

Submission to the Family Law Council

from

Relationships Australia & Canberra Region

1. How can the exchange of information between the family Courts and family relationship services (such as FDR services, counselling services and parenting order programs) be facilitated in a way that maintains the integrity of therapeutic service provision?

The basic principle of confidentiality within limitations provides clients who attend Family Counselling and FDR with enough reassurance to give practitioners an open account of their relational experience with the other party during assessment. This “pseudo confidentiality” has also provided a space in which solicitors are not likely to encourage their clients to restrict the information that they are providing to services that they are accessing. Unlike a legal process where lawyers are operating with information from only one party, FDRP’s, Counsellors etc, use the information provided by both parties to inform their determination of how best to proceed to mediation, counselling or other service. Often victims of domestic and family violence are the initiating parties to FDR and over the last 9 years of operation of the FRC’s in Australia it has become evident that the recollection by a victim of domestic violence in assessment does not provide enough insight to determine if mediation should go forward. It is the perpetrators personal insight into their behaviour that provides the richness of information that FDRP’s need to identify the best way to move forward, whether it is in the same room, by shuttle, or identifying that mediation is not appropriate at all.

The Family Law Act (FLA) currently permits counsellors and FDRPs to disclose certain information that is an exception to the confidentiality provisions in the FLA.

This submission proposes that if used appropriately the existing provisions in the FLA regarding confidentiality provide adequate opportunity for collaboration and information sharing within the family law system and other relevant support services.

In the FLA sections 10 D, 10H and 10J makes specific provision for confidentiality and privilege of communications made in Family Counselling and Family Dispute Resolution (FDR) and detail the circumstances in which disclosure is appropriate in those services. The exceptions to confidentiality and admissibility of information outlined in these sections of the FLA are made

very clear to the participants in Family Counselling and the FDR process at the first Assessment and at the commencement of the mediation.

Sections 10D(4) and 10H (4) states that a Family Counsellor or FDRP respectively may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of protecting a child from risk of harm and other serious threats or violence etc. Sections 10D4 and 10H4 further state that this disclosure can be made...“if a lawyer independently represents a child’s interests under an order under section 68L---assisting the lawyer to do so properly”. This provision is available to exchange information between the Family Counsellors, FDRP’s and Independent Children’s Lawyer’s.

Within the FDR process an expansion of Section 60I Certificates could be useful by including information to guide case management.

There would need to be clear guidelines for the FDRP to follow on what information would be disclosed on the 60I and the 60I Certificate could include recommendations to the Court regarding parenting or other programs that may assist the parties. The FDRP can identify therapeutic support and intervention required for separated parents in conflict, particularly where there is family violence and to assist parents to see through their children’s eyes. For example, a recommendation those parents undertake programs e.g. Keeping Kids in Mind, Behaviour Change, Non Violent Resistant programs could be noted on the 60I Certificate. This would provide Lawyers and the Court with information about the parties needs without confidentiality being breached. Any such additional disclosures by the FDRPs would have to be transparent in the FDR process to maintain its integrity. For a Family counselling environment a certificate style form could be introduced to facilitate a similar exchange of information to the Family Court and between relevant agencies.

Confidentiality is essential to allow parents to participate openly in a Counselling or FDR process without fear of information being used in litigation. If parents thought this confidentiality was weakened it could erode the prospect of early resolution in a cost effective forum, load the legal system with cases or alternatively, parents/children will fall through cracks because they cannot afford legal advice or costly litigation. This could be more damaging for the safety of children and parents in an environment of domestic and family violence.

2. What opportunities exist for ensuring the early assessment of risk to children in family law matters?

Family Counsellors and FDRPs are mandatory reporters and frequently make reports to Family and Community Services based on allegations or disclosures made in the Assessments or service delivery. Clients are informed of these reporting obligations through each step of their involvement with a service.

It is perhaps time to identify that simply reporting to FACS is not sufficient to the appropriate assessment of families in other services. A central database for this reporting information would provide the court, solicitors and service providers the opportunity to share information and identify if an allegation has been substantiated or not. Access would need to be partitioned and logged so that appropriate information was available to appropriate services. This concept would need industry consultation and trialling on a small scale to determine its effectiveness however information sharing of this type would be of most benefit to families and those people trying to assist them.

3. How can services such as child protection departments, mental health, family violence, and drug and alcohol services make relevant information available to the courts to support decision-making in cases where families have complex needs?

A central database for this reporting information would provide the court, solicitors and service providers the opportunity to share information and identify if an allegation has been substantiated or not. Access would need to be partitioned and logged so that appropriate information was available to appropriate services. This concept would need industry consultation and trialling on a small scale to determine its effectiveness however information sharing of this type would be of most benefit to families and those people trying to assist them.

4. What services are needed to support families and children who use the family law system where child safety concerns are identified?

In circumstances where it is identified that there are child safety concerns there needs to be an effective information link between community services, FACS and the court. This can only be done effectively if a bridge can be formed between federal and state laws, and the courts, government departments, legal community and community service agencies. Only a unified approach to communication and service provision can overcome the barriers that families involved in the family law system experience.

5. How can there be enhanced interaction between family courts and relevant services, including family violence, mental health services, drug and alcohol services and support services for Aboriginal and Torres Strait Islander families?

Within the community sector there are already agencies that are engaged with families at risk within the Aboriginal and Torres Strait Islander communities. These services need to be provided with the opportunity to engage with the court and other services in a manner that will be

beneficial to the families involved without making engagement with the court exceedingly onerous. This could be achieved with a uniform reporting template that might include recommendations for the court to take into account when making interim orders.

6. What opportunities exist for developing integrated responses to families with complex needs who use the family law system?

Within the community sector there are already agencies that are engaged with families at risk. These services need to be provided with the opportunity to engage with the court in a manner that will be beneficial to the families involved without making engagement with the court exceedingly onerous. This could be achieved with a uniform reporting template that might include recommendations for the court to take into account when making interim orders.

7. Is there a need for a specialist case co-ordination approach to families with complex needs and what opportunities exist for developing such an approach?

There is a need for a specialist case co-ordination approach to support families with complex needs engaging in the Family Law system. What is essential however is a consultative approach to the development of such an approach. The creation of a case co-ordination process needs to take into account the possibility of wrap around support for families who are affected by separation, early assessment of the entire family (an expanded version of a family report) and implementation of recommendations outside of a court context.

This could be achieved through a collaborative law model, in which solicitors, mediators, and counsellors would be working to support families in identifying and applying strategies necessary to move a family beyond the creation of parenting orders. Such a model would allow counsellors to identify the supports needed to help a family maintain an agreement that they make, the lawyers could identify the likely outcome and do on the spot reality testing should the matter go to court and the mediators would facilitate an appropriate discussion with the parents supported by their legal counsel. With many possibilities for an engagement of families outside of the Family Court it is essential that a clear model (or models) are identified and tested with a clear plan for long term implementation of the most appropriate model.

The existing Family Relationship Centres would be ideally placed to host an expansion of service to trial a case co-ordination model. This is primarily due to both the Australia wide coverage and current engagement with the legal profession. The diversity of services operating FRC's and the variety of court settings throughout Australia would provide a rich input into both the creation of potential models and the experience of their implementation. The existing DSS reporting infrastructure should make feedback on such a trial relatively easy to achieve.