Submission to the Family Law Council

from CatholicCare Melbourne and Gippsland

CatholicCare, a community based not for profit organisation based in Melbourne, Geelong and Gippsland, provides a arrange of post separation services, including Family Law Counselling, Family Dispute Resolution (FDR), Parenting Orders Program (POP) and the Post Separation Co-operative Parenting Program (PSCP). CatholicCare is also the lead of the Barwon Family Relationship Centre (FRC) in Geelong and auspice of the Melbourne Family Law Pathways Network. CatholicCare is also a service partner in three Child and Family Services (ChildFIRST) Alliances across Melbourne, which provides outreach support to families, many of which are diverted from the Victorian Child Protection system.

Family Relationship Services: Confidentiality, information sharing, collaboration

Over the past three years we have noticed a reasonable increase in the information requested by clients and lawyers regarding subpoenas and information about our services provided to inform a Court process. We collect a significant amount of information, some of which could be utilised by the Court.

Generally speaking, we believe that information disclosed in the course of service provision in family law should remain inadmissible. Family Counselling, FDR and POP services were established to provide individuals and families appropriate means to resolve personal issues and disputes as alternatives to Court. However, we also acknowledge that some basic but important information collected and assessed via service provision to clients could be provided back to the Court without breaching client confidentiality and undermining the service delivery process. Although there are existing provisions to report current risk and safety concerns particularly in relation to children, clearer definitions and direction in relation to past family violence is necessary and warranted.

We believe that there should be some formal mechanism to exchange information between the Court and the services sector using a brief proforma. Previously, some years ago, with referrals from the Court to service providers, a low level of information was required by the Court after the service was completed. This included dates of attendances, who attended, tick box questions in relation to issues covered, issues resolved and a question on recommendations of future handling of the matter. No substantive information was provided to the Court. In pragmatic terms, we do not know how useful Courts found this information. Currently this information may only be requested by the Court where they subcontract out specific service provision. This type of standard proforma could also be provided to State-based authorities, such as Child Protection.

In addition to this, we believe that changes to Section 60I Certificates are necessary and their value is overstated when in fact they are essentially a ticket to proceed to Court. Clearly the category ‘no genuine effort’ needs to be removed as this is virtually impossible to assess and promotes further legal argument in the context of factual uncertainty. Interestingly we have received the most number of complaints in the context of FDR in relation to certificates. Whilst this reflects a lack of understanding by clients about the categories on the Certificate, it also demonstrates the problems associated with the current categories. We also believe that changes to certificates may enable FDR Practitioners to share more meaningful information with the court about the FDR processes and provide some contextual information about the client(s) without breaching confidentiality. For example, a Certificate could have reference made to ‘recent allegations of Family Violence’ and or other new categories that provide more meaningful feedback to the Court.

It is also interesting to note that in Canada in the State of Ontario the Family Court system has the option of clients selecting ‘open’ or ‘closed’ mediation before commencing mediation. Open mediation is where the clients consent to sharing information from mediation in a Court process after they fail to reach an agreement. Closed mediation is similar to the process in Australia where information is

inadmissible in Court. Feedback from the Ministry of the Attorney General in 2011 indicated that clients participating in this process overwhelming elect closed mediation (approx. 70-80%). Despite the opportunity for clients to provide more information as a transition to a Court process this is not

actively embraced by the vast majority of clients. We need to be careful that we don't throw out the baby with the bathwater. We believe that some further changes to certificates as the last transition point or contact with the community sector before proceeding to Court could enable more information sharing with the Court.

Inadmissibility

The other issue in relation to the limits of inadmissibility as raised by recent Family Law Pathways and AIFS Webinars in the Australian context is that FDR intake and assessment is arguably not covered by the inadmissibility provisions in the legislation (see Rastall and Ball case). If this is indeed the case, clients should be told very clearly that the information they provide pursuant to this or any other screening tool is potentially admissible. Clients should not be ambushed into providing information in a process that they had thought was confidential. Conversely, our practice of advising people of their rights & responsibilities in FDR will result in some clients deciding themselves or being advised by their lawyers not to be fully frank and honest in the FDR intake process. A lawyer would be negligent not to advise their client to not provide information which could damage their case. This then means that practitioners (Family Counsellors and/or FDR practitioners) will not always receive all relevant information. This could impinge on our ability to be sufficiently focused on the best interests of the particular children in question. It could also mean that we would not be given the opportunity to respond to and help clients with potentially critically important information in circumstances where they have decided to withhold that information from us. In this context, an opportunity for an improvement is to push for legislative change to state clearly that the FDR intake session is covered by the usual inadmissibility provisions would seem worthy of consideration and would be in line with NADRAC advice on this issue.

Ideally in the presentation of limited client information back to the Court a tick a box format would be utilised. There could be capacity for the client to sign the proforma, in order that there is not a dispute between client and practitioner about interpretation of what the client has said. Having said that, what we know already from the regular course of service provision, is that there are regular instances where a client disputes the outcome or assessment of the situation by a practitioner.

Risk Assessment

Various States and program streams have developed a range of risk assessment tools for practitioners to use and assess risk. In Victoria the Common Risk Assessment Framework (CRAF) has been embraced in many statutory programs including the Risk Assessment and Management Panels (RAMPs). The DOORS approach in the Family law Space is too onerous for clients as a standard tool and really is only useful for a subset of high risk clients and for professionals who have limited understanding of family violence. Further training is required in relation to risk assessment in both Family Law and Child Protection.

In Victoria in 2011 two pilot Risk Assessment and Management Panels (RAMPs) were set up and tasked with identifying and responding to families at high risk of family violence. In 2014, the Victorian government committed another $12.5 million to fund 17 RAMPs across Victoria. The RAMPs involve representatives from family violence services, Victoria Police, Corrections Victoria, DHHS Child Protection, Child FIRST, men's behaviour change programs, local hospitals, Maternal and Child Health Services, Centrelink, the Office of Housing, mental health services and alcohol and other drug services. Other services are invited on a case-by-case basis including Aboriginal and homelessness services. Family law providers in high risk cases could also be invited to participate in the RAMP.

Risk Assessment is a dynamic construct that is not static but changes over time. More comprehensive risk assessment such as undertaken by RAMP involves cooperation by a number of agencies and services to complete a profile of risk across a range of domains and areas. More importantly sharing of information across a range of areas enables a profile of risk

to be established and managed. Clearly in this area with high risk cases more information needs to be shared.

Mandatory reporting

CatholicCare have identified inconsistencies between practice advice and information on the Victorian Department of Health and Human Services (DHHS) website and section 67ZA of the Family Law Act. DHHS have advised that they reviewed the matter and have advised us that they will amend their current material in order to accurately show the categories of people referred to in section 67ZA including family counsellors and family dispute resolution practitioners who are in fact mandated reporters. Ideally, in relation to risk and mandatory reporting, relevant State legislation needs to be more consistent across Australia.

Integrated response and complex needs

There are many examples of integrated service responses occurring in the service system. For example the Geelong FRC and Barwon DHHS Child Protection have collaborated on a number of recent cases when Child Protection have been closing a case and referring the family to the FRC but with some "recommendations" or "bottom lines" in relation to further contact following a separation. In the main this has been a very positive timely development with clear transparent communication between the family, Child Protection and FRC as a key enabler. The current system interfaces are ad hoc and is based on the goodwill and relationships established between professionals in locations.

Potentially this could be extended with greater links between DHHS practitioners, Family and Federal Circuit Courts and the family law service system. Although we are a service provider first and information provider second, we believe that at the very least, some case co-ordination for more complex cases would be a step in the right direction where there has been previous or current involvement of child protection. Anecdotally many complex clients appear to utilise a lot of limited resources bouncing across and between different service systems that do not readily share information. The concerning issue is that a moderate or low level risk across a range of systems can also be cumulative. Additionally, as noted in the Family Law Council discussion paper, many children and adults fail to meet the threshold for statutory intervention at a given point in time but contain a significant level of risk that is increasingly being managed by community service organisations and is not forwarded to Court.

The other concern in relation to the intersection between family law and child protection is information exchange and practice direction relating to both parents rather than a couple. In our experience following State child protection investigations, some parents strive to make changes and this may mean at least one parent (often the mother) acting protectively. Following child protection involvement and investigation, a decision may be then made to close the case. Subsequent to this time period the couple then separate and further concern is expressed to our service about the 'other' parent's capacity to care for the child in a protective capacity. However in our experience often the child protection case may be silent on the 'other' parent's capacity to care for the child as the primary carer as this may not have been considered a primary consideration in the original investigation given the family constellation. This does create some challenges for conducting FDR and post separation services. In some instances this may even warrant a further notification to child protection. As routine practice many post separation services should obtain information from clients and State child protection services about previous involvement with child protection including bottom lines and/or past concerns. Although argued to be potentially invasive, such clarification would establish a clearer path on how to proceed with these types of cases.

There is also a cohort of clients that need to be managed that have considerable risk but are not high risk. These cases have the potential to move into the high risk category. A system similar to RAMP should be adopted for these cases to be case managed where they are both clients of child protection and family law services.

We would support the establishment of a single jurisdiction Children and Family Court to hear ***complex cases*** such as those on the Magellan list to replace the State Children's Courts, Federal Circuit Court and Family Court.

Services outside the Family Law System Collaboration

Clearly there is greater capacity for increased collaboration between other services outside the family law system. Unfortunately the notion of a 'whole of government' approach to service provision essentially relates to either the State Government or the Federal Government, rather than between these two levels of Government. Many community based organisations navigate this system well as often they are funded by both levels of government and provide good referral pathways between these two systems. Additionally clients generally don't mind sharing information if this results in tangible benefits, mitigates risk for them, expedites access and reduces the need for clients to repeat personal information.

In order to get any real meaningful traction in this area there needs to be a commitment to co-locate service providers at the Court and or at Multi-Disciplinary Centres like the model established in Victoria to pilot the co-location of sexual assault services, police and DHHS child protection at the one site. A similar system could be established for cases involving child protection and family law services. Staff from both child protection and the family law service sector (including the Courts) could meet regularly to case manage and provide practice direction for cases involving both jurisdictions. An evolving model in the Victorian context which would be worth exploring further as well is the community-based Services Connect pilots – drawing together State-funded services in a wrap-around model which aims to place the client/family at the centre with one worker, one plan and one record which is tackling a range of issues including information sharing, risk assessment across broad domains of need and inter-connectedness between services to meet complex needs of families.

Family Law Pathways Networks also provide a valuable platform to inform the service sector about developments and changes in the family law area. These networks also facilitate referral pathways via training, newsletters and events. The Victorian Family Law Pathways Network also developed the "I refer" app which is a searchable directory of programs and services available to Victorian families experiencing separation, and provides a range of services that will complement, supplement or pre-empt any agreements made by the parties, or Orders of the Court. Further efforts in the collaboration space could also utilise technology to provide further opportunities for collaboration with Child Protection and other services – particularly family violence, mental health and drug and alcohol support.

Professional development

Similar to the legal profession, professionals in the community sector could have a model where they need to undertake a certain number of Professional development hours with a minimum focus in each of the three categories of:

- Family violence
- Child abuse and mandatory reporting
- Mental health and Alcohol and other Drug

Additionally further professional development is required with 'best practice' on working across service systems, particularly with family violence.

Clients with increasing complexity are presenting with multiple concurrent presentations across these areas and the sector and services need to get better at managing these types of cases across different service and program streams.

Conclusion

Clearly further reform is needed to address the challenging issue of supporting families and children involved in both the Family Law and Child Protection Systems. The growing community concern in relation to the prevalence of family violence and the need to develop safer systemic responses to support families is a welcome development as we hopefully move towards improvement to the service system.