Department an effective way of ensuring that parents and others have access to information to enable them to locate an accredited family dispute practitioner?

**Issue 2:** If a new accreditation database is established, should all eligible practitioners be registered as individuals, or are there special circumstances where organisations could be registered as an indication that all their employees meet accreditation requirements (for example, where organisations receive Australian Government funding such as the Family Relationship Services Program or funding from state and territory governments)?

*What standards will family dispute resolution practitioners need to meet in order to be accredited from 1 July 2007?*

*From 1 July 2007*

As indicated above practitioners who currently work for an organisation that receives funding under the Family Relationships Services Program, and those who otherwise meet the requirements of Family Law Regulation 83, are taken to be accredited during the transitional period (from 1 July 2006 to 30 June 2009), and would be eligible to register on any new data-base.

In addition, the Attorney-General has the capacity under the Family Law Act<sup>14</sup> to designate organisations that are able to authorise individuals to act on their behalf as family dispute resolution practitioners. To date, no organisations have been so designated.

There is an argument that where a new accreditation system is being implemented – with a key aim of ensuring nationally consistent standards across a sector – designation of organisations capable of authorising individuals as being accredited family dispute resolution practitioners (thus avoiding the need for these people to separately meet any new accreditation standards) would only be used in limited and exceptional circumstances.

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<sup>14</sup> Sub-section 10G(a)

**Issue 3:** Is there a strong argument to support designation of certain organisations? How would these organisations demonstrate that the standard of their practitioners is consistent with any new accreditation standards?

*The New Standards Developed by the Community Services and Health Industry Skills Council*

The new qualifications and standards developed by the Community Services and Health Industry Skills Council (the Skills Council) will be available in either late 2006 or early 2007 after they are endorsed within the vocational education and training sector.

As these new standards will become available during the transitional period, the Attorney-General's Department is interested in feedback from the sector about how these new standards might apply to existing family dispute resolution practitioners and potential new entrants.

Practitioners working within the family dispute resolution sector come from diverse academic and vocational backgrounds, with most already holding undergraduate qualifications in law, social science or psychology and many with related significant work experience in providing dispute resolution services such as mediation.

Others hold higher academic qualifications such as graduate diplomas, masters degrees or doctorates in these or related areas. Yet others, while not holding formal qualifications, possess significant experience and provide valuable dispute resolution services to clients, for example, in regional and remote areas of Australia.

A key principle that underpinned the development of these qualifications was that they reflect the **current** skills and competencies of existing practitioners and **not** seek to establish a new higher or lower benchmark than currently exists. For this reason, many of the skills taught in existing courses currently offered by registered training organisations and universities have been embedded in the new qualifications.

During the development process, feedback from the dispute resolution sector to the Skills Council was that the appropriate level within the vocational education and training system was to position the new qualification at the Vocational Graduate Diploma level.

Setting the qualification at this level reflects the fact that most current practitioners already meet the requirements set out in Regulation 83, or where they may not, generally have significant work experience that would enable them to meet the new standards.

The framework for the new Vocational Graduate Diploma in Family Dispute Resolution is at Attachment B. For practitioners to obtain this qualification within the vocational education and training system they are required to demonstrate competence in six compulsory units (or skills) and four elective units (or skills). The purpose of the elective units is to provide flexibility and choice for practitioners to develop skills in their particular areas of interest or to meet the needs of their particular client groups.

During the development of the standards, it became apparent that some practitioners believed that these standards would automatically become the new standard for family dispute resolution practitioners when they became available within the vocational education and training sector. **It is important to note that these standards do not become compulsory for family dispute resolution practitioners unless they, or any part of them, become a requirement of the Accreditation Rules under the Family Law Act.**

If the new Vocational Graduate Diploma, or any part of it, is introduced as the new standard for family dispute resolution practitioners this will result in some additional costs to individual practitioners or the organisations that employ them. These costs would relate either to undertaking a ‘recognition of current competence (formerly known as ‘recognition of prior learning’) for existing practitioners to gain the new Vocational Graduate Diploma. There may also be a requirement for existing practitioners to undertake ‘gap’ training where they meet most, but not all, of the new standards. There would also be costs for potential new entrants to the family dispute resolution sector in undertaking a course of study to gain the new Vocational Graduate Diploma.

Options exist for how the new standards might be ‘picked up’ in the Accreditation Rules and whether they should apply differently to existing, experienced practitioners and potential new entrants to the sector. These include:

- (i) requiring all existing and potential new family dispute resolution practitioners, to meet the requirements the new Vocational Graduate Diploma in Family Dispute Resolution (six core and four elective units) – this option would provide certainty that all practitioners meet a nationally consistent benchmark for quality service provision, but may have cost implications in relation to further training and recognition of prior learning processes for existing practitioners (particularly for practitioners who already hold post-graduate qualifications). It may also act as a disincentive for new entrants to join the family dispute resolution sector in favour of other areas of dispute resolution practice not subject to national standards
- (ii) requiring, as a minimum, all existing and potential new family dispute resolution practitioners to demonstrate competence in a sub-set of the skill units contained within the new Vocational Graduate Diploma in Family Dispute Resolution (for example, some or all of the compulsory units) – this option would provide targeted skills assessment against the core standards

required of a skilled family dispute resolution practitioner and would lessen the potential time and cost implications for individuals and organisations

- (iii) providing for a modified accreditation scheme where existing family dispute resolution practitioners have their accreditation status preserved (or ‘grandparented’) provided they meet Regulation 83 as at 1 July 2007. Under this option, potential new entrants could be required to meet all, or part, of the new Vocational Graduate Diploma (as described in (i) and (ii) above – this option, while simpler and more cost effective, does not provide a shift towards demonstrating that existing practitioners meet a minimum level of standards. It would perpetuate an ad-hoc approach to the quality of service provision within this sector with different standards applying to existing and new entrants.

The Australian Government is keen to facilitate a smooth transition to the new accreditation system and is mindful of the time and cost involved in seeking to have an entire workforce accredited against new standards. At the same time, due to the compulsory nature of dispute resolution in the new family law system for many parenting matters, it is necessary to ensure that those using these services have access to qualified practitioners who can provide quality services.

**Issue 4:** How should the new Vocational Graduate Diploma in Family Dispute Resolution apply to existing and potential new entrants to the family dispute resolution profession? In particular, should the position of existing practitioners who meet the requirements of Regulation 83 as at 1 July 2007 be preserved (‘grandfathered’)?

*What other requirements should family dispute resolution practitioners meet in order to be registered under the new Accreditation System?*

During the development of the competency-based standards by the Skills Council, feedback was received about the importance of supervised practice. This was seen as particularly important for newer entrants to the profession, to provide ‘hands-on’ experience in dealing with difficult cases, for example, where there are complex or multiple issues (such as family violence and drug or alcohol abuse) and/or multiple parties.

Feedback was also received that the opportunities to undertake supervised practice were limited and, where they were available, often came at a cost that was prohibitive.

There were also concerns expressed by a number of groups that the pre-requisites to the proposed new Vocational Graduate Diploma in Family Dispute Resolution should contain a requirement that a certain number of hours of supervised practice be undertaken.

While the value of supervised practice is acknowledged, placing supervised practice as a ‘front-end’ pre-requisite to either undertaking a course of study or a recognition process in order to obtain the new Vocational Graduate Diploma in Family Dispute Resolution may act as a significant disincentive to gaining the new qualification and a potential workforce barrier – should the new Graduate Diploma become the new standard for family dispute resolution practitioners.

Other options exist to ensure that intending family dispute resolution practitioners can obtain supervised practice experience that do not create a barrier to undertaking the new qualification or a barrier to workforce participation.

For example, the Accreditation Rules could specify that a certain number of hours of supervised practice must be obtained before a practitioner would be able to *register* on the proposed new data base as an accredited practitioner. This pre-requisite to registration could apply regardless of which option for the implementation of new standards is adopted.

This would have the advantage of facilitating the employment of new entrants to the family dispute resolution profession (because they would otherwise not be prevented from meeting the new accreditation requirements) and the opportunity for new entrants to work within the family relationship sector to obtain their supervised practice experience ‘on-the-job’.

This kind of requirement is similar to the requirements of current Regulation 83 where a practitioner is required to have engaged in at least 10 hours of supervised mediation or dispute resolution either with an experienced family dispute resolution practitioner or a person who is a regular provider of dispute resolution or mediation training.

Other matters that could be considered as a pre-requisite to registration include:

- automatic exclusion from registration where a person has a conviction or finding of guilt in relation to a serious criminal offence (such as an offence involving children or an offence that is punishable by imprisonment for one year or longer against the law of Commonwealth, a state or territory) recorded against their name (subject to the spent conviction legislation)
- meeting a fit and proper person test – increasingly statutory fit and proper person tests are being applied in a range of sectors including for child care workers, marriage celebrants and migration agents.

The Attorney-General’s Department is interested feedback in relation to the appropriateness these kinds of matters being included as a pre-requisite to registration as an accredited family dispute resolution practitioner.

**Issue 5:** Should the Accreditation Rules specify that a certain amount of supervised practice be required as a pre-requisite for *registration* as an accredited family dispute resolution practitioner?

**Issue 6:** If so, what is the appropriate level of supervised practice that is required?

**Issue 7:** Are there any other requirements that family dispute resolution practitioners should meet (such as meeting a fit and proper person test) in order to be registered as an accredited practitioner?

*What standards and other obligations should accredited family dispute resolution practitioners be required to meet in order to remain accredited and who should monitor compliance with these requirements?*

#### *Continuing Professional Development*

Currently, Family Law Regulation 83 requires family dispute resolution practitioners to undertake at least 12 hours of education or training in family dispute resolution in each calendar year and that no more than 12 months elapses between periods of training.

The National Alternative Dispute Resolution Advisory Council (NADRAC) states that the options for ongoing supervision and professional development of family dispute resolution practitioners include regular skills audits, re-accreditation processes, mentoring and co-mediation, clinical supervision and continuing professional education requirements.<sup>15</sup>

The diversity of practitioners within the family dispute resolution profession means that many are already required to undertake ongoing professional development requirements by virtue of their 'primary' professions (for example as a lawyer or psychologist). Any new requirement to meet certain obligations in order to maintain accreditation as a family dispute resolution practitioner would need to be balanced in line with these obligations to avoid imposing an onerous, additional level of ongoing professional development while at the same time, maintaining the quality of the provision of family dispute resolution services.

#### *Ongoing Practice Requirements*

Another area on which feedback was received during the course of the Skills Council project was the importance for family dispute resolution practitioners to maintain their skills by conducting family dispute resolution sessions. Feedback indicated that skills could be lost over time where practitioners take significant breaks away from work, for example, to raise families or take care of ageing parents, or where their work focuses predominantly on management and less on 'hands-on' service delivery.

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<sup>15</sup> 'A Framework for ADR Standards' April 2001 p60

**Issue 8:** Do family dispute resolution practitioners currently face any difficulty meeting the requirements of the current Family Law Regulation 83 (to undertake at least 12 hours of education or training in family dispute resolution in each calendar year and that no more than 12 months elapses between periods of training)?

**Issue 9:** Should family dispute resolution practitioners be obliged to meet any new requirements (for example, a certain number of hours of practice per annum) in order to remain accredited? If so, what should these requirements be?

*Who should be responsible for monitoring compliance with requirements in the Accreditation Rules and what obligations should accredited practitioners have regarding their compliance with the Accreditation Rules?*

As indicated in section 2 above, the Attorney-General's Department is not, at this stage, proposing the establishment of a new body to manage the new accreditation system.

In taking this view the Department is mindful of the comments by NADRAC<sup>16</sup> that the lack of appropriate infrastructure<sup>17</sup> for dispute resolution is a barrier to the future development, recognition and implementation of standards.

However, NADRAC also cautions that an unsuccessful or premature attempt to establish such a body may impact negatively on the development of...dispute resolution in Australia – the impetus for any such body being seen as more appropriately coming from the dispute resolution field itself.<sup>18</sup>

This raises the question of how compliance with the new Accreditation Rules will be monitored.

One option would be to use a combined approach that utilises existing quality control mechanisms (for example, those that exist where services receive government funding) along with the proposed registration data-base where no such relationship exists between an organisation and government.

Organisations that receive funding under the Australian Government's Family Relationship Services Program, or that are funded by state or territory governments, could be required under the Accreditation Rules to ensure that they continue to monitor the compliance of their employees with the Accreditation Rules.

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<sup>16</sup> *ibid* p87

<sup>17</sup> noting that the National Mediation Conference has recommended the establishment of a new structure for mediators generally

<sup>18</sup> *ibid* p87

In relation to practitioners or organisations where there is no link with government funding, practitioners could be required to provide a regular statement (perhaps annually), for example, in the form of a statutory declaration, that they continue to meet the requirements of the Accreditation Rules. These practitioners could also come under an obligation to provide information to the Attorney-General's Department where they no longer meet the requirements of the Accreditation Rules.

This approach would be administratively simple and address current gap in regulation of individuals and organisations within the private sector.

**Issue 10:** Is it appropriate to rely on existing quality control mechanisms for organisations funded by government (for example, those services funded under the Family Relationship Services Program) with new obligations to ensure that private practitioners meet any requirements relating to accreditation or registration set out in the Accreditation Rules?

**Issue 11:** Are there other mechanisms for ensuring compliance with the Accreditation Rules that should be considered?

### *How should complaints involving accredited family dispute resolution practitioners be handled?*

The ability for clients of family dispute resolution services to make complaints about the services they receive is an essential consumer protection mechanism.

Organisations that receive funding under the Family Relationships Services Program are already required, through their funding agreements, to provide an internal complaint mechanism that is accessible to clients. Where a client is not satisfied with the outcome of a complaint to the service, the client is then able to complain to the relevant state and territory office of the Department of Families, Community Services and Indigenous Affairs (FaCSIA) under an established process.

There is little formal data available on complaints about dispute resolution service providers and practitioners generally and family dispute resolution practitioners in particular. Data provided by FaCSIA for the period 2004-05 to date indicate that no complaints have been received in relation to services provided by family dispute resolution practitioners working in organisations funded under the Family Relationship Services Program.

NADRAC has indicated that there are very few reported complaints generally about dispute resolution practitioners. However NADRAC also states that there is anecdotal

evidence of unsatisfactory practice that would normally constitute grounds for complaints.<sup>19</sup> These practices tend to concern:

- parties being misled about the purpose and nature of the process being undertaken, such as where practitioners breach expectations of confidentiality
- the appointment of people as mediators without any reference to their training, experience or qualifications
- the inappropriate use of dispute resolution in cases involving violence, especially family violence
- the application of duress or pressure to settle matters, and
- conflicts of interest.<sup>20</sup>

NADRAC believes that the low number of reported complaints does not necessarily mean that there are no cases of poor practice and cites a number of reasons for this including that there is no accessible and well-publicised procedure for complaints about dispute resolution and that most dispute resolution consumers are one-off users, and so have no points of comparison.<sup>21</sup>

Within the family dispute resolution sector, legislative provisions seek to minimise these risks by placing statutory obligations on practitioners in respect of a range of matters including:

- the qualifications, training and experience required by family dispute resolution practitioners<sup>22</sup>
- ensuring that the family dispute resolution process is suited to the needs of the parties involved<sup>23</sup>
- preventing unauthorised access to records of family dispute resolution<sup>24</sup>
- not using any information gained from family dispute resolution for personal gain or the detriment of any person<sup>25</sup>, and
- avoiding conflicts of interest<sup>26</sup>.

In addition, recent changes to the Family Law Act also allow the imposition of financial penalties on any family dispute resolution practitioner who does not meet their obligations under the Family Law Regulations.<sup>27</sup>

A range of options exist for managing complaints within the new accreditation system. These include:

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<sup>19</sup> ibid p30

<sup>20</sup> ibid p30

<sup>21</sup> ibid p30-31

<sup>22</sup> Family Law Regulation 83, Item 124 *Family Law Amendment (Shared Parental Responsibility) Act 2006*

<sup>23</sup> Family Law Regulation 64(a)

<sup>24</sup> Family Law Regulation 64(b)

<sup>25</sup> Family Law Regulation 64(e)

<sup>26</sup> Family Law Regulation 65

<sup>27</sup> Section 10K

- (i) requiring all family dispute resolution practitioners to have access to system through which complaints about them can be made as a condition of registration on the proposed data-base. This criterion could be met in a range of ways.

For example, practitioners who work for organisations that receive funding under the Family Relationship Services Program would satisfy this requirement as all such organisations are required to have an internal complaints mechanism, with a further avenue of complaint to FaCSIA.

Similar arrangements are in place for other government funded organisations (such as legal aid commissions, community justice centres or community legal centres) with many having established internal complaints mechanisms, or recourse to other complaint mechanisms such as state and territory ombudsmen.

Individuals or organisations that do not receive government funding could meet this criterion in a number of ways including through individual membership of an appropriate professional association (with an appropriate mechanism for investigating complaints) or where the private sector organisations has a process in place for handling complaints about its employees.

However, there is a risk that ‘gaps’ in coverage might be created under this option, potentially leaving some practitioners unable to meet this requirement because they cannot access an appropriate complaints mechanism. Lack of a uniform approach to dealing with complaints may also mean that families with similar complaints are not treated consistently or receive different outcomes

- (ii) to assist in addressing any gaps in coverage under option (i), a government-funded independent body could be established that would provide an independent complaints mechanism for any part of the family dispute resolution workforce that does not already have access to an existing complaints mechanism
- (iii) alternatively, a new government-funded independent complaints mechanism could be established for complaints about *all* family dispute resolution practitioners. This could be used as a final avenue for addressing complaints about practitioners where other mechanisms (such as internal complaints mechanisms) have been utilised, and as the first avenue for complaints for about those practitioners (such as sole practitioners) who may not otherwise have access to a complaints mechanism.

If a new independent complaints mechanism was established consideration would also need to be given to the kinds of complaints that such a body could receive. Distinctions may need to be made between complaints about the *outcome* of the dispute resolution (for example, where a client disagreed with a dispute resolution

certificate that claimed that he or she did not participate in good faith), and those relating to the *process* of dispute resolution (for example where there are claims such as duress, bias, breach of confidentiality, or conflicts of interest).

The Australian Government considers that during the initial stages of the implementation of compulsory dispute resolution (from 1 July 2007), these services will largely be provided by the currently available practitioners and that for the majority of these practitioners (with the exception of private practitioners) well established mechanisms for dealing with complaints are already in place.

It may be appropriate in the implementation of the initial stages of the new accreditation system to rely upon existing complaints mechanisms as far as possible, and to introduce tighter measures for those private practitioners who are not currently subject to any form of regulation or complaints mechanism.

As new practitioners move into the sector and the new family law system becomes established it would be appropriate to gather data about the extent to which existing complaints mechanisms receive complaints about practitioners, the nature of the complaints made and the ways in which they are resolved with a view to considering whether there is a need for a more comprehensive management system, such as a new regulatory body, that deals with all aspects of regulation.

**Issue 12:** Is there a case for limiting the complaints that can be made about family dispute resolution practitioners to those concerning practices (such as duress, bias, breach of confidentiality, conflicts of interest) and excluding those relating to the outcome of the family dispute resolution (such as a disagreement regarding the kind of certificate that is issued under the Family Law Act)?

**Issue 13:** How should complaints about family dispute resolution practitioners be dealt with in the new accreditation system from 1 July 2007?

*Can accreditation (or recognition of accreditation) be refused, suspended or cancelled?*

If a new database for registering accredited family dispute resolution practitioners is established there are likely to be various points in that process where there is room for disagreement about whether a particular individual does or does not meet the requirements for initial registration or any ongoing requirements.

For those family dispute resolution practitioners who rely upon meeting the requirements of Regulation 83 from 1 July 2007 there will be many for whom there is no doubt that they meet the relevant criteria. However, there will be some for whom it is not entirely clear whether or not they meet the relevant requirements – with the consequence that they may not seek to be registered or may be reluctant to sign a

statutory declaration stating they do, in fact, meet Regulation 83 if there is room for any doubt.

Regulation 83 currently requires family dispute resolution practitioners, amongst other things, to have an ‘appropriate’ degree, diploma or other qualification. An ‘appropriate’ degree is defined as including a course of study in law, in social science (such as psychology or social work) or which includes the equivalent of two years full time study in a social science. ‘Social science’ is a broad term that encapsulates a wide range of subject matters beyond the examples currently provided for in Regulation 83. Questions arise about whether studies in areas such as sociology, history, children’s services, welfare studies, behavioural science or youth work would satisfy Regulation 83.

Similarly, if the new accreditation system requires practitioners to meet ongoing requirements (such as continuing professional development or a number of hours of practice per annum) disagreements may arise about whether a particular individual satisfies these requirements.

Where an individual fails to meet these requirements their status as an accredited family dispute resolution practitioner could be cancelled. This would result in that person no longer being able to issue certificates of attendance at family dispute resolution and loss of the confidential and inadmissible status of communications made in family dispute resolution provided under the Family Law Act.

Consideration also needs to be given to whether or not there are any circumstances that should result in automatic loss of status as an accredited person. It is envisaged that such circumstances would be limited and would relate to serious matters that should legitimately prevent an individual from providing services to vulnerable families. These could include where a person:

- has obtained registration by falsely holding themselves out as meeting requirements for accreditation
- is convicted of a serious offence (such as an indictable offence with a maximum penalty of more than 12 months imprisonment)
- is the subject of one or more serious complaints which is upheld through the complaints process
- who is a member of a professional association, loses or resigns from that membership (for example as a result of a complaint, or to avoid investigation of a complaint) where this is the only mechanism by which complaints about that practitioner can be made.

**Issue 14:** Should Regulation 83 be amended to provide greater clarification in relation to its various criteria (including what is a ‘social science’) to assist practitioners in deciding whether or not they meet its requirements from 1 July 2007?

**Issue 15:** What should be the grounds on which accreditation (or registration) is refused, cancelled or suspended?

*What happens to individuals who make false or misleading representations about their status as an accredited person?*

One of the key risks in the current system is that in the absence of uniform regulation, it is possible for an unscrupulous person who has no qualifications, skills, or experience relevant to providing family dispute resolution to hold themselves out as being accredited, provide these services and to potentially cause harm to the families that receive these services.

The implementation of the new accreditation system provides an opportunity to consider the consequences that should apply when an individual makes false or misleading representations about their status as an accredited person.

One consequence available under the Family Law Act<sup>28</sup> is the imposition of penalties not exceeding 10 penalty units (currently \$1,100) in respect of offences against the Family Law Regulations that relate to the provision of family dispute resolution services. This penalty could apply to individuals who make false or misleading statements about their status as an accredited person.

Another option for dealing with individuals who make false or misleading statements about their status as an accredited person is to remove that person from the register of accredited persons. This would have the immediate consequence of rendering them unable to issue certificates of attendance at family dispute resolution under the Family Law Act as well as the loss of the confidential and inadmissible status of communications made in family dispute resolution set out in the Family Law Act.

**Issue 16:** Is it appropriate to specify the maximum penalty (10 penalty units equating to \$1,100) to apply to family dispute resolution practitioners who holds themselves out as an accredited or registered family dispute resolution practitioner?

**Issue 17:** Should individuals who make false and misleading statements about their status as an accredited person be automatically removed from the proposed registration data-base?

**Issue 18:** Should there be any other consequences for individuals who make who make false and misleading statements about their status as an accredited person? If so, what should they be?

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<sup>28</sup> Sub-section 10K(2)

*Will decisions to refuse, suspend or cancel accreditation (or recognition of accreditation) be reviewable?*

As a general principle of administrative law, an administrative decision that affects the interests of a person should be subject to merits review.<sup>29</sup>

There are some circumstances where a decision automatically follows from the happening of a set of circumstances. For example, there may be a statutory obligation to act in a certain way upon the occurrence of a specified set of circumstances. In these cases there may be nothing on which merits review can operate and review would not be appropriate.<sup>30</sup> However, where there is scope for disagreement about whether or not particular facts have occurred, the automatic or mandatory character of the decision flowing from those facts will not mean that the decision is inappropriate for review.<sup>31</sup>

It is intended that the new accreditation system will include appropriate review rights in respect of decisions that affect the interests of individuals. This will include consideration of the appropriateness of internal review by the Attorney-General's Department and external review rights (such as to the Administrative Appeals Tribunal). The kinds of decisions made within the new accreditation system that may attract review rights are those where an individual practitioner is refused accreditation (or registration) or where decisions are made to remove a practitioner from the register of accredited persons.

## **5. Next Steps**

### *Accreditation Rules*

The feedback that is received in response to this paper will inform the development of new Accreditation Rules that will be included in the Family Law Regulations 1984.

It is anticipated that there will be a further consultation period on the draft Accreditation Rules so that stakeholders will have a further opportunity to comment on the detail of the new accreditation system before it is implemented.

### *Family Counsellors and Accreditation*

It is also proposed that, in the near future, separate consultation will be undertaken in relation to how the new Vocational Graduate Diploma in Relationship Counselling developed by the Community Services and Health Industry Skills Council might

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<sup>29</sup> "What Decisions Should be Subject to Review" Administrative Review Council Commonwealth of Australia July 1999 p 5

<sup>30</sup> *ibid* p 8

<sup>31</sup> *ibid* p 9

apply to family counsellors who work both within organisations funded under the Family Relationship Services Program and those that do not.

In the meantime, transitional arrangements apply to ensure that family counsellors working within organisations funded under the Family Relationship Service Program are taken to be accredited during the transitional period.

## Attachment A

### Transitional Arrangements for Family Dispute Resolution Practitioners

During the transitional period (1 July 2006 – 30 June 2009) practitioners who work for services funded as part of the Australian Government's Family Relationship Services Program (such as Family Relationship Centres and other Australian Government funded dispute resolution services) are authorised by the Government-approved service for which they work to offer dispute resolution services on behalf of the organisation<sup>32</sup>. In other words, they are 'taken to be' (accredited) family dispute resolution practitioners during the transitional period.

These services are required, under applicable 'Approval Requirements' to employ practitioners with either formal qualifications (such as a degree or diploma) or has a level of competence appropriate to their role as a dispute resolution practitioner. The Approval Requirements also require supervision of practitioners, training and development as well as staff appraisal.

All other family dispute resolution practitioners, such as those working in private practice or in other community services or government funded services such as legal aid commissions, are taken to be 'accredited' family dispute resolution practitioners<sup>33</sup> if they meet the requirements set out in Regulation 83 (described above).

Practitioners are also taken to be accredited where they may not currently meet Regulation 83, but take the steps to meet them by 30 June 2007<sup>34</sup>.

The *Family Law Act 1975*<sup>35</sup> also enables the Attorney-General to designate organisations that are able to authorise persons as family dispute resolution practitioners. To date, no organisations have been designated in this way.

An important consequence of being 'taken to be' an (accredited) family dispute resolution practitioner during the transitional period is that these practitioners attract the protections offered by the provisions of the Family Law Act dealing with confidentiality<sup>36</sup> and inadmissibility<sup>37</sup> of communications made in family dispute resolution.

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<sup>32</sup> Item 124(a) *Family Law Amendment (Shared Parental Responsibility) Act 2006*

<sup>33</sup> Item 124(b)(i) *Family Law Amendment (Shared Parental Responsibility) Act 2006*

<sup>34</sup> Item 124(b)(ii) *Family Law Amendment (Shared Parental Responsibility) Act 2006*. Regulation 83 largely reproduces the requirements (with only minor changes to terminology) for family and child mediators prescribed in former Family Law Regulations 60 and 61 as in force until 30 June 2006.

<sup>35</sup> sub-section 10G(b)

<sup>36</sup> Section 10H

<sup>37</sup> Section 10J

## Attachment B

### Framework for the New Vocational Graduate Diploma in Family Dispute Resolution

#### *CHC80206 Vocational Graduate Diploma of Family Dispute Resolution*

This qualification relates to dispute resolution practitioners working in agencies or independently to provide dispute resolution services and interventions for families experiencing high levels of relationship conflict and/or where the clients may be involved in the Family Law system. Dispute resolution in this qualification has a direct link to the provisions of the Family Law Act. Practitioners at this level are making high level, independent, complex judgements in highly specialised contexts. Some practitioner roles may also involve full responsibility and accountability for all aspects of work of self and others functions including, program planning, budget, strategy, design and analysis.

#### **Entry requirements**

Learners seeking entry to this qualification must demonstrate one of the following:

- Certificate IV in Community Mediation

**OR**

- An accredited qualification in conflict management or dispute resolution at Diploma or Advanced Diploma level

**OR**

- An undergraduate degree or higher qualification in Psychology, Social Work, Law, Conflict Management, Dispute Resolution, Family Law Mediation or equivalent

**OR**

- Learners undertaking this qualification need to have previous experience in a dispute resolution environment, the job role would have involved the self directed application of knowledge with substantial depth in some areas, the exercise of independent judgement and decision making, and a range of technical and other skills

#### **Workplace application**

For award of this qualification, candidates must complete workplace application under direct supervision. During this workplace application assessment must be undertaken by the Supervisor to obtain evidence of the candidate's ability to apply dispute resolution skills and knowledge as specified in the compulsory units of:

CHCDFV811A	Respond to family domestic violence in family work
CHCFAM505A	Operate in a Family Law environment
CHCDISP801A	Facilitate dispute resolution in a family law context
CHCDISP802A	Implement dispute resolution strategies
CHCDISP803A ethical standards	Facilitate family dispute resolution in an impartial manner and adhere to
CHCDISP804A resolution	Create a supportive environment for safety of vulnerable parties in dispute

**Occupational titles** for these workers may include:

- Family Relationships Mediator
- Family and Couples Mediator
- Aboriginal Family Consultant
- ADR Practitioner
- Family and Child Mediator
- Family Law Mediator
- Barrister Mediator
- Dispute resolution Facilitator
- Manager of an ADR service
- Indigenous Family Facilitator

## **PACKAGING RULES**

10 competency units are required for this qualification, including:

- **6 compulsory units**
- **4 elective units**

A wide range of elective units is available and may include:

- Competency units available at Diploma level or higher in the Community Services and/or Health Training Packages.
- A maximum of 2 competency units may be selected from other relevant Training Package units available at Diploma (or higher).

**NOTE:** Some relevant elective units are listed below the following core (compulsory) units, but many more electives are available as outlined above.

## **Compulsory units**

CHCDFV811A	Respond to family domestic violence in family work
CHCFAM505A	Operate in a Family Law environment
CHCDISP801A	Facilitate dispute resolution in a family law context
CHCDISP802A	Implement dispute resolution strategies
CHCDISP803A	Facilitate family dispute resolution in an impartial manner and adhere to ethical standards
CHCDISP804A	Create a supportive environment for safety of vulnerable parties in dispute resolution

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## **Elective units**

Electives are to be selected in line with specified Packaging Rules.

The following grouping of electives is intended to facilitate the selection of electives. Electives may be selected from one or more groups. Employers may specify that certain electives are required to address specific workplace needs.

### ***Family Relationship electives***

CHCFAM801A	Develop an understanding of child inclusive practice
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CHCFAM802A	Work within a child inclusive framework
CHCFAM503A	Work with a child focused approach
CHCFAM806A	Assist clients to develop parenting arrangements
CHCYTH10A	Work effectively with the families of young people
CHCHILD3A	Promote the safety, well being and welfare of children, young people and their families
CHCCS501A	Assess and respond to individuals at risk of self harm and suicide
CHCCS601A	Work with clients with unique needs
CHCFIN1A	Provide information and support to assist clients to manage personal and household finances
CHCFIN2A	Determine client needs in respect to financial issues

### ***Domestic and Family Violence electives***

The competency unit, CHCDFV2B Manage own professional development in responding to domestic and family violence, must be completed prior to or in conjunction with the following listed domestic and family violence units

CHCDFV2B	Manage own professional development in responding to domestic and family violence
CHCDFV8B	Provide support to children affected by domestic and family violence
CHCDFV9B	Work with users of violence to effect change
CHCDFV10B	Facilitate workplace debriefing and support processes
CHCDFV817A	Manage domestic and family violence screening and risk assessment processes

### ***Leadership Practitioner electives***

CHCORG28A	Reflect and improve upon professional practice
CHCORG29A	Provide coaching and motivation
CHCPOL5A	Manage research activities
CHCORG11B	Lead and develop others

### ***Diversity and Cultural Context electives***

HLTHIR403B	Work effectively with culturally diverse clients and colleagues
HLTHIR404B	Work effectively with Aboriginal and Torres Strait Islander people
CHCDFV6B	Provide domestic and family violence support in Aboriginal and Torres Strait Islander communities
CHCDFV7B	Provide domestic and family violence support in non English speaking background communities
RTD4802A	Develop approaches to include cultural and human diversity
CHCCD13C	Work within specific communities

*The following electives are currently under development and are intended for use by Aboriginal and Torres Strait Islander workers currently working in the area of social and emotional well being*

HLTAHW507A	Work effectively in social and emotional well being
HLTAHW508A	Develop healing framework for social and emotional well being work
HLTAHW509A	Respond to loss, grief and trauma