Family Support Program Literature Review

Research into the Family Support Program: Family Law Services

March 2013
About the Australian Centre for Justice Innovation (ACJI)

ACJI (formerly Australian Centre for Justice System Innovation (ACCJSI)) is a Research Centre in the Faculty of Law at Monash University that is supported and has been created with the assistance of the Australasian Institute of Judicial Administration (AIJA). ACJI is administratively supported by Monash University. ACJI engages in three core streams of activity:

- Research to provide the intellectual underpinnings for increased court efficiency and effectiveness and to support improved governance, the continued development and implementation of court innovations and the adoption of non-adversarial justice and ADR approaches.
- Research consultancy in the areas of program design, piloting, monitoring and evaluation of court innovations and non-adversarial justice and ADR approaches.
- Education and training involving the delivery to law students, legal practitioners, court and justice system administrators, judicial staff and allied professionals to achieve innovations in the court system and non-adversarial justice and ADR concepts and practice.

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<td>AGD</td>
<td>Attorney-General’s Department</td>
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<td>CALD</td>
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<td>Department of Families, Housing, Community Services and Indigenous Affairs</td>
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Chapter One - Introduction

1.1 The objectives of this Literature Review (this Review) are to identify existing information regarding Family Support Program (FSP) family law services and related programs; and to identify material in respect of best practices in service delivery and performance measurement in these areas. This Review reports on existing understandings in the literature, about the effectiveness of government-run FSP family law services.

1.2 The FSP consists of a range of services that provide preventative and early intervention services designed to help and support families. The objectives of the program are to ‘provide integrated services for families, particularly vulnerable and disadvantaged families, to improve child wellbeing and development, safety and family functioning.’

1.3 The FSP has two main streams of activity:

- the Family and Children’s Services stream — designed to improve family functioning, safety and child wellbeing and development, with a particular focus on vulnerable and disadvantaged families; and
- the Family Law Services stream — designed to provide alternatives to formal legal processes for families who are separated, separating or in dispute.

1.4 The family law services stream provides a range of community-based services and interventions to manage parental separation in a more cooperative way that minimises recourse to litigation in a formal legal environment. Clear access to, and navigation of, the services is a core consideration of the services. Key components of the stream include:

- Family Relationship Centres (FRC) — a key platform of information, advice and referrals for families. Family Dispute Resolution (FDR) services are also an important part of services provided;
- Supporting Children after Separation Program (SCaSP) — provides services to support children, maintain and enhance relationships during and after separation;

- **Post Separation Cooperative Parenting (PSCP)** — designed to shift focus from the conflict between parents to the needs of children in relation to parenting issues;
- **Family Dispute Resolution (FDR)** — provides FDR outside the FRC platform, on issues such as parenting, finance and property. Regional Family Dispute Resolution (RFDR) is also provided to meet the particular needs of regional communities;
- **Parenting Orders Program (POP)** — designed to assist separating or separated parents experiencing significant conflict in relation to parenting issues;
- **Children’s Contact Services (CCSs)** — provides a service and space to enable separated parents to develop safe relationships with children;
- **Counselling** — provides support for couples and families to manage relationship issues;
- **Family Relationship Advice Line (the Advice Line)** — Information and Advice component — provides non face to face information and advice on family relationship issues and referrals to appropriate services if required;
- **Legal Advice Service (LAS)** — part of the Advice Line, the LAS provides families with non-face to face legal advice and information;
- **Telephone and Online Dispute Resolution Service (TODRS)**; — part of the Advice Line, the TODRS provides non-face to face family dispute resolution; and
- **Family Relationships Online (FRO)** — providing information about family relationships and separation via the website www.familyrelationships.gov.au.

1.5 The specific objective of this Literature Review is to consider the operation of the FSP family law services by locating and detailing the findings in literature from relevant national and international academic writing (journals, books and book chapters), research reports, conference presentations, Departmental Reports and documents and from other materials available through the web and provided to the researchers by the Commonwealth Attorney-General’s Department (AGD).

### About this Project

1.6 This Review forms an important part of a broader research project being undertaken by the Allen Consulting Group in partnership with Australian Centre for Justice Innovation (ACJI) at Monash University. The Australian Government AGD has commissioned the research.

1.7 Other components of the research project are designed to collect new information and include consultation with a range of family law system stakeholders, survey of family law service users, site visits to a select number of

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services and locations across Australia, and an analysis of existing data collected by services themselves. By identifying best practices in family law service delivery and performance measurement, the literature review informs and supports these broader research project components. The Australian Centre for Justice Innovation has undertaken the literature review to draw from the existing evidence base in informing aspects of the research. ACJI thanks those who have contributed to this Literature Review and in particular staff from AGD and Allen Consulting Group who have commented on draft versions of this document.

1.8 This Literature Review is specific rather than general in nature. It reports on the following specific indicative questions devised by the Allen Consulting Group in response to the research areas identified by the Access to Justice Division of AGD to undertake research services associated with the Review of the Family Support Program (FSP), Family Law Services.3

- What are the range of interventions and services available for families in need of support?
- Are people from disadvantaged and vulnerable backgrounds accessing FSP family law services?
- How effective are FSP family law services in meeting the needs of families from disadvantaged and vulnerable backgrounds?
- What is the current level of utilisation of technology to deliver FSP family law services?
- Can non face-to-face service delivery be improved?
- Are performance and quality measurement arrangements appropriate?

1.9 The Review has been structured so that each chapter addresses a single indicative research question, further defined by the type of information relevant to collection through a literature review (eg evidence of good practice, barriers to access). Chapters 3 ‘Clients from Disadvantaged and Vulnerable Backgrounds’ and 4 ‘Technology and FSP Family Law Services’ each address two related indicative questions. In addition, Chapter 6 ‘Service Effectiveness in Relation to Children’ addresses the following indicative questions outlined by Allen Consulting Group’s Project Plan for the AGD:

- Are FSP family law services meeting the needs of Australian families who are in conflict, separating or separated?
- How are the best interests of children being met by FSP family law services?
- What is the client’s (encompassing age, gender and background) experience of their involvement with FSP family law services?4


Each Chapter is structured so that it explores the issue areas that are related and identifies key themes raised by existing research and literature.

Key Themes Arising from the Literature Review

Two key overarching themes arise from an exploration of the available literature. These relate to what the reviewers have termed ‘Data Quality and Performance Measurement Challenges’ and ‘Service Provision Gaps’. As these themes arise throughout this Review, some comments have been made below about the impact of each and also the methodology adopted by the researchers.

Data issues

The limitations in available data at a general level were noted in the July 2010 Auditor-General’s report into the implementation of FRCs, which emphasised that the gaps specifically affect the performance-monitoring component of the FRC program.5

While a great deal of data is collected through FSP services, the data collected may not be consistently collated and presented and is not usually made publicly available.6 The literature suggests that there are unlikely to be common understandings about the data frameworks by service-providers, raising questions about the reliability of data collected.7 Data that is collected does not always measure key policy foci nor does it allow assessment of performance against targets outlined. In terms of the data that is collected, services who are funded to deliver Family Relationship Services, Specialist Services and Family Law Services submit data via the FSP Data System. These services refer to the FSPDS Protocols for data definitions that relate to the collection of data. The FSP Program Guidelines Part A – provides definitions of terms commonly used within the FSP.8 Family Relationship Centres (FRC) – Family Law Service can also refer to the Operation Framework for Family Relationship Centres.9

In addition, the literature suggests that there is a substantial gap in knowledge about how particular sub-groups of clients describe their experiences, for example, CALD clients10, Aboriginal and Torres Strait Islander clients11, rural

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10 Family Law Council, Improving the Family Law System for clients from Culturally and Linguistically Diverse Backgrounds, A Report to the Attorney General Prepared by the Family Law Council (February 2012) 29
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Chapter One

Introduction

and remote clients, clients located transiently, and clients whose children suffer disabilities or serious ill-health.

1.15 There is also a lack of linked data. For example, the Federal Magistrates’ Court deals with family law applications, but data from this Court and the FSP area is not linked to identify trends or assess the impact of initiatives.

Service provision

1.16 The second theme that arises from the literature relates to potential, and possibly significant, gaps in service provision, between the various FSP services, between FSP and other services within the family law system and between FSP services and services outside the family law system. A range of measures have been developed within the FSP family law service sector and the family law system generally to address some of these services gaps, including many instances of good or best practice in services available for families in need of support. However the literature explored below suggests that there may be a long way to go to address these concerns.

1.14 The Literature Review has identified a number of collaborative initiatives from both within and outside the FSP family law stream designed to overcome identified service gaps. These examples of good practice in collaboration are outlined in detail in Chapter 2 of this Review and include:

- Co-location of services;
- Pathways Networks and other local collaboration;
- Evidence of good practice in collaboration between FDR and legal services; and
- Evidence of good practice in collaboration from the family courts.

1.15 However, despite recent efforts to improve collaboration, such as that evidenced between FDR and legal services and with the family courts, the literature which is discussed below suggests that some fundamental stumbling blocks exist in respect of improved inter-professional and inter-agency collaboration. These are identified in Chapter 2 of this Literature Review.

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11 Aboriginal Legal Service, Guide to Legal Services for Aboriginal People in NSW and the ACT, (NSW/ACT) (2006) 1
Chapter Two - The Range of Interventions and Services for Families In Need of Support

Introduction

2.1. This Chapter considers the literature in relation to the range of services available to families in need of support in the context of family breakdown and discusses examples of best practice within these services and also gaps in these services.

2.2. It addresses the following indicative question from Allen Consulting Group’s Project Plan for the AGD and focuses on evidence of good practice and service gaps:

What are the range of interventions and services available for families in need of support?

Range of Interventions and Services Within the FSP Family Law program

2.3. The range of services supporting families in the context of family breakdown that are now placed within the FSP has grown incrementally over the years. When the Family Law Act was enacted in 1975, services were primarily court based legal services. However, since then a myriad of support services, some offering legal support and others offering family relationship advice, information and support and located in community based agencies, have been instigated by the Commonwealth government and offered across Australia. All these services together make up what became known in the report, Out of the Maze, as the family law service(s) system or ‘the family law socio-legal service(s) system.’

2.4. The 2006 family law reforms included legislation which changed the principles for legal decision making in children’s matters. The reforms also

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comprised the establishment of a national network of 65 FRCs offering group education, information, referral and family dispute resolution services. These FRCs act as gateways to the family law service system, by directing separating couples to the FRCs for dispute resolution prior to proceeding to court, effectively expanding many of the existing support services and also developing new ones. It aimed at strongly encouraging parents to develop cooperative respectful parenting patterns of behaviour after separation to better support their children.

2.5. There are two streams of services within the FSP and this Literature Review focuses on the Family Law services stream within the FSP, as noted in Chapter one.

2.6. All of these services are separate services, although some may be co-located. Some of the services, like Children’s Contact Services, require considerable investment in specialised infrastructure. Family Relationships Online (FRO) is provided by the Commonwealth Government, the telephone Legal Advice Service is provided through a private law firm, Telephone and Online Dispute Resolution Services (TODRS) is part of Family Relationships Advice Line (FRAL) formerly provided by Centrelink, but now provided by Relationships Australia Queensland (RAQ), a not for profit community based agency.

2.7. Chapter 3 of the Australian Institute of Family Studies (AIFS) 2006 evaluation of family law reforms has a focus on the above services. However, apart from this there seems to be little literature on these services in terms of any overall review of the total constellation, on groups of services, or on individual services. There have been various evaluations undertaken, such as the evaluation of the Supporting Children after Separation Program, an Australian National Audit Office (ANAO) audit on the implementation of FRCs and an evaluation of online dispute resolution. Further, some years ago, a number of research projects focused on Children’s Contact Services.

Evidence of Service Gaps

2.8. The following section explores the literature regarding evidence of service gaps in FSP services. It commences by exploring evidence of general service gaps, pathways through the family law system and fragmentation before exploring two specific service gaps identified in the literature:

- Evidence of service gaps in cases of family violence, child abuse and neglect; and
- Evidence of gaps between FDR services and legal services who may assist clients attending FDR.

2.9. For some time now, available literature, identified below, has painted a picture of a fragmented family law system containing numerous service gaps. At this stage in the development of the FSP, concern has not centred
around service gaps but rather around service linkages, or poor service interfaces, as between the services within the FSP and those outside of it.

2.10. The Family Law Pathways Advisory Group in reviewing the family law socio-legal services system in 2001 found a number of systemic factors within it that made it difficult for separating families to resolve disputes, manage change and develop workable arrangements for the future within the existing framework. Those factors mostly relate to the process of families attempting to deal with a dispute following separation. The report concluded that the family law system was not designed as a system and did not always operate coherently. It established that some of the many services and institutions that constituted the family law system did not see themselves as part of any system and failed to link up with other services.

2.11. The report revealed the extent to which this confusion and disjuncture impacted upon families so that many felt frustrated and discontented with the operation of the system. The level of disarray identified in the Pathways Report suggested that messages about early, non-adversarial resolution of family disputes were lost. Fehlberg and Behrens have gone so far as to ask if the fragmentation evident in the family law ‘system’ is so great that no single law reform effort can overcome it.

2.12. Following the 2006 reforms, three main studies have reported on clients pathways through the family law system. While two cover all clients, one covers primarily clients who have experienced family violence. However, the three studies show much the same pattern of service usage. All of them show that, once a separation takes place, there are common patterns of movement through the services and that these suggest what characteristics the service system needs to acquire for best effect (as the *National Blueprint for the Family Law System* has suggested).

2.13. In the *Evaluation of the 2006 Family Law Reforms*, the Australian Institute of Family Studies (AIFS) found that FRCs had generally become a visible gateway to the family law system, but that the pathways through the system

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needed to be more clearly defined. The complexity of this movement from agency to agency is also depicted in a number of reports, such as the study on the Frankston and Mornington Peninsula FRC and the Family Relationship Services National Report, 2010–11, both of which note the wide range of referring agencies moving clients to FRCs and the wide range of agencies to which FRCs refer.

2.14. The report by Family and Relationship Services Australia has shown that there may still be many obstacles in the pathways for some in using services of the FSP, namely waiting times before a new agency will accept the client, difficulty in finding an appropriate service, some services’ inability to take the client, and the time a service must invest to move clients on to one of the further appropriate services.

Evidence of Service Gaps in Cases of Family Violence, Child Abuse and Neglect

2.15. In the Evaluation of the 2006 Family Law Reforms, AIFS found that some families with family violence or child abuse issues were on a ‘roundabout’ between FRCs, lawyers, courts and state-based child protection and family violence systems.

2.16. Whilst this topic may seem to sit outside the scope of this literature review, it is important to note that a significant amount of matters that access the family law services, relate to family violence. In cases of family violence, some separating families make their first contact with the legal system through protection order proceedings under State and Territory family violence legislation. These families may arrive at FSP FDR services, including FRCs, through the State/Territory family violence system. The existence of and conditions on any family violence protection orders are relevant in these circumstances.

2.17. The Australian Law Reform Commission and the NSW Law Reform Commission highlighted that, in some cases, protection order conditions may conflict with arrangements made for FDR, such as where a protection order prohibits contact with the other person but FDR requires both parties to be present. FRCs are usually aware as to whether such orders are in

27 Thea Brown, What About the Children? (Family Life, 2010).
place as a result of their screening and assessment processes, and in these cases can put in place appropriate processes, such as shuttle mediation.

2.18. The Australian Law Reform Commission and the NSW Law Reform Commission highlighted how different definitions of ‘family violence’ in federal family law legislation and State and Territory family violence legislation can lead to problems in practice.\(^{33}\) Despite recent amendments to the definition of ‘family violence’ in s 4 of the Family Law Act 1975 (Cth),\(^ {34}\) there remains significant inconsistencies between what constitutes ‘family violence’ between the Family Law Act and definitions of family violence in some of the various family violence legislative regimes in the States and Territories.

2.19. Key differences include the extent to which the family violence definitions are linked to criminal offences; capture non-physical violence; turn on the impact on the victim or the intent of the person committing family violence; and cover abuse experienced by certain groups within the community.\(^ {35}\) The divergence between the Family Law Act and the State and Territory family violence legislation is greater in some jurisdictions than others.

2.20. Other research conducted following the 2006 reforms clarified that both adult and child victims of family violence find it difficult to navigate around the socio-legal service system in family law, and that when using services, they felt disbelieved and consequently under-disclosed the presence of family violence.\(^ {36}\) These findings reflect that of the Chisholm report, which argued that a key theme of the report was that:

> [t]he family law system, and each component in it, needs to encourage and facilitate the disclosure of family violence, ensure that it is understood, and act effectively upon that understanding.\(^ {37}\)

2.21. Laing’s 2010 qualitative study of the experiences of women negotiating the family law system in the context of domestic violence found that such women struggled to navigate the complex and uncoordinated web of family services necessary to protect themselves and their children.\(^ {38}\) Laing’s subjects identified poor coordination between services in the family law system and even within single services as central to their difficulties.

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\(^ {34}\) *Family Law Legislation Amendment (Family Violence and Other Measures) Amendment Act 2011* (Cth).


\(^ {38}\) Lesley Laing, *No Way to Live: The experiences of women negotiating the family law system in the context of domestic violence* (University of Sydney, 2010) 37.
2.22. Laing and her co-authors’ research highlights the importance of collaboration between family law and mental health services to assist victims of family violence.\(^{39}\) They argue that women who have experienced family violence have far higher rates of mental ill-health and that there are significant barriers to receiving simultaneous family violence and family law assistance and mental health help. Their pilot study of collaboration in family violence and mental health services reveals:

the perspective of staff from both sectors, participating in the action research led to the development of cross-sector working relationships that increased access to services for their clients and enabled the sharing of knowledge from two different perspectives\(^{40}\)

2.23. The AIFS evaluation of the 2006 reforms found that those clients using family relationship services generally were more likely to have reported experiences of family violence, mental health problems (MHP), drug and alcohol issues as well as distant, conflicted and fearful relationships than those who did not use the services.\(^{41}\) That evaluation suggests mixed results in both staff and client assessments of the effectiveness of the service provided by centres. Professionals working at FRCs rated the effectiveness of their services quite highly, especially in relation to the child-focused nature of the services and their capacity to deal with mothers, fathers, low income earners and children.\(^{42}\)

**Evidence of Service Gaps: Legal Services and FDR**

2.24. Another specific service gap identified in the literature is between FDR services and legal services who may assist clients attending FDR. It is important to note that new services have been added into the FSP to cover potential gaps between FDR services and legal service providers such as the guidelines on referral to legal services in the Operational Framework for FRCs, then the 2009 legal assistance partnerships and the development of protocols and the Coordinated Family Dispute Resolution in 2010. This section focuses on those services to address the acknowledged gap.

2.25. In their case-based study of three NSW and Victorian FDR services, Batagol and Brown provided evidence that access to quality legal advice and legal representation may be beneficial for parties in FDR. Such advice may help parties to agree on interpretations of law and therefore limit exploitation of legal uncertainty in FDR by stronger, more strategic negotiators. In this context, family lawyers can provide a useful settlement

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service alongside FDR, and ought not be simply labelled ‘adversarial’. Banks’s study of Queensland family lawyers revealed that they were almost universally child-focused and relational in their practice.44

2.26. Until 2009, Australian law and policy did very little to encourage use of legal advice in FDR. Batagol has stated that the 2006 reforms were premised upon an anti-lawyer philosophy and a false assumption that family lawyers always behave adversarially.45 As an example, the government’s November 2004 Discussion Paper states:

To help prevent joint sessions with a parenting adviser becoming adversarial, it is proposed that lawyers not be present during those sessions. Parents would still be able to consult a lawyer if they wished, but the lawyer would not be part of the process at Family Relationship Centres.46

2.27. This position became policy at all FRCs where, until 2009, clients were not permitted to be legally represented at FDR sessions conducted at the centres in order to ‘move away from an adversarial approach to negotiating parenting arrangements’.47

2.28. In July 2009, the Attorney-General announced a change in this policy, suggesting that lawyers could attend dispute resolution sessions with their clients at FRCs in some circumstances, especially cases involving family violence.48 Consequently, the Coordinated FDR Pilot was announced, providing legally assisted FDR in cases of identified family violence. This model followed recommendations and a model for legally supported FDR for survivors of family violence proposed by Field.49 Another program which was initiated in this respect was the Legal Assistance Partnerships, which focus on regional community legal services50.

2.29. Batagol and Brown have shown that current relevant statutory rules are silent on the issue of whether or not parties should seek legal advice in

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conjunction with FDR.\(^{51}\) FDR practitioners are not permitted to give legal advice except on procedural matters or unless they are also lawyers.\(^{52}\) Until the enactment of the *Family Law Rules 2004* (Cth), family mediators were required to tell mediating parties to seek legal advice before and during mediation as well as before any agreement that arose from the mediation became legally binding.\(^{53}\) No equivalent requirement exists today.

### 2.30. The AGD has created a set of guidelines for referral to legal advice by staff at FRCs. Those guidelines differentiate legal information (‘information of *general application* such as information about what the law says’) from legal advice (‘information that is *specific* to a person’s individual circumstances, such as explanation of the legal consequences of pursuing a particular option’).\(^{54}\) Centres are obliged to follow guidelines from the AGD relating to the provision of advice.\(^{55}\) The guidelines are clear that if a client asks how the legal information they are given by the centre applies to them, staff must reiterate that they cannot give such advice but can offer a referral to a legal service if necessary. If clients need legal advice, staff are able to suggest that clients ring the Family Relationship Advice Line and speak to a Commonwealth-funded Legal Adviser. The centres can provide referrals to local legal aid offices, community legal centres and to a range of private lawyers or the State or Territory law society.

### 2.31. Under the FRC Legal Assistance Partnerships Program, each FRC is required to develop relationships with local private legal practitioners, community legal centres and legal aid offices in order to facilitate referrals to legal advice.\(^{56}\) Staff at centres are given discretion in determining whether or not it is appropriate to make a referral for legal advice. Conditions for legal assistance and FRCs are outlined in protocols.\(^{57}\)

### 2.32. Varied, localised cultures have been established at centres in relation to legal referrals. Some centres have cultivated strong local ‘socio-legal service networks’ (sources of referral both to and from the centres) through holding

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\(^{52}\) *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth), reg 29(d).

\(^{53}\) *Family Law Rules 1984* (Cth), O 25A, r 12, now repealed.


numerous information seminars and meetings with neighbourhood service providers, including lawyers. 58

2.33. The 2011 AIFS evaluation of the FRCs legal assistance partnerships found that the majority of FRC legal assistance partnerships were functioning well with a small number operating poorly. 59 The report identified a legacy of previous policies, practices and attitudes whereby legal assistance provided by lawyers was denigrated. 60 The report found that lawyer-assisted FDR was not offered to any great extent and that the effectiveness of lawyer-assisted FDR was very mixed. 61 The two key challenges identified in the program evaluation were resource issues in the face of high demand for services and that of working with professionals from other disciplines ‘when the disciplines themselves had different histories, cultures, roles and responsibilities.’ 62

2.34. The AIFS evaluation of the 2006 family law reforms showed that most parents who had reached agreement at FDR reported that lawyers or courts do not play a key role after agreement has been reached. 63 This finding suggests that most clients at FDR appear reluctant to use legal services alongside a mediation service, noting that prior to 2009 it was very difficult to access legal assistance alongside FDR, particularly in FRCs and therefore it would have been reported that those reaching agreement using FDR did not see courts and lawyers as playing a key role. Batagol and Brown’s qualitative research has shown that clients using family mediation are often unwilling to use court processes to enforce their legal entitlements because of a desire to protect children from further conflict. 64 Coupled with an apprehension about lawyers, this study concluded that client attitudes towards lawyers was a major stumbling block to increased use of legal services alongside FDR services. 65

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58 The Frankston Family Relationship Centre has developed a strong socio-legal network in this way: see Thea Brown, Research Report: Frankston Family Relationship Centre (January 2008).
59 Lawrie Moloney, Rae Kaspiew, John De Maio, Julie Deblaquiere, Kelly Hand and Briony Horsfall, Evaluation of the Family Relationship Centre legal assistance partnerships program (AIFS, 2011) E1.
60 Lawrie Moloney, Rae Kaspiew, John De Maio, Julie Deblaquiere, Kelly Hand and Briony Horsfall, Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program (AIFS, 2011) E1.
61 Lawrie Moloney, Rae Kaspiew, John De Maio, Julie Deblaquiere, Kelly Hand and Briony Horsfall, Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program (AIFS, 2011) E3.
62 Lawrie Moloney, Rae Kaspiew, John De Maio, Julie Deblaquiere, Kelly Hand and Briony Horsfall, Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program (AIFS, 2011) E3.
Evidence of Good Practice

2.35. This section explores evidence in the literature of good practice in service delivery for FSP family law services. It explores evidence of good practice in relation to good collaborative practice as well as available evidence in good practice in general service delivery across FSP family law services.

Evidence of Good Collaborative Practice

2.36. Services within the FSP have produced a number of collaborative initiatives to overcome identified service gaps. This section explores evidence of good practice in collaboration in the following areas:

- Co-location of services;
- Pathways Networks and other local collaboration;
- Evidence of good practice in collaboration between FDR and legal services; and
- Evidence of good practice in collaboration from the family courts.

2.37. The literature explored below suggests that collaboration needs to be targeted to local needs and gain support from local groups. It needs senior staff in the collaborating organisations to be convinced of the benefits of collaboration so that they can overcome the inevitable obstacles, including differences between professional groups, and the energy needed for change. The collaborating group needs control over the collaboration. Resources need to be allocated to the collaboration as it is an additional cost in service provision. In order for the collaboration to be maintained beyond the first phase, the benefits of the work being done need to be shown clearly and early.

Evidence of Good Collaborative Practice: Co-location

2.38. Co-location, an obvious solution to the disjunctions of the service system, is only now emerging in the literature and is discussed in only the research covering the SCaSP program. However, it exists, despite its almost complete absence from the literature. For example through common sponsorship of services within the FSP, counselling is co-located with FDR, sometimes these are co-located with SCaSP and with Children’s Contact Services. POP services are on occasions co-located with Children’s Contact Services. It seems important to give further consideration to co-location as a good practice initiative within the FSP and between FSP and other family law services. It is also important to identify where and how it is occurring.

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Evidence of Good Collaborative Practice: Pathways Networks and Local Collaboration

2.39. Another solution to the fragmentation of the service system has been the instigation of the Commonwealth funded local Family Law Pathways Networks as well as other local collaborative projects.

2.40. The Family Law Pathways Networks have sought to ‘improve collaboration and coordination between organisations operating in the family law system in order to help separating families obtain appropriate services’. 69 The networks allowed collaborative referrals between local service providers and organisations, including the family courts, FRCs, family counsellors, legal aid commissions, community legal centres, private legal practitioners, and relevant government departments and agencies. An evaluation of the Pathways Networks is currently underway.

2.41. Other examples of local collaboration have been documented by the FRSA Linkages and Collaboration project undertaken to consider local collaboration between family relationship services (most of which are from the FSP) and other local services (mostly provided by state government and local community based not for profit agencies). 70 The project showed the conditions for successful collaboration and the obstacles to it and these are discussed further in Chapter Five ‘Performance and Quality Measurement’.

Evidence of Good Practice in Collaboration between FDR and Legal Services

2.42. The research conducted by Rhoades and her co-authors has clearly shown that professional relationships between FDR practitioners and family lawyers vary according to the nature of the FDR service offered, including the goals and approach of the FDR program. Consequently, they recommend that initiatives used to cultivate good interpersonal relationships between members of these professions will need to be tailored to individual practices. 71 They identified best practice in collaboration between FDR practitioners and lawyers (which they named a ‘complementary services approach’) involving:

- [a] complementary services approach (where dispute resolution and legal professionals saw each other as providing different but equally valuable services to clients);
- [s]hared goals between lawyers and family dispute resolution practitioners;
- [a] common understanding of each profession’s role, responsibilities and practices; and

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Evidence of Good Collaborating Practice: Family Courts

2.43. Another example of collaborating best practice has been undertaken by the Family Court of Australia which while not located in the FSP sector does have lessons for it. That project, arising out of research on the management of child abuse allegations in disputes over what was then termed access and custody, brought together a number of services in a new program, Magellan, run from the Family Court. The project, now a permanent list within the Court, offers a special service to separated families where serious child abuse may have occurred. The project links the Court, the State legal aid commission, the State child protection service and the local family law legal professionals in a service where the Court has laid out the steps for the legal process led by the judge and where the judge brings together stage by stage the various relevant services.

2.44. The project has been evaluated twice and found to be successful, producing decisions more quickly and cheaply, producing decisions that were less frequently disputed subsequently and decisions that offered improved protection to the child. The conclusions as to the success of the collaboration were that the collaboration needed to be based on strong commitment to a shared goal that related to improvements in the service to clients, collaboration being undertaken by the senior levels of the organisation before less senior levels could be brought in, clear policies and procedures, clear decision making, resources invested in the collaboration, education and encouragement of front line workers in the new tasks, regular meetings to monitor and trouble shoot, evaluation and support.

2.45. The project has led to further collaborative projects between the WA Family Court of Australia and the WA child protection services and again between the Family Court of Australia, Adelaide Registry, and the SA child protection services.

2.46. Another example of collaboration can be seen in the Review of the Dandenong Project which tested new methods for reducing the burden of litigation on disputants. The Review suggests that overall the changes made to case management processes as part of this project had a positive impact and that overall cases settled earlier, without adjudication and often with less court events. In turn, it has been suggested that the burden on disputants in relation to fees and time required, has been reduced.

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2.47. The Project features the referral of cases to external (community) dispute resolution services via a kiosk located at the Dandenong registry\(^75\) and would improve links between those that work in the family law sector.\(^76\) The kiosk would rely heavily on the provision of data from various organisations relating to contact details and wait times, as well as the support of federal magistrates, the legal profession, the court administrators and the community.\(^77\)

**Evidence of Good Practice in Service Delivery for FSP Family Law Services**

2.48. While many of the services under the FSP are relatively new and delivered in line with Departmental guidelines, many service providers have tried new initiatives, as these services have developed. Information about new initiatives is sometimes disseminated through conference papers or kept ‘in house’. For example, Professor Rosalind Croucher’s paper at the AIFS conference in 2012 focused on initiatives related to law reform, including improving practices in education and training, information sharing and better co-ordination.\(^78\)

2.49. FRCs are the location for many initiatives that are not yet highlighted or evaluated. These include for example: Child-Focused Group Education for separated parents and family members on Post-Separation Parenting\(^79\), Video-Conferencing Mediation for separated parents in different locations, and the Use of a Case Manager to assist clients navigate the services\(^80\), and other service linkage strategies.

2.50. In addition, there are two new intake and assessment tools being trialled for introduction in 2013, being the DORS and the CAARS tools. The CAARS tool has been used by Interrelate FRC’s\(^81\) for the past two years and the DORS tool is currently under consideration with the AGD.

2.51. Child-Focused Group Education for separated parents and family members on post separation parenting is carried out in most, if not all, FRCs

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\(^75\) Theresa Layton, Yarrandale Enterprises Pty. Ltd., *Review of the Dandenong Project*, The Federal Magistrates Court of Australia (March 2012), 1


\(^79\) For example Family Mediation Centre programs, information accessible at: http://www.mediation.com.au/post_separation_parenting_course.html


\(^81\) See the *Interrelate* website http://www.interrelate.org.au/ (accessed 17 January 2013)
and it is offered to all who are seeking mediation but also to those approaching the centres but who do not or may not proceed to mediation. While each centre offers something a little different, they all have devices to focus families on keeping the well-being of children uppermost in their mind in planning and carrying out parenting behaviour, they teach clients about post separation communication with former partners and children, and they offer information about post separation services and issues. Two studies have noted they rate highly with parents, more highly than the mediation experience, and that parents do believe they learn cooperative parenting from them. 82

2.52. Another study considering such groups in the POP program found they were just as well received there, suggesting more exploration could be undertaken into this as an effective and value for money intervention. 83 Each service structures the groups differently – the FRCs take those who wish to come, but do not place separating parents in the same group, and POP structures the groups more carefully by bringing together mothers and fathers but not those who have been partnered with the other.

2.53. FSP service providers have adopted policies of serving the best interests of children using the model of the continuum of child focused, child-centred and child inclusive services outlined in greater detail in Chapter 6 which focuses on children. FRCs use the model of child focused services in group education, for example, by having the parents post up drawings of their child’s hand to keep the child at the forefront of the parent’s thinking. Research indicates that child-focused service as a model may be very acceptable to parents. 84 Additionally FRCs use child inclusive mediation, but that seems less acceptable. 85 Here, when the parents agree and the issues indicate the value of this, children are interviewed to gain their views on their past and future living and these views are made known to the parents discretely.

2.54. Where parents and children are prepared to join this intervention, parents report favourable outcomes of gaining a better understanding of the children and what they expect from all family members and a greater acceptance of the differences between their views and those of their children; children report a sense of being listened to when they have not previously been heard, of relief at being able to express themselves and a sense that they are being cared for as individuals. Much research indicates

82 Thea Brown, What About the Children? (Family Life, 2010); Thea Brown, Alan Campbell, Jennie Hannan and Karen Barker, Advancing Children’s Interests, Paper Presented to FRSA Annual Conference, Darwin (13 November 2012)
children are left alone and excluded from discussion in family crises like parental separation.86

2.55. FRCs have also developed video conferencing and teleconferencing for mediation between former partners who no longer live in the same region. This relies on each of the participating FRCs coordinating about agreed mediation principles and processes. There is very little discussion in the literature of the use of this new technology in mediation, however Relationships Australia Queensland have undertaken an evaluation on the development of this service, which will be further referenced, below.

2.56. The Central Coast FRC at least has set out a new role, (used in other family support services), of a case manager to look at each client’s particular needs and to assist them to keep moving forward and to link them with other services where necessary but to keep monitoring the client’s progress. This role was established because of the agency’s view of the client’s difficulties in managing the family law service system, especially where they had extra burdens, like financial problems and domestic violence.

2.57. Most FRCs have developed linkages with other related services, some within the FSP and some without. Few of these linkages are documented. Such strategies include establishing regional coordinating committees to undertake joint service planning and service linking, setting up groupings of services around the particular FRC and setting up designated liaison staff to link clients from one service to another.87

Summary

2.58. The range of services within the FSP family law program is extensive and they include well established conventional services many of which require costly infrastructure and also newer services using new technology that require less infrastructure.88 There is little research on many of these services and especially on those utilising new technologies to deliver services.

2.59. There is also clear evidence in the literature of good practice in collaborative initiatives to overcome identified service gaps in the following:

areas: Co-location of services\textsuperscript{99}; Pathways Networks and other local collaboration\textsuperscript{100}; evidence of good practice in collaboration between FDR and legal services\textsuperscript{91} and evidence of good practice in collaboration from the family courts.\textsuperscript{92}

2.60. Even though many of these services are relatively new they are developing examples of good practice which over time will yield standards for the service system as a whole. Many of these examples are aimed at addressing the structural problems of the service system which is particularly problematic in Australia because of the Commonwealth / state responsibility and service provision divide. At the same time there are examples in intervention with separating families but they have not been brought together for consideration. Group education and counselling has become a common feature of a number of these programs and needs further investigation.

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\textsuperscript{100} Attorney-General Robert McClelland, ‘$2.8 Million for Family Pathways Networks’ (Press Release, 27 April 2010).


Chapter Three - Clients from Disadvantaged and Vulnerable Backgrounds

Introduction

3.1 This Chapter explores the literature in relation to barriers that families from disadvantaged and vulnerable families experience in accessing services. It also explores instances of good practice that enable their access and participation in FSP family law services.

3.2 The Chapter addresses the following indicative questions from Allen Consulting Group’s Project Plan for the AGD:

- Are people from disadvantaged and vulnerable backgrounds accessing FSP family law services?
- How effective are FSP family law services in meeting the needs of families from disadvantaged and vulnerable backgrounds?

3.3 There are recent reports that suggest that there are gaps in services offered by many Family Support Program (FSP) service providers for clients from Aboriginal and Torres Strait Islander, CALD and other vulnerable backgrounds. Other vulnerable backgrounds which will be explored later in this chapter relate to families experiencing family violence, children whose parents suffer mental illness, children with a disability and families in regional and remote areas.

3.4 This chapter is structured so that it commences by defining ‘disadvantage and vulnerability’ amongst FSP client groups and then goes on to examine specific issues relating to both barriers to access and good practice for the following priority groups: CALD, Aboriginal and Torres Strait Islander clients, families experiencing family violence, children whose parents suffer mental illness, children with a disability and families in regional or remote areas.
Who are Clients from Disadvantaged and Vulnerable Backgrounds?

3.5 ‘Vulnerable’ clients are defined by FaHCSIA as clients from backgrounds who are ‘vulnerable to poor outcomes because of multiple or complex needs or who lack resources (financial, physical, personal or social) to support their wellbeing and positive family functioning.’93 The word ‘disadvantaged’ has been used in this review to reflect the language used by FaHCSIA in its Family Support Program Access Strategy Requirements.94

3.6 FaHCSIA emphasises that it is a family’s circumstances (such as high conflict separation, lack of parenting skills, low income, etc), rather than family type or characteristic, that makes them vulnerable to poor outcomes.95 FaHCSIA suggests that some client groups are more vulnerable to poorer outcomes than others including:

Indigenous families; single parent or blended families; young parent families; families living in areas of locational disadvantage; those experiencing housing instability or high mobility; families where violence or significant trauma is an issue; families involved with the child protection and/or family law or justice system; families experiencing financial hardship or disability; grandparent or extended family carers, mental health or substance abuse issues; and many culturally and linguistically diverse families particularly refugees.96

3.7 Research suggested that people with lower levels of education, some Aboriginal and Torres Strait Islander clients and those who were very old or very young were most likely to do nothing in response to legal events.97 Finally, people with a chronic illness or disability had lower

rates of resolution when compared with other survey participants. The researchers concluded that:

the consistent relationship between chronic illness or disability and a wide range of legal problems indicates the importance of ensuring that legal services meet the needs of this disadvantaged group. 99

3.8 In November 2010, the Federal Government announced reforms to the FSP ‘to better target vulnerable and disadvantaged families and coordinate services for families and children, reduce red tape and paperwork for service providers and enable them to work more flexibly to meet the needs of children and families.’ 100

3.9 FSP services are required to assist families who are vulnerable to poor outcomes to build resources and capabilities to enable more ‘positive family functioning.’ 101 To do so, they must outline a ‘Vulnerable and Disadvantaged Client Access Strategy’ that ‘consider[s] how best to strategically improve service accessibility, responsiveness and outcomes for the most vulnerable and disadvantaged (including Indigenous) families’ in their area. 102

3.10 Key aspects that must be incorporated into each organisation’s ‘Vulnerable and Disadvantaged Client Access Strategy’ are identification of social needs among clients, appropriate engagement with vulnerable client groups, effective collaboration with other service providers, holistic service provision and strategies to improve accessibility of services for vulnerable clients. 103

3.11 Because of concerns around the ambit and meaning of ‘vulnerability’, very limited reliable data is available on the use of FSP services by vulnerable families. As pointed out in Chapter 2 of this Review ‘The Range of Interventions and Services Available for Families in Need of Support’, information about service delivery to vulnerable client groups was inconsistent in terms of whether or not data was gathered and then in terms of which particular groups were covered.

100 Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs’ Family Relationship Services Program (FRSP) National Report 2009–10 (2011) 3.
3.12 The Auditor-General’s 2010 report into the implementation of FRCs revealed that a large proportion of FSP clients are families presenting complex issues (domestic violence, mental health problems (MHP), substance abuse issues).[^104] The AIFS reports of 2009 and 2011 included Aboriginal and Torres Strait Islander clients and victims of violence clients (VOVC) and made mention of clients with mental health and substance abuse problems (SAP), but it did not cover CALD clients or low income clients.[^105] The Institute’s report included Aboriginal and Torres Strait Islander and CALD clients as well as low income clients.[^106]

3.13 Information from FaHCSIA suggests that, in 2009–10, 66 per cent of funded FSP services had developed strategies or programs to meet the needs of families affected by drugs and alcohol, 75 per cent of FSP services had developed strategies or programs to meet the needs of families affected by mental health problems (MHP), 63 per cent of services had strategies or programs for clients with disabilities or their carers and 64 per cent of FSP services had programs or strategies for rural, regional or remote families.[^107]

**CALD Clients**

3.14 FaHCSIA suggests that some client groups are more vulnerable to poorer outcomes than others including ‘many culturally and linguistically diverse families particularly refugees.’[^108] This section explores evidence of both barriers to access and good practice in delivering FSP family law services to CALD communities.

**Relevant Policy Goals and Frameworks for providing services to CALD clients**

3.15 The Commonwealth Government’s *Access and Equity Strategy and Framework* ‘provides agencies with a key tool for building cultural diversity considerations into the core processes of government service

The strategy covers FSP service providers as the services are government-funded. The Access and Equity Strategy and Framework contains four principles or performance indicators, being:

- Responsiveness: Extent to which programs and services are accessible, fair and responsive to the individual needs of clients;
- Communication: Open and effective channels of communication with all stakeholders;
- Accountability: Effective and transparent reporting and review mechanisms; and
- Leadership: Broad approaches to management of issues arising from Australia’s cultural and linguistic diversity.

The 2009 Strategic Framework for Access to Justice in the Federal Civil Justice System recognised that:

[access to quality legal assistance and information can help people from CALD backgrounds and their communities by removing misconceptions, reducing fear of victimisation, promoting belonging and building trust in government and the justice system. This also reinforces the resilience of our system, as it encourages respect for the rule of law.]

3.17 The Strategic Framework for Access to Justice in the Federal Civil Justice System contains a number of recommendations that relate to CALD families’ engagement with the family law system. Relevant to FSP service provision for CALD clients, these recommendations include:

- That Commonwealth agencies that provide services and information to the public and Commonwealth-funded service providers adopt a no wrong number, no wrong door approach to the provision of information about government services, or queries seeking information about legal issues. This will reduce information barriers to accessing justice, by ensuring that whichever source of assistance people turn to is able to assist, either directly or by taking people to the correct source.
- The AGD should develop strategies to increase the accessibility of legal information and services among groups that may not be reached by more general programs. This may include targeted advertising, technological solutions, and outreach programs.
- In line with the Commonwealth Ombudsman’s recommendations to enhance access to interpreters as a ‘lifeline’ for access to government information and services for culturally and linguistically diverse communities, Commonwealth agencies

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should explore ways to improve access to interpreters, including through direct links to interpreter services on website homepages.  

- Legal assistance providers and relevant Commonwealth-funded service providers (such as family relationship services) should increase collaboration to develop joined-up solutions to service delivery. Strategies could include the collaborative delivery of services, increasing the use of warm referral between providers and more uniform data collection.

- The Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians.

3.18 All FSP services are required to be accessible, equitable and responsive. This includes engaging groups that may have barriers to access, such as families from CALD backgrounds. In particular, Family Relationship Centres (FRCs) are required to service all clients in their catchment areas without bias, including those from diverse backgrounds. Under their Operational Framework, FRCs must:

work to ensure sensitivity and accessibility to any people who face a real or perceived barrier to receiving assistance ... whether on the basis of race, religious background, language or ethnic background ... or any other unjustifiable basis.

3.19 Matters that FRCs must take into account when designing their services for the diverse communities in their catchment areas include engagement and communication with ethno-specific groups, cooperative arrangements with other local services, means to overcome language and cultural barriers in service delivery, making optimum use of interpreters, adapting the service design model, a workforce diversity strategy and providing access for clients outside business hours.

Barriers to Access for CALD clients

3.20 This section explores barriers to access to FSP family law services for CALD clients. It commences by exploring current levels of use of FSP

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119 Susan Armstrong, Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 1.
120 Attorney-General’s Department, Operational Framework for Family Relationship Centres (June 2011) 16.
121 Attorney-General’s Department, Operational Framework for Family Relationship Centres (June 2011) 15.
122 Attorney-General’s Department, Operational Framework for Family Relationship Centres (June 2011) 16.
services by clients from diverse backgrounds before examining literature on barriers to access.

**Use of FSP Services by CALD Clients**

3.21 Issues about the quality of data available on the responsiveness of government-funded services to the needs of diverse families have been recognised in Australia’s multicultural policy, *The People of Australia*.\(^{123}\) That policy states that the Australian Government will:

> conduct an inquiry into the responsiveness of Australian Government services to clients disadvantaged by cultural or linguistic barriers. The outcome of this inquiry would provide the Government with a comprehensive view on how existing services are performing and how they could be improved.\(^{124}\)

3.22 Data about clients’ cultural and linguistic needs is not always systematically and comprehensively collected nor reported by family support services or the relevant government departments. For example, the 2008 KPMG evaluation of family dispute resolution (FDR) services conducted at state legal aid commissions noted that, once referred to FDR, some FDR intake forms at some legal aid commissions do not request information about clients’ cultural backgrounds.\(^{125}\) At the Court level, there is usually no demographic material collected.

3.23 Data about CALD clients for the FSP program has been calculated according to the proportion of clients born in a country where English is not the dominant language, language spoken at home and English language proficiency.\(^{126}\) Armstrong notes the poor quality of data collected about CALD clients for FSP services, with data about clients’ country of birth not publicly accessible, and since 1 July 2010, FSP services only collect data on language spoken at home (and English-speaking proficiency) and no longer collect data about country of birth, year of arrival or ancestry.\(^{127}\)

3.24 The most recent report from the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) – *Family Relationship Services Program (FRSP) National Report 2009–10* (the most current report received by the researchers) – does not report on the percentage of clients using FSP services who were born in a country where English is not the dominant language.\(^{128}\)

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\(^{125}\) KPMG (for the Attorney-General’s Department), *Family Dispute Resolution Services in Legal Aid Commissions: Evaluation Report* (2008) 34.

\(^{126}\) Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 2.

\(^{127}\) Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 4.

3.25 Armstrong’s research suggests that Australian CALD families are not using FSP services at a rate that is comparable with their representation in the general Australian population.\textsuperscript{129} In 2008–09, CALD clients comprised 10 per cent of non-FRC FDR service clients, 8 per cent of FRC clients and 3 per cent of regional FDR clients. Eight per cent of all FDR clients, and of all FSP service clients, were of CALD background.\textsuperscript{130} Armstrong points out that this compares to 2006 Census figures that suggest that 22 per cent of the population were not born in Australia, 15 per cent speak a language other than English at home and 14 per cent were born in a country where English was not the main language spoken.\textsuperscript{131}

3.26 Access rates to FSP services may vary according to ethnic group and the efforts put in by FSP services to attract particular communities to their service. Ojelabi and her co-researchers’ investigation into the Broadmeadows FRC found that Turkish and Iraqi groups had access rates to the FRC that were slightly higher in comparison with the representation of that population within the municipal area, while access rates for Lebanese clients were slightly lower.\textsuperscript{132} Importantly, they also found that CALD clients who did attend the FRC for FDR were more likely than non-CALD clients to be issued with certificates stating that FDR was inappropriate.\textsuperscript{133} Ojelabi and her co-researchers identify service-related barriers which relate to elements of cultural inappropriateness in service procedures and a lack of cultural diversity in the workforce, which may be problematic. \textsuperscript{134}

**Barriers to Access to Services by CALD Families**

3.27 The AIFS evaluation of the 2006 family law reform suggested that particular barriers exist to achieving full and open access to FSP family law services by clients from diverse backgrounds. The evaluation revealed that FSP staff were least confident engaging with clients from CALD and Aboriginal and Torres Strait Islander backgrounds of any client group.\textsuperscript{135} In particular, just 38.3 per cent of staff members from the

\textsuperscript{129} Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 2.

\textsuperscript{130} Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 4.

\textsuperscript{131} Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 4.


Family Relationships Advice Line (FRAL) felt that their service had capacity to work well with CALD families, the lowest rating from staff from any service working with any client group.\footnote{Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand and Lixia Qu, \textit{Evaluation of the 2006 Family Law Reforms} (Australian Institute of Family Studies, 2009) 55.}

3.28 In its 2012 reference on \textit{Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds}, the Family Law Council noted the following barriers to effective access to the family law system for families from diverse backgrounds that are relevant to provision of FSP services:

- A lack of knowledge of the law and available services, particularly amongst new and emerging communities;
- Language and literacy barriers, especially amongst newly arrived communities, compounded by difficulties in obtaining interpreters;
- Cultural and religious issues including varied understandings of divorce and parenting and socio-cultural norms which emphasize family privacy;
- Skepticism within some CALD communities about family relationship services including the perception that the process will lead to divorce or separation rather than reconciliation;
- Social isolation of many newly arrived family members;
- Lack of systematic collaboration and effective referral procedures between migrant support services and FSP and other family law services;
- A lack of culturally competent personnel across family support services;
- Inflexible service delivery models, especially at FRCs, which have developed without consideration of the needs of diverse population groups;
- Mistrust of government agencies by families from some migrant and refugee communities as a result of negative experiences with government prior to arriving in Australia;
- The vulnerability, especially to family violence, of migrant and refugee women who come to Australia on temporary visas where they are reliant upon their sponsor;
- The narrowness of definitions and conception of ‘family’ in family law legislation and policy which may not resonate with new and emerging communities; and

3.29 Armstrong’s research into use of FSP services by CALD families suggests that there is a lower level of external help seeking among people whose cultural norms are collectivist (that is, groups that have a centralised notion of social and economic control).\footnote{Susan Armstrong, \textit{Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds} (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 8.} In relation to underuse of FDR services in particular by CALD families, Armstrong...
conducted survey research that indicated that the following factors may contribute to these issues:

- Lack of understanding about mainstream mediation services;
- Cultural expectations for couples to stay together, and the shame and failure associated with separation, especially for some CALD women whose role is to maintain family unity, inhibit help-seeking from mainstream family services;
- Lack of trust in mainstream mediation services;
- Uncertainty that services would be culturally sensitive;
- Uncertainty that services would be culturally appropriate;
- Preference to deal with family breakdown within family or community processes; and
- Communication barriers.\(^\text{139}\)

3.30 The Australian Law Reform Commission and the NSW Law Reform Commission concluded in their 2010 report into family violence that there was the potential for non-judicial family law services to offer significant flexibility to tailor services and outcomes to the needs and interests of CALD children, families and their cultures.\(^\text{140}\) However, the Commissions also suggested that concerns regarding the use of non-judicial dispute resolution services may be amplified in the context of Aboriginal and Torres Strait Islander or CALD families because of the particular difficulties identifying family violence in these cases.\(^\text{141}\) An expert submission to the Inquiry noted the reluctance of Muslim women to disclose family violence because of fear of being blamed for the situation and of the violence being stereotyped as an Islamic issue.\(^\text{142}\)

3.31 Family and Relationship Services Australia (FRSA), the peak body representing family relationship and support services, noted in its submission to the Australian Law Reform Commission and the NSW Law Reform Commission in 2010 that barriers to access to FDR services for CALD families included low awareness of services, practical difficulties with the use of interpreters and the additional resources required to respond appropriately to families with complex needs.\(^\text{143}\)

**Good Practice in FSP Family Law Service Provision and CALD Families**

3.32 In relation to determining good practice in access to FSP Family Law Services by CALD Families, the poor quality of data available on the responsiveness of FSP services to families from diverse backgrounds is

\(^{139}\) Susan Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds* (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 8–10.


apparent.\textsuperscript{144} Data about clients’ cultural and linguistic needs is not always systematically nor comprehensively collected and reported by family support services or the relevant government departments.\textsuperscript{145}

3.33 The evidence of good practice outlined here relates to service provision across the full range of FSP family law areas.

**FDR Service Provision**

3.34 Armstrong summarised the best available evidence to determine elements of best practice in relation to engaging more CALD families in mainstream FDR services. These elements are:

- implementing a policy and monitoring framework to engage CALD families;
- responding to CALD communities’ needs and contexts;
- engaging CALD service providers and community leaders;
- developing partnerships and contribute to building community capacity; and
- fostering a culturally competent workforce and processes that facilitate the effective participation of CALD clients.\textsuperscript{146}

3.35 Armstrong’s 2011 research at Parramatta and Bankstown FRCs examined whether and how developing a culturally reflexive practice might assist FDR practitioners to enhance their responsiveness to the cultural contexts of families involved in FDR. Armstrong’s research showed that a culturally responsive FDR practitioner will:

- [u]nderstand the value of and limits to accommodating culture in FDR;
- [s]ensitively and respectfully explore the relevance of culture with each particular family;
- [r]espond effectively to cultural contexts in the FDR process, especially that the best interests of children will be constructed differently in different cultures.\textsuperscript{147}

3.36 The 2008 KPMG Family Dispute Resolution Services in Legal Aid Commissions: Evaluation Report found that, across FDR services at commissions in all states, there was very limited targeting of CALD

\textsuperscript{144} On the poor quality of data available from Commonwealth services for CALD clients see Australian Government, The People of Australia, Australia’s Multicultural Policy (2011) 8.

\textsuperscript{145} Amongst other commentators, this is asserted in Susan Armstrong Family Law Council, Reference Indigenous and Culturally and Linguistically Diverse Clients in the Family Law System (University of Western Sydney) 2 accessible at: https://docs.google.com/a/monash.edu/viewer?a=v&q=cache:9xALDu-taxoJ:www.ag.gov.au/FamilyLawCouncil/Submissions/Documents/Dr-Susan-Armstrong.doc+Susan+Armstrong+FAMILY+LAW+COUNCIL+ReferenceFamily+Law+Council,+Indigenous+and+Culturally+and+Linguistically+Diverse+Clients+in+the+Family+Law+System&hl=en&gl=au&pid=bl&srcid=ADGEESixmNtGIPxSd0vpt8ty8lz9qDZse5pExsY5E8ZyBaYc1E9GUHzTOFHM8LgdbgXkuLOE211OGLmVZGUTHOscF5s6Ir32-firGkgQw6jVq4A3s5Y69Yh7AMbAWbek_fyx7R&sig=AHIsEtbnQNMv7VFLVUnh5KfF9MzKYBQ_80kkAg

\textsuperscript{146} Susan Armstrong, ‘Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds’ (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 12.

\textsuperscript{147} Susan Armstrong, ‘Developing culturally reflexive practice in family dispute resolution’ (2011) 22 Australasian Dispute Resolution Journal 30, 37.
families to increase use of FDR services. Further, the report concluded that, across all states, legal aid FDR services’ response to people from diverse backgrounds was largely ad hoc and was not framed by protocols for delivering culturally and religiously competent FDR services. The report recommended a number of best practice reforms that would address the pitfalls in provision of FDR services to clients from diverse backgrounds:

- Actively promoting FDR services in target populations and organizations;
- Forming partnerships with services that represent or provide services to target populations;
- Developing alternative screening and assessment tools that are appropriate for varied populations;
- Ensuring screening checklists ask about the cultural or religious background of the applicant;
- Undertaking FDR in a culturally competent manner including matching of parties and FDR practitioner or including other participants in the FDR process;
- Training all professionals involved in FDR (not just FDR practitioners) at services in culturally and religiously competent practice; and
- Examining and continuously monitoring the appropriateness of existing FDR services for people from diverse backgrounds.

3.37 Armstrong indicated that, in relation to FDR services in particular, the following factors may increase CALD families’ use of and attendance at family mediation services:

- Acknowledgment of differences in CALD communities and the importance of religious and cultural values;
- Identification of the influence of structural factors on the migration and settlement experience;¹⁵¹
- Recognising the important gate-keeping role played by community-based services assisting CALD and faith communities and working in collaboration with CALD communities and such services;
- More effective communication with CALD communities and service providers;
- Supplementing existing community dispute resolution processes;¹⁵² and

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¹⁵¹ Armstrong does not specifically explain what these structural factors (systemic factors which are beyond the individual’s control) relating to the migrant experience may be.
¹⁵² In making this point, Armstrong is referring to existing dispute resolution processes present within many CALD communities which would be supplemented with FDR services, so that the FDR services would operate in addition to and alongside existing community dispute resolution services.
Family Violence Prevention Programs

3.38 Dimopoulos considered the role of ‘legal empowerment strategies’ in the prevention of family and domestic violence in new and emerging communities, through the examination of three such strategies being implemented in Victoria. Although these services are not FSP family law services, the findings of Dimopoulos’ review have implications for best practice in service delivery to diverse families in the FSP family law program aimed at preventing family violence. Dimopoulos concluded that good practice in delivery of family violence prevention programs to new and emerging communities, centres around the idea that legal empowerment strategies must progress beyond building legal literacy, so that there is an implementation of critical consciousness and social change. It further highlights that mere information provision is not enough, and that there is a:

...need to challenge the prevailing view that the delivery of legal information in relation to family violence laws to members of new and emerging communities will inevitably result in contributing to the prevention of violence.

3.39 Respondents in Dimopoulos’ study (reporting through subjective self-assessment) who were delivering family violence prevention programs to new and emerging communities in Victoria listed the following factors as improving the levels of knowledge held by newly arrived communities about the law as it related to family and domestic violence:

- The adoption of a whole of community approach, involving both men and women, and recognising difference in the information and learning needs within communities, including issues for young people;
- The involvement of trusted community mediums to convey key messages, particularly when they involve messages of ‘cultural’ change;
- Utilising strengths based approach which adopts culture as a medium for achieving change;
- Advocating for change within existing community structures to create a safe and supportive environment for all women can have

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153 Susan Armstrong, Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds (Australian Family Relationships Clearinghouse Briefing no 18, 2010) 11.
the most profound effect in reducing the potential and incidence of violence against women;

- Building the capacity of community leaders to understand the impact of violence against women and motivating them to initiate change within their own environments is a significant factor that supports women’s rights and priorities;

- Information and communication strategies with new and emerging communities are time and resource intensive and, as such, require a considerable amount of face-to-face work; and

- Relationship building and trust are critical factors that must be carefully cultivated before, during and after the project’s duration.\(^{157}\)

**Service Integration Strategies**

3.40 Service integration strategies are efforts used to foster collaborative working relationships between agencies across the family law services system, including partnerships with health and migration services, to better assist clients from diverse backgrounds. The Family Law Council reports that good practice in relation to service integration strategies will respond to concerns that access to the family law system for families from CALD backgrounds is inhibited by the fragmented nature of the service landscape.\(^{158}\) In its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* the Family Law Council identified the following as being elements of good practice in service integration strategies designed to assist CALD families within the family law system:

- Positive relationships between health and legal services to provide an effective pathways system into the family justice system for people from CALD backgrounds;\(^{159}\)

- Effective referral relationships with migrant settlement services for FRCs and legal services;\(^{160}\)

- Co-location (including outreach services) of legal, health and other non-legal services as a way of reaching out to newly arrived communities;\(^{161}\)

- Integrated service models which include some family sector services as well as migrant and other services which are all available in one location;\(^{162}\) and

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3.41 The above reference to ‘co-location’ presumably refers to FRC co-location with legal, health and other non-legal services.

3.42 The Family Law Council highlighted the following service integration strategy as an example of good practice in this field:

A highly successful referral strategy that has been running for 11 years in Melbourne’s Western suburbs is the Greek Legal Information Referral Service. This service, provided by the Australian Greek Welfare Society, provides a free evening legal advice service to low income families. Around one third of the matters dealt with by the service, which is staffed by Greek-speaking volunteer solicitors, concern family law issues.\(^{164}\)

**Capacity Building and Workforce Development**

3.43 Capacity building and workforce development initiatives have been highlighted as key strategies in good practice because of concern that a lack of culturally responsive and bicultural personnel have impeded effective use of the family law system for clients from diverse backgrounds.\(^{165}\) The two specific initiatives to improve workforce diversity explored by the Family Law Council were scholarships for people from diverse communities to become lawyers or FDR practitioners\(^{166}\) and the creation of a community support workforce to help guide clients from CALD backgrounds through the service system and court process.\(^{167}\)

**Community Consultation Strategies**

3.44 The Family Law Council suggests that an element of good practice in delivery of family services of CALD clients is a collaborative approach to program design which is informed by consultation with local communities.\(^{168}\) The Family Law Council highlighted the *Strengthening Family Wellbeing* model developed by Foundation House in Victoria as a “highly successful” example of good practice in community consultation:

This model involved the establishment of gender balanced 14 member Community Advisory Groups within three new and emerging


communities to work directly with mainstream service providers to develop culturally responsive services. The approach was informed by an understanding that the family relationships sector did not have the capacity to provide significant levels of direct service support to refugee background families, and that simply ‘pushing these families into the sector would produce poor outcomes’. The model established networks between six family relationships services and 40 community leaders from the Karen, Afghan and Sudanese communities around Melbourne. The Community Advisory Groups comprise seven men and seven women from each community, who are paid a stipend to participate in three hour monthly meetings. Once they were selected and established, the Community Advisory Groups undertook an analysis of their community’s family support needs, and were linked by Foundation House to the mainstream family relationship service that most closely correlated with the issues they identified. The Community Advisory Groups then created a job description for a Community Access Worker to work three days per week in each agency. Two positions were created for each service, one for a man and one for a woman. The diagram below illustrates this model.

Consultations with Foundation House personnel revealed a number of key principles underpinning the successful establishment of these advisory groups. Firstly, it was suggested that identifying appropriate advisors needs to be done with an established profile in mind. In the case of the Strengthening Family Wellbeing strategy, this was men and women who had children or who were the primary carers of children and young people, who were ‘not captured by a sense of culture clash but rather had a good foot in both the host and root culture of the particular community’. Secondly, Council was advised that having well developed Terms of Reference and being prepared to negotiate this
with the advisory group once formed was critical. Thirdly, the ‘compensation payment’ of $60 per person per meeting was considered to be an important acknowledgment ‘that people’s time has a value’ and vital to ensuring continued participation by group members. The manager of the program explained; ‘[W]e needed to address the issue that consumers often don’t have the resources to stay engaged in this kind of consumer participation strategy for the time needed for effective capacity building to take place’. He recommended that engagement endeavours by family relationships services need to be supported by ‘sufficient resource allocation’ to pay people from the community ‘on a consultancy basis’. 169

Flexible Service Delivery Models

3.45 The Family Law Council was clear that flexible service delivery models were important to enhance access to the family law system for people from diverse backgrounds. 170 Flexible service delivery models included

- Additional time to provide legal advice and dispute resolution services to clients from diverse backgrounds, especially if an interpreter is being used, if extended family members or support workers are present or when explanations of Australian family law are required; 171 and
- Organisational policies that are directed at meeting the support needs of diverse client groups. 172

Strategies for Working with Interpreters

3.46 A consistent theme that emerged from the Family Law Council’s consultations on working with clients from culturally and linguistically diverse backgrounds in the family law system was the need for targeted legal training for interpreters. 173 The Council stated that ‘The potential for cross-cultural misunderstandings can be compounded when interpreters come with their own cultural norms, experiences and perceptions about the family law system.’ 174

Improved Data Capture Strategies

3.47 Finally, the Family Law Council noted the need for more accurate data collection strategies regarding clients from CALD backgrounds. 175 The Council noted that:

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measures of cultural diversity across the family law system continue to be problematic, with some data capture systems restricted to linguistic diversity, which fail to record clients from diverse cultural and religious backgrounds who have English fluency, while others fail to capture second generation clients from culturally and linguistically diverse backgrounds.  

3.48 The Family Law Council report suggested that good practice in service delivery to CALD clients in the family service system would involve consistent use of measures of cultural diversity across the sector.

Aboriginal and Torres Strait Islander Clients

3.49 According to FaHCSIA definitions, Aboriginal and Torres Strait Islander clients may be vulnerable or disadvantaged:

There is evidence that some family groups may experience greater difficulties accessing and/or using resources and services needed to support wellbeing and positive family functioning. These families include: Indigenous families . . . 177

3.50 This section explores evidence of both barriers to access as well as good practice in delivering FSP family law services to Aboriginal and Torres Strait Islander communities. It commences by exploring relevant policy goals and frameworks before considering barriers to access and good practice to access to service provision.

Relevant Policy Goals and Frameworks

3.51 The National Indigenous Law and Justice Framework 2009–2015 provides the national approach to addressing the serious and complex issues that mark the interaction between Aboriginal and Torres Strait Islander peoples and the justice systems in Australia. 178 Endorsed by the Federal, State and Territory governments in 2009, the Framework sets out a number of goals, strategies and actions that Australian jurisdictions have committed to implement and monitor.

3.52 In relation to the family law system, one of the key strategies in the Framework is reducing the incidence and impacts of violence related to family law cases involving Aboriginal and Torres Strait Islander peoples. 179 To achieve this strategy, the Framework lists three specific
actions relating to Aboriginal and Torres Strait Islander peoples’ use of family support services:

- Increase Aboriginal and Torres Strait Islander peoples’ access to, and use of family support services during relationship breakdown and/or after separation;
- Assist survivors of violence to access and effectively use family law support services; and
- Develop and implement community legal education programs to make family law more understandable and accessible to Aboriginal and Torres Strait Islander peoples.\(^{180}\)

3.53 The *National Plan to Reduce Violence Against Women and Their Children 2010–2022* provides the framework for action by the Commonwealth, State and Territory governments to reduce violence against women and their children.\(^ {181}\) The Plan notes that Aboriginal and Torres Strait Islander women experience much higher levels of family violence than non-Indigenous women.\(^ {182}\) Consequently, the Plan contains strategies relating to Aboriginal and Torres Strait Islander women and children’s use of family law services, including for 2010–2013:

- Improving the cultural competence of mainstream and specialist services;
- Improving community responses to perpetrators;
- Improving services for Aboriginal and Torres Strait Islander women and their children; and
- Developing effective culturally appropriate therapeutic responses for Indigenous children who have been exposed to family violence, to prevent the transmission of intergenerational trauma.\(^ {183}\)

3.54 The *National Framework for Protecting Australia’s Children 2009–2020* attempts to provide a more integrated response from all State, Territory and Commonwealth governments to the need to protect children and work together better in areas of shared responsibility in relation to child protection.\(^ {184}\) This Framework noted that Aboriginal and Torres Strait Islander children are significantly over-represented in all parts of the child protection system and are six times more likely to be


the subject of a child abuse substantiation than non-Indigenous children.185

3.55 The key elements outlined in the Framework that affect FSP service provision to Aboriginal and Torres Strait Islander clients is the strategy of expanding access to Aboriginal and Torres Strait Islander and mainstream services for families and children. Initial actions planned for the first three years under this strategy will include the development of new indigenous-specific family support services and better links to and from existing FSP services, including:

- Expand Indigenous Parenting Support Services to additional sites;
- Link 35 Indigenous Child and Family Centres with the range of family and community programs for at-risk children;
- Improve access to child and maternal health services for Indigenous families;
- Support SNAICC [the Secretariat on Aboriginal and Islander Child Care] to develop resources and materials to support and promote child and family services within Indigenous communities; and
- Continue to focus new activities in the Indigenous Family Violence Partnership Program and Indigenous Family Violence Regional Activities Program on child protection issues.186

3.56 The Strategic Framework for Access to Justice in the Federal Civil Justice System contains a number of recommendations that relate to Aboriginal and Torres Strait Islander engagement with the family law system and that are designed to be consistent with the National Indigenous Law and Justice Framework 2009–2015.187 Relevant to FSP service provision for Aboriginal and Torres Strait Islander clients, these recommendations include:

- The AGD should work with Indigenous legal assistance providers, relevant non-legal services and communities to improve the provision of information to Indigenous Australians, including through direct contact, and building outreach services to connect existing services.188
- The AGD should work with relevant departments and agencies to ensure that opportunities to expand ADR services are considered for a diverse range of disputants, including for Indigenous disputes and for self-represented litigants.189

3.57 Finally, almost all FSP services are required to complete an Indigenous Access Plan, now incorporated into the Vulnerable and Disadvantaged Client Access Strategy, which will result in the creation of an Indigenous Access Improvement Target. The target set is specific for each service.

3.58 To obtain funding, FSP services are required to complete the Vulnerable & Disadvantaged Client Access Strategy and report against it. The relevant performance indicator set by FaHCSIA is:

[a] satisfactory rating by us of achievement to increase or maintain service delivery to FSP priority groups.192

3.59 The first year of measured targets for Indigenous clients will be 2012–13. In 2009–10, 63 per cent of FSP services had an acceptable Indigenous access policy in place.193

Barriers to Access to FSP Services by Aboriginal and Torres Strait Islander Clients

3.60 This section explores barriers to access to FSP family law services for Aboriginal and Torres Strait Islander clients. It commences by exploring current levels of use of FSP services by clients from Aboriginal and Torres Strait Islander cultures before examining literature on barriers to access.

Use of FSP Services by Aboriginal and Torres Strait Islander Clients

3.61 It appears that family law services generally are under-utilised by Aboriginal and Torres Strait Islander peoples compared to non-Indigenous clients, and there is a great deal of unmet family law need among Aboriginal and Torres Strait Islander peoples.194 Recent research by Cunneen and Schwartz suggested that Aboriginal and Torres Strait Islander people in NSW have high levels of complex family law needs that are often not met by existing legal services.195 Cunneen and Schwartz

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194 Christine Courmarelos, Zhigang Wei and Albert Z. Zhou, Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas (Law and Justice Foundation of NSW, 2006) 100.

stress the importance of meeting Aboriginal and Torres Strait Islander family and civil law needs because unaddressed family and civil law needs can become criminal in nature.\footnote{Chris Cunneen and Melanie Schwartz, ‘Civil and Family Law Needs of Indigenous People in New South Wales: The Priority Areas’ (2009) 32 University of New South Wales Law Journal 725, 744.}

3.62 Data made public by the Family Law Council in 2012 for the 2010–11 financial year show the number of clients who identify as Aboriginal and Torres Strait Islander to FSP services range from a low of 1.5 per cent of clients of FDR services to 3.2 per cent of clients of FRCs, to 3.7 per cent of clients of counselling services, to 7.3 per cent of clients of Men and Family Relationship Services to a high of 8.5 per cent of clients of specialist family violence services.\footnote{Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 38.} This compares to data from the 2001 Census that just 2.5 per cent of the general population identifies as Aboriginal and Torres Strait Islander.\footnote{Australian Bureau of Statistics, Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians, 2011 (2012, Cat no 2075.0).}

3.63 The AIFS evaluation of the 2006 family law reforms showed that, in the three years following the reforms, the number of clients identifying as Aboriginal and Torres Strait Islander using FSP services increased.\footnote{Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand and Lixia Qu, Evaluation of the 2006 Family Law Reforms (Australian Institute of Family Studies, 2009) 55–56.} However, the increase in service usage by Aboriginal and Torres Strait Islander-identifying clients was not uniform, with larger increases for Aboriginal and Torres Strait Islander clients using the Men and Family Relationship Services from 2006–07 to 2008–09 and specialist family violence services than for FRCs, which had relatively static usage figures by Aboriginal and Torres Strait Islander clients over the same period.\footnote{Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand and Lixia Qu, Evaluation of the 2006 Family Law Reforms (Australian Institute of Family Studies, 2009) 56.}

### Barriers to Access to Services by Aboriginal and Torres Strait Islander Clients

3.64 The Family Law Council has noted that many Aboriginal and Torres Strait Islander families face ‘multiple, simultaneous difficulties which have a combined cumulative impact’ on their capacity to engage initially with family services and then to maintain ongoing contact.\footnote{Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 38.} The Family Law Council concluded in 2012 that the family law system’s ability to meet the needs of Aboriginal and Torres Strait Islander clients was uneven.\footnote{Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 47.} Ralph has noted that it is in the family law system above all other areas of human service delivery that is apparent the dearth of timely, responsive and effective culturally appropriate services for Aboriginal families involving extended families, multiple parties and...
complex issues who may also have involvement with the criminal justice system as a result of family violence.\footnote{Steve Ralph, ‘Family dispute resolution services for Aboriginal and Torres Strait Islander families’ (2010) 17 Family Relationships Quarterly: The Newsletter of The Australian Family Relationships Clearinghouse 14, 15.}

3.65 Research into Indigenous legal needs shows that Aboriginal and Torres Strait Islander people often experience very complex family events and have compelling legal needs in relation to family matters. A study of legal need in NSW found that Aboriginal and Torres Strait Islander people are 2.1 times as likely to report family events than non-Indigenous people.\footnote{Christine Courmarellos, Zhigang Wei and Albert Z. Zhou, Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas (Law and Justice Foundation of NSW, 2006) 88.}

3.66 Widespread entrenched inter-generational Aboriginal and Torres Strait Islander disadvantage significantly contributes to this picture. The Aboriginal and Torres Strait Islander population as a whole is recognised to be subject to multiple disadvantage compared to non-Indigenous people or communities, including in relation to child protection, family violence, imprisonment, education, employment, socio-economic status, income, safety and health.\footnote{Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 21–22; Productivity Commission, Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011 (2011) 13.1–13.4.} The Family Law Council has noted how such disadvantage complicates family law service provision for Aboriginal and Torres Strait Islander people: ‘In general, economic, educational and health disadvantages are highly relevant in shaping needs and engagement.’\footnote{Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 21.}

3.67 Despite the high level of legal need within Aboriginal and Torres Strait Islander populations for assistance with family matters, Aboriginal and Torres Strait Islander Australians may have a low level of engagement with support and assistance services. In the NSW legal needs study, Aboriginal and Torres Strait Islander respondents were most likely to report taking no action in response to legal events, doing so for 50.9 per cent of legal events, compared with 32 per cent for non-Indigenous people.\footnote{Christine Courmarellos, Zhigang Wei and Albert Z. Zhou, Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas (2006, Law and Justice Foundation of NSW) 97.}

3.68 Cunneen and Schwartz’s focus-group research showed that family law matters tend to be worked out by Aboriginal and Torres Strait Islander parties without the assistance of service providers, a key reason being that Aboriginal and Torres Strait Islander people did not trust, understand or have access to the family law system.\footnote{Chris Cunneen and Melanie Schwartz, ‘Civil and Family Law Needs of Indigenous People in New South Wales: The Priority Areas’ (2009) 32 University of New South Wales Law Journal 725, 741–42.} Other barriers to justice identified were disadvantages faced by Aboriginal and Torres
Strait Islander people in the areas of education, housing, employment, income and health, the lack of understanding of cross-cultural issues in legal service delivery, and language issues.209

3.69 In 2012, the Family Law Council identified numerous barriers to access and engagement with family law services by Aboriginal and Torres Strait Islander clients. These are:

- Resistance to engagement with government, legal agencies and some non-government organisations, stemming from both a distrust arising from past racist policies and from a preference for resolving issues arising from relationship breakdown within families and wider communities;
- A lack of knowledge about how the legal system operates;
- Poor education, language and communication leading to a lack of understanding of family law processes;
- Poor delivery of culturally specific or appropriate services for Aboriginal and Torres Strait Islanders;
- Geographic and economic barriers;
- The physical and psychological impacts of family violence. There is a high prevalence of family violence across Aboriginal and Torres Strait Islander communities;
- Parallel rather than coordinated service delivery for Aboriginal and Torres Strait Islanders; and
- Gaps and shortfalls in service delivery.210

3.70 In relation to FRCs, the Family Law Council highlighted three particular barriers to initial engagement and ongoing service provision for Aboriginal and Torres Strait Islander clients (as suggested by submissions and consultations for their report). First, many Aboriginal and Torres Strait Islander clients considered that the FDR models used by FRCs were not culturally appropriate because they were mostly premised upon the concept of the nuclear family and Anglo-Saxon child-rearing models.211 Secondly, submissions made to the Family Law Council suggested that many Aboriginal and Torres Strait Islander clients or potential clients would not use an FRC because they were ‘seen as government and feared’. This fear was reported as stemming from historical experiences of involvement with government over family services and also clients’ uncertainty over FDR practitioners’ authority and a perceived lack of ownership of decision-making in FDR.212 Thirdly, transport and travel costs associated with accessing FRC services prohibited the attendance

211 Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 50.
212 Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 50.
of many Aboriginal and Torres Strait Islander clients living in regional or remote areas.  

**Good Practice in FSP Service Provision to Aboriginal and Torres Strait Islander Families**

3.71 In its 2012 report, the Family Law Council selected examples of numerous services and initiatives that were promising in addressing barriers to participation by Aboriginal and Torres Strait Islander families. Also in 2012, the Productivity Commission noted that absence of much formal evaluation of Aboriginal and Torres Strait Islander programs makes it difficult to judge the effectiveness of services offered.

3.72 The following section outlines evidence from the available literature of good practice in FSP family law service delivery for Aboriginal and Torres Strait Islander families. Most of the literature related to FDR service provision, as this is the oldest and most developed FSP family law service. However evidence of good practice in other areas of service delivery for Aboriginal and Torres Strait Islander families has been included where available.

**Evidence of Good Practice Across the FSP Sector**

3.73 In examining effective and promising practice in service delivery to Aboriginal and Torres Strait Islander clients, the Family Law Council argued that the consistent message from the literature is the importance of recognising the diverse needs of individuals and communities and ensuring that local needs and conditions inform service delivery. The literature further emphasises the importance of having both Aboriginal and Torres Strait Islander-specific family services as well as culturally responsive mainstream services.

3.74 The Family Law Council identified eight fundamental principles, drawn from relevant research, which contribute to the development of effective practice in dispute resolution and FSP service provision for matters involving Aboriginal and Torres Strait Islander people. The fundamental principles are:

- Meaningful partnerships with Aboriginal and Torres Strait Islander stakeholders. Such partnerships might be most effective

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where there are ‘champions’ within the community who can promote the service and contribute to service development and improvement;

- Recognition of traditional dispute resolution approaches, respect for language, culture and an understanding of Aboriginal and Torres Strait Islander community and kinship network relationships;
- Supporting Aboriginal and Torres Strait Islander initiatives in dispute resolution and service delivery;
- Addressing barriers to use of mainstream services by Aboriginal and Torres Strait Islanders;
- That mainstream organisations take pro-active measures to develop and retain an appropriately skilled and qualified Aboriginal and Torres Strait Islander workforce;
- Supporting awareness and legal literacy amongst local Aboriginal and Torres Strait Islander communities through delivery of appropriately formulated and disseminated community education programs;
- Appropriately developed performance measures and funding models for FSP services that recognize the complex needs of Aboriginal and Torres Strait Islander clients and which provide long term and consistent funding; and
- Coordination and collaboration between specialist and mainstream services in the FSP sector.  

Evidence of Good Practice in Family Dispute Resolution

3.75 In relation to FDR, whether offered at FRCs or at stand-alone services, there is a great deal that can be done to provide culturally appropriate FDR for Aboriginal and Torres Strait Islander families. Ralph defines culturally appropriate FDR for Aboriginal and Torres Strait Islander families as:

- Services delivered by Indigenous practitioners, supported by good workforce development;
- Fostering skills and attributes in non-Indigenous practitioners to ensure they work effectively with Aboriginal and Torres Strait Islander clients;
- Tailoring services and FDR processes to meet the needs of Indigenous families, rather than referral into mainstream services;
- Education and awareness-raising within Indigenous communities of dispute resolution processes available;
- Community engagement, and organisational partnering in the provision of services; and
- Funding arrangements that allow for flexible and timely modes of service delivery.  

3.76 The Solid Work report also warns against simply employing Indigenous Advisors at FRCs as mere:

‘add-ons’ to existing mainstream services as requiring Indigenous FDR practitioners to perform a range of community development, education and liaison roles might compromise their impartiality or ability to conduct FDR.\(^{220}\)

3.77 The Australian Law Reform Commission and the NSW Law Reform Commission concluded in their 2010 family violence inquiry that culturally responsive FDR offer value for Aboriginal and Torres Strait Islander children in promoting their right to enjoy their culture.\(^{221}\)

However, in a submission to the Inquiry, the Aboriginal Family Violence Prevention Legal Service noted problems with FRCs identifying family violence experienced by Aboriginal and Torres Strait Islander people.\(^{222}\)

This was attributed to the reluctance of Aboriginal and Torres Strait Islander women to disclose family violence, among other causes. FRSA noted that working with Aboriginal and Torres Strait Islander clients requires quite a different approach to service delivery than for other client groups.\(^{223}\)

3.78 The FRSA suggested to the Commissions that a model for FDR developed by the Alice Springs FRC could be supported and further disseminated.\(^{224}\) The Australian Law Reform Commission and the NSW Law Reform Commission recommended that there needed to be a coordinated development of culturally responsive FDR, including appropriate screening and risk assessment practices.\(^{225}\)

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**Barriers in FSP Service Provision to Aboriginal and Torres Strait Islander Families**

**Barriers Across the FSP Sector**

3.79 In their 2009–10 and 2010–11 reports, *What Works to Overcome Indigenous Disadvantage*, Al-Yaman and Higgins have identified a series of approaches that do not work in service delivery to help overcome Aboriginal and Torres Strait Islander disadvantage. From the evidence

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gathered in that report, Al-Yaman and Higgins conclude that what does not work in service delivery are:

- One size fits all approaches;
- Lack of collaboration with other services and poor access to services;
- External authorities imposing change and reporting requirements;
- Interventions conducted without local Indigenous control and which are not culturally appropriate;
- Short-term, one-off funding, piecemeal interventions, provision of services in isolation and failure to develop Indigenous capacity to provide services;
- Programs that do not integrate families’ access into programs reduce the potential benefits for children;
- Services that do not fully engage the Indigenous community, for example through mainstream services not employing indigenous workers are linked to poorer early childhood outcomes; and
- Programs that have not been adapted to the local cultural context are linked to poorer early childhood outcomes.

**Barriers in Family Dispute Resolution**

3.80 One identified weakness in the ability of existing FSP services to provide culturally appropriate FDR services for Aboriginal and Torres Strait Islander families is the lack of accredited Aboriginal and Torres Strait Islander FDR practitioners. As of 2009, there were Indigenous Advisers employed at just 12 of the 65 FRCs to assist Aboriginal and Torres Strait Islander people to access FDR services.

3.81 The 2009 report of the Federal Court and NADRAC, *Solid Work You Mob Are Doing*, (see above) pinpoints the lack of Aboriginal and Torres Strait Islander workers as the most obvious barrier that confronts Aboriginal and Torres Strait Islander families when they attempt to access FDR through such agencies as FRCs. Ralph explains that, for Aboriginal people, understanding of local conditions, language and culture, as well as a sense of ‘connectedness’ and local authority are essential to effective practice with Aboriginal and Torres Strait Islander families, and that this is best achieved in mainstream FDR services through use of Aboriginal and Torres Strait Islander FDR practitioners.

3.82 The Solid Work report notes that there is little if any FDR-practitioner training in Australia that has been specifically designed for the Indigenous context and that much available training is inaccessible to Aboriginal and Torres Strait Islander people. Notably, in respect of National Mediation Accreditation System (NMAS), those from culturally and linguistically remote communities can meet accreditation requirements in other ways. Ralph notes that in respect of FDR accreditation there are:

very, very few Indigenous people who would be able to satisfy the current criteria for accreditation without undertaking a course of formal
study that would primarily focus on dispute resolution in a non-Indigenous context.

3.83 Research conducted by the Australian Institute of Aboriginal and Torres Strait Islander Studies suggests the core competencies for FDR practitioner accreditation under the Family Law (Family Dispute Resolution Practitioner) Regulations 2008 (Cth) have a number of shortcomings in the Aboriginal and Torres Strait Islander context. These include an absence of reference to issues of cultural safety or cultural competence, and a lack of recognition of cultural and community skills that Aboriginal and Torres Strait Islander peoples bring with them to mainstream organisations.

Clients Experiencing Family Violence

3.84 FaHCSIA acknowledges that family violence may be a contributing factor in creating vulnerability or disadvantage and may also be a result of vulnerability and disadvantage amongst client groups. According to FaHCSIA, family violence can be an issue in families where violence or significant trauma is an issue and where families are involved with the child protection and/or family law or justice system. Commonly, family violence may also be an issue for families in the family law system but be unreported.

3.85 Family violence is clearly a significant issue dealt with by FSP family law service providers. The AIFS evaluation of the 2006 reforms found that those clients using family relationship services generally were more likely to have reported experiences of family violence, mental health problems, drug and alcohol issues as well as distant, conflicted and fearful relationships than those who did not use the services.

3.86 The following section outlines barriers to access to FSP family law services for clients experiencing family violence and also good practice in relation to service delivery for these clients.

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228 The 2010 study of the impact of the 2006 family law reforms found that being a victim of family violence and too afraid to tell was a problem for around 2 in 5 women and 1 in 3 men: Dale Bagshaw, Thea Brown, Sarah Wendt, Alan Campbell, Elspeth McInnes, Beth Tinning, Becky Batagol, Adiva Sifris, Danielle Tyson, Joanne Baker and Paula Fernandez Arias, Family Violence and Family Law in Australia: The experiences and views of children and adults from families who separated post 1995 and post 2006, Volumes 1 and 2 (Attorney-General’s Department, 2010) vol 1, 80.

3.87 Two studies have found that people with family violence, past or present, need additional components in the pathways and additional support to use the common pathways within the family service system.\(^{230}\) Clients have reported needing staff with greater knowledge and understanding of the nature and dynamics of family violence and staff with better intervention knowledge and skills.

3.88 Clients experiencing family violence have described many unsatisfactory experiences in detail concerning the lack of knowledge and understanding shown to them by services within the FSP and outside of it.\(^{231}\) Taken together, the studies suggested the clients were suffering from debilitating problems and needed more expert staff, more targeted intervention and longer-term help. At the time, the 2006 legislation had set the shared time principle against the protection from violence principle, and the so-called twin pillars (or ‘primary considerations’ in the Family Law Act 1975)\(^ {232}\) were clearly working to the extreme disadvantage of this large group of clients.

3.89 By way of contrast are the experiences reported in a Parenting Orders Program (POP) in 2004 prior to the 2006 reforms, where 78.5 per cent of clients reported benefits to themselves from the program and 76 per cent reported benefits to their children.\(^ {233}\) Most of these parents were in the program because of family violence but had progressed through most of the available service prior to being passed to the POP, almost a program of last resort.

3.90 One study of the impact of the 2006 reforms consulted children directly, as well as their parents, on their experiences of family law services, including those in the FSP, was one where adults and/or children had a background of family violence.\(^ {234}\) This study found that


children and parents discovered many barriers in their use of the FSP services on account of the family violence.

3.91 Clients in this study did not think that the services knew enough about family violence (both domestic violence and child abuse) to be able to provide effective services to them. Some half of men and women had used FSP services but reported that the services did not believe that the violence existed. Further, they thought the services provided were inadequate or too short-term and that they had to access many different services for the one problem – family violence.235

3.92 A view (supported by Chisholm236) was that staff should have better training in family violence in order to understand the problems of these clients and to act on them. In this study, some 50 per cent of children reported feeling unsafe after decisions had been made about their care.

3.93 One of the issues raised by parents was the poor interface between FSP services and state-provided services relevant to family violence, child protection services, state domestic violence courts, police and mental health services.237

Barriers to Access to FDR in Cases of Family Violence

3.94 A great deal has been written over a long period about the potential barriers which family violence creates to equal and un-coerced participation in FDR by victims of family violence.238

3.95 Provisions in the Family Law Act 1975 relating to FDR and family violence have been strongly criticised for placing significant obstacles in the way of victims of violence needing to obtain a safe resolution of their family disputes. It has been claimed that these provisions will further discourage victims of violence from raising the abuse at all and will push them towards family dispute resolution even if

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236 Richard Chisholm, Family courts violence review: A report by Professor Richard Chisholm (Australian Government Attorney-General’s Department, 2009).


inappropriate. A specific exception to the requirement to attend FDR exists where there are ‘reasonable grounds’ to believe that there has been or there is a risk of abuse to a child or there is a risk of family violence from one of the parties to the proceedings. Screening procedures have been put in place by the staff at Family Relationship Centres to identify cases of family violence. But even in circumstances of abuse and violence, applicants for parenting orders from a court must still provide evidence in writing that they have received advice from a family counsellor or family dispute resolution practitioner about services and processes including alternatives to court action.

3.96 Rathus reasons that the future focus of the parenting provisions in the reformed Act and of the FDR process itself will discount consideration of past violence which will silence women who might raise the abuse that has been perpetrated against them by their partners in family dispute resolution. One Australian evaluation of the experiences of women victims of family violence found that a number of women ‘had a strong sense that mediators and mediation was forward focused, and did not leave scope for accommodating or really acknowledging their abuse’.

3.97 It has been argued that staff at Family Relationship Centres will not be able to identify all cases of family violence and may fail to sufficiently recognise the complexity of problems for women arising from violence and abuse.

3.98 However reforms to the Family Law Act which came into effect in 2012 aimed to provide ‘better protection for children and families at risk of violence and abuse.’ Although the reforms do not specifically address concerns about FDR and family violence, they do require advisers, including FDR practitioners, to advise parents that they should give greater weight to a child being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence over the child having a meaningful

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240 Family Law Act 1975 (Cth) s 60I(9)(b).
242 Family Law Act 1975 (Cth) s 60J(1)(b). But see s 60J(2) which does not require evidence in writing if there is a risk of family violence or child abuse occasioned by the delay in obtaining advice.
Good Practice in FSP Service Delivery for Clients Experiencing Family Violence

3.99 The lack of interface between FSP services at all levels and child protection services is a long-standing problem, and many initiatives have been undertaken by the family law service system to address these problems, including by services within the FSP suite that include various initiatives spread around Australia and lead by a range of FSP services. Possibly the best known, and certainly a best practice example of inter-agency collaboration within the family law system is that led by the Family Court of Australia where the Court operates the specialised Magellan list for parenting disputes where child abuse allegations are involved.

3.100 Although Magellan does not involve FSP service providers, it has been included here as an example of best practice in inter-agency collaboration around issues of allegations of child abuse within the family law system. That program brings together the Family Court, the state child protection service, the particular state Legal Aid Commission or equivalent and the local professional family lawyer groups and is a pre-set court directed way with parents and children to resolve the dispute. The Family Court of WA operates another similar specialised program but being a state court it can and may bring the state child protection service into the court itself in an even more integrated way.

3.101 The child protection services have not lead with initiatives in this area but rather joined others lead from the family law services. There is one exception that is being jointly developed between the Family Court of Australia and the SA Child Protection service. It is important to note the absence of concern about this issue shown by the child protection services workers as the parents in the Bagshaw and Brown study reported that the problem commenced for these clients when the child protection service advised them to leave the violent partner but gave them no further help and omitted to tell them of the many difficulties ahead.

247 Family Law Act 1975 (Cth) s60D.
250 Dale Bagshaw, Thea Brown, Sarah Wendt, Alan Campbell, Elspeth McInnes, Beth Tinning, Becky Batagol, Adiva Sifris, Danielle Tyson, Joanne Baker and Paula Fernandez Arias, Family Violence and...
Good Practice in FDR for Clients Experiencing Family Violence

3.102 In relation to FDR, there is extensive literature canvassing good practice in service delivery in cases of family violence. Field has proposed a model of mediation (FDR) for cases of family violence that would involve family lawyers attending mediation as well as providing advice during the mediation process. Field’s model emphasises thorough screening for violence issues, significant training of mediation staff and access to independent legal advice for targets of violence at three distinct stages of the process: before mediation to ensure informed consent to the process, advice as to the legal position and alternatives to mediation and coaching; during mediation for advocacy, if necessary, and support; and after mediation for safety and support, making the agreement legally binding and advice in the event of a breach.

3.103 This model demonstrates a method of non-adversarial, co-operative legal practice around FDR. It does not assume a purely adversarial role for family lawyers. Field’s model has the potential to assist with fair participation in family dispute resolution processes for targets of violence and reduce the potential for exploitation. It relies upon significant collaboration between family dispute resolution practitioners and lawyers to level the extreme power imbalance created by violence.

3.104 In July 2009, the federal Attorney-General announced a change in this policy, suggesting that lawyers could attend dispute resolution sessions with their clients at Family Relationship Centres in some circumstances, especially cases involving family violence. Now known as the Coordinated Family Dispute Resolution Program and funded by the AGD, this pilot includes legal assistance to clients experiencing family violence. The program ‘brings together family dispute resolution practitioners, legal practitioners, domestic violence and men’s support services to assist separating parents make parenting arrangements.’ It is currently being evaluated by AIFS.

3.105 Victoria Legal Aid has developed a form of FDR known as Roundtable Dispute Management, a type of Legal Aid family conferencing, where cases of family violence may be mediated with safety plans developed post 1995 and post 2006, Volumes 1 and 2 (Attorney-General’s Department, 2010).

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- That all clients are screened for a range of complex issues by their lawyers prior to Roundtable Dispute Management conferencing both in terms of risk and capacity;
- That family violence screening and risk assessment for lawyers is tied to state-wide and national screening tools and training guides such as the Victorian Common Risk Assessment Framework (CRAF), and the Commonwealth AVERT training package.\footnote{Allie Bailey, \textit{Thinking Outside the Square: The Role of Lawyers at Roundtable Dispute Management}, \textit{Victoria Legal Aid} (Victoria Legal Aid, 2012) 1-10.}

3.106 Kirkwood and McKenzie argue that acknowledgment of family violence, with the victim’s consent, is essential to ensure fair participation of the victim in family mediation. They state: ‘This does not mean that details of past violence have to be discussed, but that potential risks to safety be considered when negotiating future parenting arrangements.’\footnote{Deborah Kirkwood and Mandy McKenzie, ‘Family Dispute Resolution and Family Violence in the New System’ (2008) 19 \textit{Australasian Dispute Resolution Journal} 170, 177.}

Other Forms of Vulnerability and Disadvantage

3.107 This section explores literature on barriers and good practice relating to forms of vulnerability and disadvantaged suffered by clients at FSP services other than those previously identified in this chapter. These forms of disadvantage or vulnerability include children whose parents suffer mental illness, children with a disability and families in regional or remote areas.

Children Whose Parents Suffer Mental Illness

3.108 Family law services are not informed if parents with agreements or court orders to be a child’s guardian under family law are being treated or hospitalised for MHP. This lack of coordination has led to child deaths. Parental separation and parental mental ill health are the two most common factors implicated in filicide events,\footnote{Thea Brown and Danielle Tyson, ‘Considering Filicide: Research and Action’ (Paper presented at the 12th AIFS Conference, Melbourne, July 2012).} and the research shows that the services do not manage this problem well. Very little research considers the problems for children of parental mental illness, and this is so for children using the FSP.
Children with a Disability

3.109 There is little literature on children with a disability and parental separation. Some research shows that parents whose children have a disability find the family law services unresponsive to their children’s special needs. This research suggests that their children have a greater number of problems than other children in all aspects of their lives, and resolving these post-separation presents greater challenges.

Families in Rural or Remote Areas

3.110 FaHCSIA has identified families living in areas of locational disadvantage experiencing greater difficulties accessing and/or using resources and services needed to support wellbeing and positive family functioning. This may include families in regional or remote areas.

3.111 Research about FSP services does not explore whether or not there are any special issues affecting families from rural and remote areas. Generally, these areas are known to have fewer services, both in terms of numbers of services and diversity of services. They especially lack specialised services. In the health services, new technology is being used to offer substitutes for face-to-face provision of services. There is little known about the value of these services to the families involved.

Summary

3.112 There are many elements which contribute to the barriers that disadvantaged and vulnerable families experience in accessing FSP and FDR services.

3.113 The Federal Government’s requirement that organisations outline a ‘Vulnerable and Disadvantaged Client Access Strategy’ is one clear step toward accommodating the needs of vulnerable and disadvantaged clients accessing FSP and FDR.

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261 Refer to chapter 4 of this review ‘Technology and FSP Family Law Services’.

3.114 There is a lack of consistent data around the access of FSPs by vulnerable and disadvantaged groups, such as CALD families, which makes it difficult to determine whether these groups are accessing FSP family services. It seems clear from reviews of the data collected, that Aboriginal and Torres Strait Islanders generally under-utilize the family law services, compared with non – indigenous people and that barriers to access might be related to the complexity and often simultaneous difficulties of the occurrence of family events for Aboriginal and Torres Strait Islanders. It is important to note that a major weakness identified in the service provision of FDR services for this group, is the lack of Aboriginal and Torres Strait Islander FDR practitioners.

3.115 The literature states that clients experiencing family violence, which might contribute to the clients’ vulnerability and disadvantage, require FSP staff that have an understanding of the dynamics of family violence and that there should be a greater interface between FSP and state provided services relevant to family violence. Inter-agency collaboration (such as the Magellan list) have been cited as examples of good practice in FSP relating to this group and a particular model of mediation has been proposed as a good practice standard for FDR provision.

3.116 Whilst there is little literature that relates to other disadvantaged and vulnerable groups, such as children whose parents suffer mental illness, children with a disability and families in rural or remote areas in relation to their experience of FSP services, it is clear that a lack of responsiveness and specialised services provided by FSPs as well as a lack of coordination in terms of data availability to FSPs, might be responsible for the barriers to accessibility.

3.117 The literature suggests that elements of good practice relating to FSP family law services would contribute to their effectiveness in meeting the needs of families from vulnerable and disadvantaged backgrounds but that in many instances, it might not yet be clear just how valuable these services are to the families involved.

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263 Family Law Council, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (2012) 38.


Chapter Four - Technology and FSP Family Law Services

Introduction

4.1 This Chapter considers the literature that identifies current levels of utilisation of technology within the FSP family law program including good practice in the use of technology to deliver FSP family law services and reflects on whether service delivery of non face-to-face services can be improved, including barriers to use of technology in the sector.

4.2 It addresses the following indicative question from Allen Consulting Group’s Project Plan for the AGD

What is the current level of utilisation of technology to deliver FSP family law services?

Current level of Utilisation of Technology to Deliver FSP Family Law Services

4.3 Online dispute resolution (ODR) has grown significantly in the past decade in Australia and overseas. Online dispute resolution (ODR) is ‘dispute resolution processes conducted with the assistance of information and communications technology, particularly the Internet.’

4.4 Internet access to households increased to more than 73 per cent in 2010 and 2011. Internet access tends to be higher in households with children.

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4.5 The Family Relationship and Advice Line (FRAL) is the key means currently using telephonic technology to provide advice, information and mediation services to individuals following relationship breakdown. The Advice Line complements the information and services offered by Family Relationship Centres by making support accessible to people who are not able to attend a Family Relationship Centre.\(^{269}\)

4.6 As part of the FRAL service, Telephone Dispute Resolution (TDR) is offered to clients and provided by Relationships Australia in Queensland.\(^{270}\) This is used where clients requiring family dispute resolution (FDR) are not able to attend the same location for dispute resolution. In 2009–10, 20,832 calls to the FRAL related to TDR.\(^{271}\) Clients of the TDR service must be referred by staff at the FRAL, a Family Relationship Centre (FRC) or another FSP service provider.\(^{272}\)

4.7 Family Relationships Online (FRO) is a website containing information about family issues and details of services with a family focus. In 2009–10 FRO had 250,674 visitors to its website.\(^{273}\)

4.8 The most comprehensive and recent study of the use of technology in the FDR area was undertaken by Relationships Australia in 2011 which evaluated an Online FDR (OFDR) project funded by the Commonwealth AGD.\(^{274}\) A number of conclusions emerged from the Relationships Australia study, these included:

- The design of OFDR system should aim to promote a sense of trust in technology among users. In particular, ensuring a high rate of reliability and promoting privacy and confidentiality provisions may assist users to feel comfortable engaging with an online service.
- Promoting the ease of use of the OFDR system would likely improve the chances of client uptake. Strategies such as ‘sandbox’ demonstrations (whereby clients can login to a practice session to observe and interact with the system) could improve clients’ intentions toward uptake by providing a tangible referent, against which, existing skills and abilities can be compared.
- As evidenced by respondent comments, clients may hold particular expectations of online services—of note, themes relating to speed of service and convenience emerged from the data. Subsequent service


quality research may be useful to identify pre-existing expectations of an OFDR service and gaps in the existing client offering.\(^{275}\)

4.9 Some specific recommendations were made about violence. The report noted that survey information suggested that particular strategies could be helpful:

From this preliminary data, it is likely that domestic violence may have a suppressing effect on clients’ willingness to engage in OFDR. Multiple service options should be provided (e.g., removal of video feed) to cater for client preferences where possible.\(^{276}\)

4.10 The Relationships Australia report found that there were very high rates of satisfaction with the OFDR services that were set up as part of the project in Queensland. Their research suggests that many factors support the use of effective OFDR. The factors include:

- The type of technology – the ease of use, reliability, accessibility and staff assistance (help desk and like supports);
- The skills and experience of staff; and
- The training given to staff.\(^{277}\)

4.11 Anglicare in Tasmania provides e-counselling to clients in the remote north-west of that state.\(^{278}\) Real-time counselling is provided online using software developed by that organisation. Partnerships have been developed with local community organisations that allow clients to use their computer facilities for counselling sessions. Reported challenges faced in delivering this service included:

- technical challenges with the quality of video;
- ensuring protocols are in place to ensure that clients arrive on time;
- that some counsellors had more trouble than others adapting to the different mode of offering therapy;
- in encouraging local community organisations to adapt to offering services using online technologies; and
- in ensuring that clients felt their session was private and felt secure.\(^{279}\)

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Can non face-to-face service delivery be improved?

4.12 This section explores the literature which addresses the indicative question of whether non face-to-face service delivery be improved in the FSP family law sector. In particular it explores barriers to use of technology and opportunities for future uses of technology.

Barriers to Use of Technology

4.13 Comprehensive recent research on internet usage in Australia shows that despite rapid growth in internet use in the Australian community, there are still minority groups within our community who have limited or no access to this technology. These groups include homemakers, older people, lower educated and lower income individuals. Also, families in rural households are less likely to have internet usage than those living in capital cities (81.8 per cent outside capital cities compared to 89.6 per cent living in capital cities).

4.14 In lower income households, there appears to be a relationship between lower internet usage and access to government services on-line. For families living in households on less than $30,000 per annum, internet use has increased strongly since 2007 although this may have slowed since 2009: there was much greater growth 2007 to 2009 (42.6 per cent per cent to 58.3 per cent or 36.9 per cent growth) than 2009 to 2011 (58.3 per cent to 67.2 per cent or 15.3 per cent growth). In relation to lower income households, Ewing and Thomas conclude that in 2012:

We have now reached a point where there is almost universal broadband access in Australia’s more affluent households, but a large proportion of low-income households are still without home broadband access. Almost four in ten households in the lowest income group do not have home broadband. Further, those low-income households with access are more likely to describe the costs of connection as unaffordable. Households on lower incomes are not any more likely to be dissatisfied with the speed or reliability of their home connection, but they do appear to derive less benefit from their internet access. They are less likely to access government services or information online, less likely to see the internet as a fast and efficient means to access information, and more likely to see the internet as a frustrating technology.

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4.15 Courmarelos and her co-researchers argue that, while computer literacy is increasing in the general population, there are still sections of the community that are not able to access the Internet or who may not have the skills or confidence to use technological advances in service delivery. They argue that ‘helpful problem specific information needs to be available for dissemination at the point where individuals first make contact with legal service agencies.’

**Opportunities for Use of Technology**

4.16 Some researchers have advocated for increased use of new technologies to enhance delivery of FSP family law services, especially as most parents in dispute over the care of their children are aged under 45 and are more likely to be cognisant of and comfortable with new technologies.

4.17 Internet use in Australia today is high and growing. Most recent reports suggest that ‘The overwhelming majority of Australians are internet users, and uptake is still growing rapidly’. According to Ewing and Thomas in 2012, 96.3 per cent of household internet connections are now broadband, while the proportion of Australians accessing the net through a mobile device more than doubled between 2009 and 2011, from 15 per cent to 37 per cent. Internet use is most common amongst students, employed persons, younger people, higher educated and higher income individuals.

4.18 Available literature focuses mostly on ODR, which could be used in the FSP family law program to deliver FDR services. ODR might be useful in a FDR context for a number of reasons. Bellucci, Macfarlane and Zeleznikow argue that it provides the potential to broaden the range and reach of existing FDR services. They state:

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286 Scott Ewing and Julian Thomas, *CCI Digital Futures 2012: The Internet in Australia* (ARC Centre for Excellence for Creative Industries and Innovation, 2012) v.
288 Scott Ewing and Julian Thomas, *CCI Digital Futures 2012: The Internet in Australia* (ARC Centre for Excellence for Creative Industries and Innovation, 2012) v.
Compared to the costs of litigation or even prolonged alternative dispute resolution, the investment in online technologies is potentially both value adding and cost saving.  

4.19 As noted previously (and more specifically in the Relationships Australia study) Conley Tyler and McPherson argue that ODR has the potential to enhance access to justice for some:  

by mitigating disadvantages such as geographic isolation, confinement or imprisonment, disability, threat of physical violence, shyness in face-to-face settings and socio-economic status.

4.20 Further, ODR in family law might be useful as a form of shuttle mediation in cases of family violence. It may be useful when used in combination with face-to-face FDR to keep the process moving between sessions at a time and place convenient to all participants.

4.21 Conley Tyler and McPherson also identify a number of disadvantages of ODR, being:

- Text-based methods reduce communication cues that can lead to misinterpretations;
- Those who are most comfortable with the technology are advantaged;
- It may be culturally inappropriate for some groups;
- It may be inaccessible to some because of lack of hardware or software; and
- A small but significant group are simply not interested in making use of online communication.

4.22 Bellucci, Macfarlane and Zeleznikow suggest that, in the Australian FDR context, ‘computers can help negotiation by providing quick and easily accessible decision support.’ Technology can play an increasing role in FDR with the development of online negotiation support systems:

Many negotiation support systems such as AdjustedWinner, Smartsettle and FamilyWinner use bargaining and game theory to provide win-win solutions to participants in disputes. Adjusted Winner and SmartSettle can be used to provide negotiation advice, whereas Split-Up, Family-
Winner and Asset Divider ... focus upon decision support for negotiation.\textsuperscript{296}

4.23 In Australia, the area of family law has seen a growth in the application of ODR technologies. In discussing the statistical trends of this growth, Bilinsky notes that:

\textit{... most family/divorce/access/support issues take place in families where the age of the parties are often under 35. This demographic group is familiar with technology as well as having access to technology. Given the large geographic challenges faced in Australia, this factor alone is driving the use of this system.}\textsuperscript{297}

4.24 Some researchers suggest that this technology can enhance the fairness of negotiated agreements. They have designed numerous ‘negotiation support systems’ designed to assist parties involved in disputes over property who are attending FDR. After assets and values have been inputted, negotiation support systems enable each disputing party to understand the full range of potential outcomes in their dispute and to empower them in negotiations through understanding their best alternative to a negotiated outcome or Best Alternative to a Negotiated Agreement (BATNA).\textsuperscript{298}

4.25 Fisher and Ury argue that the BATNA is the measure against which parties should assess the fairness of any offers made to them in negotiations.\textsuperscript{299} In this way, law is brought into negotiations in mediation. Rationally speaking, a party who is offered in mediation something around their BATNA (the best they would get under law if they were to go to court) would rationally accept that offer and reject any lesser offer. Their BATNA, the best a court could give, becomes the level at which they will accept or reject an agreement in mediation. BATNAs, under this theory of negotiation, become an important source of power. A party who knows their BATNA gains bargaining power over the other side. Fisher and Ury assert:

\textit{You can convert such resources as you have into effective negotiating power by developing and improving your BATNA} ... Developing your BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum. Developing


your BATNA is perhaps the most effective course of action you can take in dealing with a seemingly more powerful negotiator.  

4.26 Zeleznikow suggests that negotiation support systems have great potential to provide useful decision support for conducting interest-based facilitative mediation, and in so doing, will assist FDR practitioners to remedy power imbalances and help parties to reach fairer outcomes.  

Summary  

4.27 There have been considerable advances in the use of technology to deliver FSP family law services, especially in the use of ODR. There is some useful evaluation work that was completed by Relationships Australia in 2011 however there is generally a lack of information about service provision across the sector and about difficulties that may be encountered by those who have limited internet access (as a result of broadband or lack of familiarity with the technology).  

4.28 Recent research suggests that a key barrier to use of technology is that some sectors in our community, especially those on lower incomes, older and retired people, lower educated individuals and home-makers are less likely to have internet access.  

4.29 However there is considerable scope for the development of new technologies in this area that can support decision making and inform users of services. For example, although no app has yet been developed in the family area, this is a probable development within the next 12 months.  

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Chapter Five - Performance and Quality Measurement

Introduction

5.1 This Chapter explores the way and the extent to which the literature comments upon the measurement of performance and quality regarding the services within the FSP positioned as they are in the broader context of the family law services system.

5.2 This chapter addresses the following indicative questions from Allen Consulting Group’s Project Plan for the AGD:

- Are performance and quality measurement arrangements appropriate?

5.3 The FSP suite of services is very new in its present form and while the separate services within it are of longer duration they are also relatively new. Hence performance measurement in the FSP suite of services as presented in the literature is at an early stage of development and discussion varies in sophistication across the range of services. The Australian Institute of Family Studies acknowledged the challenges of effective program evaluation in an environment where many services lack expertise to embed a quality evaluation program in the program design and where many services are delivered through multiple partner agencies making it difficult to negotiate practical involvement in evaluation. One component of service provision where performance measurement is well developed in the literature is the family dispute resolution area where the service has a longer history and where its outcomes have been contested and consequently measured over the years.

5.4 This review will be significant in that there are no other reviews of performance measurement in services of this kind and it may contribute to the building of a comprehensive, reliable and appropriate set of performance measurements in this group of services in Australia.

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Context for Performance Measurement

5.5 Broad goals for the family law system were set out by the Pathways Group, *Out of the Maze*,304 re-stated later with some minor changes in the AGD’s *Towards a National Blueprint for the Family Law System*,305 and they incorporate broad goals and objectives some of which spring from the particular fragmented structure of the family law services system.

5.6 The objectives include broad objectives, such as providing access to justice, supporting fairness, providing child-focused processes, being flexible, enhancing parenting, ensuring children’s safety and well-being, mixed with more narrow objectives, such as enabling visible and varied access points to the services system, creating clear pathways through the service system and ensuring people do not ‘fall through the cracks’. They stress an objective that flows through to the FSP services: that of ensuring the various organisations in the system are working towards the same outcomes, providing consistent information, aiming at the same system-wide objectives and collaborating with each other to do this.

Past Reviews Assessing and Measuring Program Performance

5.7 In recent years a number of studies have investigated aspects of the FSP and provided tangentially a picture of the extent and type of development of performance measurement and indicated where development is less and or more sophisticated. These studies have taken two forms: one reviewing one or more services provided by agencies across Australia that are funded within the FSP, and the other reviewing one or more services provided through the FSP but undertaken by one agency alone. The former have been funded directly by the Commonwealth Government and the latter by individual agencies, usually with a component coming from their Government funding. The former have had the advantage of a wider horizon with larger data-sets and the latter have had the advantage of being more detailed in their analysis of one agency’s work.

3.1. Four of the past studies – the Evaluation of the 2006 Family Law Reforms (‘AIFS 2009’),306 the Evaluation of the Family Relationship Centre Legal Assistance Partnership Program (‘AIFS 2011’),307 the Evaluation of the...

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Supporting Children after Separation Program (‘Institute 2011’) and the review of evidence of the economic and social benefit of Family and Relationship Services (which focused on large-scale prevention and early intervention family and relationship services ‘AIFS 2013’) cover many of the services created to date as delivered by many agencies across Australia. These studies were funded by the Commonwealth Government (and in the case of AIFS 2013, by Family Relationship Services Australia (FRSA)) and illustrate the strength of current knowledge of the services of the FSP. Another Commonwealth funded study, the FRSA review – *What Helps and Hinders* – highlights a major issue of the FSP flowing from the fragmented structure of the family law service system, the need for and results of local collaboration of services (‘FRSA 2010’). For the purpose of contrast, another review, an agency-funded review of FRC services, the Frankston and Mornington Peninsula 2010 study, is also explored.

5.8 The following agency-led studies/evaluations of individual Family Relationship Centres are publicly available (or have components of the studies publicly available or otherwise accessible by the researchers) and their findings have been outlined at relevant points in this Literature Review:

- the Frankston and Mornington Peninsula (Frankston FRC) 2010 study;
- the Broadmeadows FRC 2011 study;
- the Parramatta and Bankstown FRC 2011 study; and
- the Lismore FRC study in 2009.

**Descriptive Performance and Quality Measurement**

5.9 The FSP Performance Framework is used to demonstrate the effectiveness of the whole FSP. The FSP Performance Framework aims to:

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• ensure services are clearly focused on achieving positive outcomes for clients;
• provide a logical and consistent approach for measuring outcomes across the program; and
• link the performance reporting of specific activities to the overall program performance including the achievement of FSP outcomes.317

5.10 The following table, Table 5.1, presents descriptive performance measures of the FSP services, derived from these studies; some of these performance measures are descriptive only and some can be used to indicate outcomes. Fundamentally, they are descriptions of what is happening but on occasions provide data from which stronger outcome measures can be built. The level of discussion of these measures is a beginning rather than an end stage in creating performance and quality measures. The picture of descriptive performance and quality measurement conveyed in the table below has been taken from these six studies although the studies did not set out to develop consistent or comprehensive performance measures. Nonetheless the studies present material from which performance measures can be derived and they show the emergence of one possible kind of framework for FSP performance measurement. Nonetheless, it is important to note the existence of the FSP Performance framework, before which there also existed Key Performance Indicators for FSPs.

5.11 The Table 5.1 presents a framework broken down into a number of topic areas and these are broken down into sub-topic areas, chosen because of their presentation in some or all of the studies. It can be seen that all the studies taken together do not use the entire framework but rather use parts of it and use some parts more than others.

5.12 Examining Table 5.1 indicates that most of these studies developed a considerable amount of information to describe the services they studied, an important task as the programs were new. However, the descriptive data varied because of the differences between services and because of the different foci of the studies.

5.13 Also, significant for selecting consistent sources in performance measurement, all the studies used the same data collection sources, taking data from the agency’s administration, from staff, from adult clients and less commonly from related local agencies.

**TABLE 5.1: MONITORING DATA**

<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
</tr>
</thead>
</table>

## Performance and Quality Measurement

<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement with Community:</td>
<td></td>
</tr>
<tr>
<td>Referrals In</td>
<td>AIFS 2009(^{318}), AIFS 2011(^{319}), Institute 2011(^{320}), AIFS 2013(^{321}), FRSA and Mornington Peninsula FRC 2010(^{323})</td>
</tr>
<tr>
<td>Referrals Out</td>
<td></td>
</tr>
<tr>
<td>Outreach</td>
<td></td>
</tr>
<tr>
<td>Geographical Access</td>
<td></td>
</tr>
<tr>
<td>Service Integration:</td>
<td></td>
</tr>
<tr>
<td>Formal Links to Other Services</td>
<td></td>
</tr>
</tbody>
</table>

### Notes:

- \(^{323}\) Thea Brown, ‘What About the Children?’ ((2010) *Family Life*).
<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>to service and service integration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informal Links to Other Services</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Consistently considered; contributes to KPIs for access to service and service integration</td>
</tr>
<tr>
<td>Collaboration</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Consistently considered; contributes to KPIs for service integration. Has been quantified in terms of degrees, with ‘high degrees’ considered a benchmark for good service provision</td>
</tr>
<tr>
<td>Time-Resources</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>Only one study looked at service integration from the point of view of time taken; it can contribute to KPIs for service integration</td>
</tr>
<tr>
<td>Inter-disciplinary Conflict</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>Only one study considered this; might contribute to KPIs for service integration</td>
</tr>
<tr>
<td>Engagement with Clients:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>All services report numbers to Commonwealt h govt; contributes to KPIs on engagement with clients.</td>
</tr>
<tr>
<td>Numbers</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Waiting Time</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Referred in passing in four of the five studies;</td>
</tr>
<tr>
<td>Topics</td>
<td>Studies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>--------------------------------------------</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Client Profile</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Client Reflection of Demography of Area</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services Delivery:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Names and Numbers</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Locations</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use by Aboriginal and Torres Strait Islander</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Contributes to KPIs on engagement with clients and access.

Client profiling reported in three studies; contributes to KPIs of engagement, in total and with any vulnerable or targeted client groups.

Demographic client descriptions reported in two studies; contributes to KPIs of engagement, in total and with any vulnerable or targeted client groups.

All studies listed services provided and mostly numbers of clients; contributes to KPIs on service provision.

Two studies considered co-location advantages; they suggested it as a benchmark of good service provision.

Two studies commented noting a need for improvement.
<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>clients</td>
<td></td>
<td>contributes to KPIs on access for vulnerable groups</td>
</tr>
<tr>
<td>Use by CALD clients</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Use by Violence Victims</td>
<td>x x x</td>
<td>x</td>
</tr>
<tr>
<td>Use by Mental Illness Sufferers</td>
<td>x x</td>
<td>x</td>
</tr>
<tr>
<td>Use by Clients with Substance Abuse</td>
<td>x x x</td>
<td>x</td>
</tr>
<tr>
<td>Use by Low Income Clients</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Service Maintenance:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staffing</td>
<td>x x</td>
<td>x</td>
</tr>
<tr>
<td>Need for Specialised</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Topics</td>
<td>Studies</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------</td>
<td>---</td>
</tr>
<tr>
<td>Staff</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Costs</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Service Problems</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Service Resources:</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>One Service Not Being</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Taken Up Much</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Service Gaps</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Evidence of Social and</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Economic Benefit</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Improved Family Functioning</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Improved Child Development</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Increased Safety of</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Family</td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Considered it a KPI for services to children.

One study commented in passing; did not see it contributing to any KPI.

Two studies commented on inflexibility of service boundaries as a KPI on service provision.

One study commented on poor take up of one part; this contributes to KPIs on service provision.

Three studies commented with concern seeing this as a KPI on service provision.

Outcomes included improved parent confidence, literacy, and mental health and increased parent self-determination and self-esteem.

Outcomes included improved child behaviour and academic achievements.

No outcomes were documented.
The Table 5.1 shows that past studies have developed descriptive detail as a foundation for performance measurement but done so unevenly. Although the research material from these studies can be sharpened into KPIs and on occasions the researchers and the agencies were aware of this.

In this table of descriptive performance measures the sub-area of collaboration, (which is a part of ‘service integration’), was the most developed in terms of KPIs. One study (the FRSA 2010 study\textsuperscript{324}) had worked a great deal on it and all other studies considered it important. That study had established a series of levels of collaboration, ranging from high to low, that could be quantified although they had not gone to this point. They had developed a ladder of collaboration and numerical values could be allocated to each level and used to set up benchmarks or standards.

Moreover the study had presented best practice examples of collaboration and set out nine factors the services considered enhanced collaboration (organisational culture, support for staff advancing collaboration, resources for it, including collaboration in performance measurement, respectful relationships with other organisations, incentives relating to clients for collaboration, alignment of goals across the organisations, resources for the network, local government support) and nine that hindered it (organisational hindrance, workforce constraints, unclear decision making, poor administrative practice, poor history of collaboration, complexity of collaborative network, competition among collaborators, performance measures that cut across collaboration, and lack of system

Furthermore, the study had considered the costs of collaboration and the need for program funding to make allowances for working in a fragmented service system.  

**Issues Identified in Descriptive Material Affecting Quality in Service Provision**

5.17 Many of the studies suggested that there were particular issues in collaboration between FSP services and those provided from agencies sponsored by state government that affected the quality of the FSP services being provided. The most common agency referred to regarding these difficulties was state child protection services. Such difficulties have been referred to in very many studies and have been documented extensively.

5.18 The six studies provided less information about the level of engagement with the client than anticipated although it is an important KPI. The Commonwealth agencies have information from the services about the level of engagement and contact and that may be why it was not sought in studies. Most studies identified client numbers (but not in relation to staff numbers or by reference to sub-sections of services) and aggregated profiles of the clients using the service. Only two, the Institute of Child Protection study and the study of the Frankston and Mornington Peninsula FRC, considered these profiles in relation to whether or not they reflected the composition of the services’ catchment areas. These studies found that the clients were typical of the various components of the local community. (The first of the AIFS studies did not collect data according to locality and so could not pursue this issue.)

5.19 None of the studies commented much on waiting times for services for clients, although this is an access to service and fairness KPI and information on this is now collected by the FSP data system.

5.20 In addition, it is not clear whether FSP providers of services use client information (demographic and other) to improve their services. While this information is provided to funders, it may or may not be used to inform

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326 Belinda Fehlberg and Fiona Kelly, ‘Jurisdictional Overlaps between the Family Division of the Children’s Court and the Family Court of Australia’ (2000) 14 *Australian Journal of Family Law* 211; Dale Bagshaw, Thea Brown, Sarah Wendt, Alan Campbell, Elspeth McInnes, Beth Tinning, Becky Batagol, Adiva Sifris, Danielle Tyson, Joanne Baker and Paula Fernandez Arias, *Family Violence and Family Law in Australia: The experiences and views of children and adults from families who separated post 1995 and post 2006, Volumes 1 and 2* (Attorney-General’s Department, 2010). The National Child Protection Framework is an inter-governmental plan that, among other aims, seeks to overcome the disjunctions of the State/Commonwealth divide in child protection, and work has taken place to address these issues within the Family Court of Australia through the Magellan program and through State/Commonwealth projects. The references to these problems in three of the reports were about local interfaces, between local FSP services and the regional child protection offices. This suggests that there is work to be done at the local level, and certainly some regional Family Law Pathways Groups are tackling this problem.


Chapter Five - Performance and Quality Measurement
improvements in service delivery, as for example in tighter targeting of service provision.

5.21 The studies provide some consistent and some inconsistent information about the services. For example, they all identify the services provided in the FSP. However, only the AIFS 2011 study raised a significant issue that did not emerge in any other studies when it noted that one of the services funded (lawyer-assisted dispute resolution) was not being used very much within the FRC Legal Assistance Program.

5.22 The FRSA report raised another issue of significance, that of a locality having difficulty in raising a sponsoring organisation (via funding agreements) for service provision despite local need. The Institute of Child Protection report raised the issue of co-location of services (one feature of service mapping) and strongly supported co-location as it believed co-location advantaged clients by making it easier for them to access related services and was therefore a KPI for access to services. That study and the FRSA study considered that co-location make local collaboration and local service coordination better and easier.

5.23 The studies provided inconsistent information about services to vulnerable client groups. This was the result of either not gathering data or where studies collected data on groups each study defined the groups differently. For example, the AIFS studies of 2009 and 2011 explored issues relating to Aboriginal and Torres Strait Islander clients and Victims of Violence Clients (VOVC) and made mention of Clients with Mental Health Problems (MHP) and with Substance Abuse Problems (SAP), but did not explore issues from the perspective of Culturally and Linguistically Diverse (CALD) clients or low income clients. In contrast, the Institute’s report explored issues relevant to Aboriginal and Torres Strait Islander and CALD clients and low income clients. The Frankston and Mornington Peninsula study explored issues by reference to VOVC and low income, clients with disabled children status but not CALD or Aboriginal and Torres Strait Islander status. This difference was due to relatively low numbers of certain client groups in local regions.

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5.24 The Institute study reported that the services were not engaging well with CALD clients.\textsuperscript{334} It suggested that services had noted this problem and intended to focus on this issue into the future. Attention has been focused on Aboriginal and Torres Strait Islander and CALD clients within the family law system in two other reports from the Family Law Council,\textsuperscript{335} and issues associated with these two client groups are discussed in greater detail later in this Review.

5.25 Three of the studies presented limited information on staffing of services, these being the AIFS 2011 study, the Institute study and the Frankston and Mornington Peninsula study.\textsuperscript{336} The number of staff, educational backgrounds of staff, work experience of staff, ongoing training needs, staff management issues and turnover of staff were not covered at all, although all reports mentioned unmet staff needs. Obtaining and maintaining sufficient staff was seen as a difficult task in most services, and the Institute’s study raised the issue of an unmet need for specialist staff for children’s services.

5.26 Cost of service provision in either gross terms or in terms of costs per unit of service was not covered in any of the studies. The Institute’s study expressed a view that one service presented gave good value for money, which is one of the driving factors behind this research; however, there was little detail about how this conclusion was reached.\textsuperscript{337}

5.27 The most common service issue identified in the studies, apart from staffing issues, was that there were insufficient resources to achieve service objectives. However, no studies provided a detailed account of what funds were needed to accomplish what tasks.

### Outcome Performance Measurement

5.28 The following table, Table 5.2 ‘Outcome Data’, continues the depiction of the way the five studies explored performance measurement, and in this table it presents outcome performance measurement, the type of performance measurement that is related to an assessment of service efficacy in terms of its outcomes. Once again, the table presents outcome performance measurement broken down into topic areas and then these areas are broken down into sub-topic areas and the table shows to what extent each of the studies explored those topics. As noted in Table 5.1 and

\textsuperscript{334} Institute of Child Protection Studies, \textit{Evaluation of the Supporting Children after Separation Program and Post Cooperative Parenting Programs} (ACU, 2011) 8, 10.

\textsuperscript{335} Family Law Council, \textit{Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds} (2012); Family Law Council, \textit{Improving the Family Law System for Aboriginal and Torres Strait Islander Clients} (2012).


discussed below, there is a lack of consistent coverage of all topic areas and some studies do not explore some areas at all.

**TABLE 5.2: OUTCOME DATA**

<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification of Program Goals</td>
<td>AIFS 2009 338&lt;br&gt; AIFS 2011 339&lt;br&gt; Institut e 2011 340&lt;br&gt; AIFS 2013 341&lt;br&gt; FRSA 2010 342&lt;br&gt; Frankston and Morningto n Peninsula FRC 2010 343&lt;br&gt; KPIs</td>
</tr>
<tr>
<td>Identification of Service Objectives</td>
<td>AIFS 2011 339&lt;br&gt; Institut e 2011 340&lt;br&gt; AIFS 2013 341&lt;br&gt; FRSA 2010 342&lt;br&gt; Frankston and Morningto n Peninsula FRC 2010 343&lt;br&gt; KPIs</td>
</tr>
<tr>
<td>Links Between Program Goals and Service Objectives</td>
<td>AIFS 2011 339&lt;br&gt; Institut e 2011 340&lt;br&gt; AIFS 2013 341&lt;br&gt; FRSA 2010 342&lt;br&gt; Frankston and Morningto n Peninsula FRC 2010 343&lt;br&gt; KPIs</td>
</tr>
<tr>
<td>Establishing KPIs</td>
<td>AIFS 2011 339&lt;br&gt; Institut e 2011 340&lt;br&gt; AIFS 2013 341&lt;br&gt; FRSA 2010 342&lt;br&gt; Frankston and Morningto n Peninsula FRC 2010 343&lt;br&gt; KPIs</td>
</tr>
</tbody>
</table>

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### Topics

<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Measuring KPIs</strong></td>
<td>x</td>
<td>All studies produced measurements of outcome KPIs, for dispute resolution, collaboration, service to children and client satisfaction.</td>
</tr>
<tr>
<td><strong>Identifying Outcomes</strong></td>
<td>x</td>
<td>All studies attempted to identify outcomes; contributes to outcome measurement.</td>
</tr>
<tr>
<td><strong>Contributing to Benchmarks</strong></td>
<td>x</td>
<td>Three studies contributed to benchmarks; they were in dispute resolution, collaboration and services to children.</td>
</tr>
<tr>
<td><strong>Costing Outcomes</strong></td>
<td>x</td>
<td>One study attempted but commented that a comprehensive assessment of economic benefit is still elusive.</td>
</tr>
<tr>
<td><strong>Value for Money</strong></td>
<td>x</td>
<td>Limited direct evidence of the economic benefits of specific programs and services as currently provided by the family and relationship service sector.</td>
</tr>
<tr>
<td><strong>Use of Staff Views on Client Satisfaction</strong></td>
<td>x</td>
<td>Four studies considered; a KPI for outcome performance measurement.</td>
</tr>
</tbody>
</table>
### General Observations

Three studies identified service goals. One study noted these were not always stated. Four of the studies were able to identify the objectives of the services they were evaluating, and two explored the links between the broader goals and objectives and found that they were consistent.

The Table 5.2 shows that the studies presented data that provided the basis for the development of outcome measures and also presented outcome measures that were quantified in some sub-topic areas. These areas were firstly in the dispute resolution area and this will be discussed further as it is the area where outcome performance measures are best developed. Secondly, outcome performance measurement was well developed in the area of collaboration and although not quantified was able to be so. Furthermore, this area had progressed to benchmarking through depictions of best practice examples. Thirdly, outcome performance measurement had

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**Table 5.2: Use of Staff Views on Client Outcomes**

<table>
<thead>
<tr>
<th>Topics</th>
<th>Studies</th>
<th>Use of Staff Views on Client Outcomes</th>
<th>Use of Client Views on Satisfaction</th>
<th>Use of Client Views on Outcomes</th>
<th>Other Measures of Outcomes</th>
<th>Agency Undertaking Own Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>AIFS 2013</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>Only two studies considered but is an important KPI for outcome measurement</td>
<td>X</td>
</tr>
</tbody>
</table>

---

been developed in the Institute’s research on intervention with children in the SCASP service program and from that work could be quantified.

5.31 The studies did not measure outcomes in the same way suggesting the need for further work to establish consistency. Only the AIFS 2013 study considered a costing of outcomes which found some direct evidence of economic benefit, but concluded that a comprehensive understanding of the economic benefits of prevention and early intervention programs that fall within the family and relationship services sector is still elusive. Thus it is difficult to identify value for money as no service and its outcomes were costed. In a sense true comparisons are difficult since the most reliable comparison would be between providers of the same services but each of them operates in different local environments.

**Auditor-General’s Report**

5.32 The performance measurement emerging from the studies showed incomplete and inconsistent performance measurement suggesting more development was required. None of the studies presented the performance measures developed by the Commonwealth government for services within the FSP. These have been presented recently in the Auditor-General’s Report of 2010-11 and discussed at length and considered to need further development. The discussion of these performance measures was focused on the services of the FRCs with little differentiation between the various services provided from the FRCs as the report noted.

5.33 The report set out to review the implementation of the FRCs and in exploring the efficiency and effectiveness of the FSP, concluded that:

> there were some notable gaps in the selection, implementation and ongoing administration and performance monitoring phases. These gaps, particularly in the performance monitoring component, have limited the ability to assess the success, or otherwise, of the FRC network in achieving its objectives and delivering a value-for-money outcome.

5.34 Further, the Auditor-General suggested that the public and policy prominence of the FRC initiative created a strong imperative to reliably measure the performance of this service and the success of the policy direction. The Auditor-General pointed to the following factors as limiting the effectiveness of the performance framework developed for FRCs:

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the absence of a common approach to collection and storage of compliance and performance documentation;

- data integrity issues with the key data collection system, FRSP Online; and

- a lack of key performance indicators to measure the efficiency and effectiveness of FRCs in delivering services to families.  

5.35 The Report argued that the following aspects of FRC performance measurement could be improved:

- assessment of the quality and integrity of cost and client data being provided by FRCs and use of this information to inform an analysis of the value-for-money outcomes being delivered;

- an assessment of the caseloads of each FRC, including the number of client contacts, costs per service and numbers of unregistered clients, to better understand the operating models and the outcomes achieved by FRCs;

- a mechanism to capture and analyse customer feedback;

- a common approach on the part of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to the collection and storage of necessary performance and compliance documentation;

- conduct of regular data audits and provide training to FSP providers in data collection; and

- improvement of external reporting of FRC performance to provide information on the extent to which FRCs are achieving their overall objectives.  

5.36 The report listed the KPIs which were put in place in 2006, modified during the first two years of operation, and ceased to be the basis of performance pay in about 2009. Whilst these were still in existence up until July 2011, they were superseded by FSP performance framework, after this. As can be seen from the above comments, the Auditor-General saw them as requiring further development on a theoretical and practical level.  

5.37 These KPIs were placed in three broad areas Helping Intact Families with their Relationships, Helping Separating Families with their Relationships, and Providing Quality Family Relationships. These were intended for application for all services within the FSP. However, in 2007 they were amended to include some more specific focus on FRCs. The three broad areas were retained and augmented with further measures around access to service and outcomes with families where there are issues like family violence or other similar problems. In addition, further more specific outcome KPIs were set out covering intermediate outcomes, immediate outcomes and process outcomes. These were presented in quantifiable forms of KPIs. Most could be quantified, for example percentage of clients making parenting arrangements, and whether additional decisions were

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made as to time lines covered in the KPIs. Also, the various quantifications of KPIs were explained in terms of the definitions adopted for KPIs, the methods of measuring the KPIs and the sources of data for KPIs, producing a robust series of quantified KPIs.

**Measuring Performance and the Quality of FDR**

5.38 The literature on measuring performance and quality in family dispute resolution appears to exhibit the most sophisticated thinking on measuring performance and quality in the FSP. Examples include the Family Dispute Resolution Services in Legal Aid Commissions report relating to Commissions throughout Australia\(^{351}\) and Armstrong's report which evaluates culturally responsive family dispute resolution in family relationship centres.\(^{352}\) This further discussion of it shows the complexities of performance measurement and the gains that can be obtained.

5.39 Tyler notes that the evaluation of quality of a dispute resolution program involves an assessment of the degree to which programs achieve their objectives.\(^{353}\) FDR is defined in section 10F of the *Family Law Act 1975* (Cth) as:

> A process (other than a judicial process) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other.

5.40 One measure of effectiveness suggested by the legislation is whether or not the processes assisted in the settlement of some or all post-separation disputes, meaning that settlement rates may be a major measure of the quality of the FDR program.

5.41 The AIFS evaluation of the 2006 reforms provided two starkly different settlement rates for FDR, with the differences being attributable to differences in discrete data collection methodologies.\(^{354}\) From other studies (reported in paragraphs following), it appears that the higher of the two settlement rates in the AIFS study may have been more reliable in that time period 2006-2009, although data from the Broadmeadows Family Relationships Centre (FRC), discussed below, suggests that settlement rates may be significantly lower for areas with more recently arrived immigrant groups. These differences show the difficulties in moving from measuring settlement rates in aggregate to establishing benchmarks that are not related to client profiles of the FSP catchment region. The random longitudinal survey of FSP clients who

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352 Susan Armstrong, ‘Culturally Responsive Family Dispute Resolution in Family Relationship Centres: Access and Practice,’ *A Report for Family Relationship Centres at Bankstown* (June 2010)
separated between 2006 and 2008 asked parents to recall whether they had used FDR and whether they had reached settlement. Some 39.4 per cent of these parents who completed FDR reported reaching an agreement in FDR, whereas 57 per cent of parents in the voluntary survey of FSP clients who used services between 2008 and 2009 reported reaching full or partial agreement in FDR.

5.42 Settlement rates in FDR of 60 per cent for some or all issues in dispute were reported at the Frankston FRC in the Frankston and Mornington Peninsula study. This figure was somewhat lower than the high expectations of settlement reported by clients prior to engaging in FDR, where 86 per cent expected to resolve some issues in dispute and 14 per cent expected to resolve all issues in dispute. This study raised issues around what comprises a dispute settlement as when clients were contacted twelve months after the cessation of service, some who had left with only a partial dispute settlement now saw that partial settlement as a complete one, having become reconciled to their situation.

5.43 The evaluation of the Broadmeadows FRC provided data on settlement rates in FDR according to length of time living in Australia. Whereas clients who had lived for more than 15 years in Australia had settlement rates in FDR of just below 60 per cent, clients who had lived in Australia for less than 15 years had a settlement rate of just 20 per cent.

5.44 Durability of agreements made in FDR, although not an explicit goal of FDR in the Family Law Act 1975, is another recognised measure of FDR quality. Durability as a measure of quality is consistent with one of the key principles underlying the objects of Part VII of the Family Law Act: that ‘parents should agree about the future parenting of their children’. The AIFS evaluation of the 2006 reforms found that 6 per cent of those who reached agreement at FDR found that the agreement had not ‘stuck’ up to two years later, and for 19 per cent, it appears that FDR did not cover all of the issues at the time and negotiations continued. At the Frankston FRC, while some agreements broke down within the first twelve months after they were gained, more who had not reached agreement originally continued to work on the dispute and ultimately 17 per cent of clients who had attended FRC 12 months previously had no resolution of any issues in the dispute at all.

358 Family Law Act 1975 (Ch), s 60B(2)(d).
5.45 The AIFS evaluation of the 2006 reforms approached comparable outcomes from a different perspective, showing that it is often useful to use additional sources of data and different design strategies to obtain greater reliability in performance measurement. They pursued the direction noted in the *Resolving Disputes without Courts Background Report*[^361] of the Australian Centre for Justice Innovation (ACJI) which had pointed out:

An extensive evaluation of the 2006 reforms in the family area[^362] found that these reforms had resulted in a significant increase in the use of non-court services, and a decrease in matters filed in the Family Court of Australia and the Federal Magistrates’ Court. Importantly and unlike the most recent changes in the civil pre-action area, the reforms were accompanied by the establishment of Family Relationship Centres which were designed to provide dispute resolution and other services;

The changes to the family relationship services system included the establishment of 65 FRCs throughout Australia (designed to provide a gateway to the system for families needing assistance), funding for new services, and additional funding for existing services.[^363]

5.46 Thus the AIFS evaluation of the 2006 reforms found at the time of their study that there had been a significant decrease in the work of the Courts:

While the number of applications for final orders relating to children’s matters that were made to the FMC between 2005–06 and 2008–09 increased, this increase was more than offset by the decrease in the total number of such orders that were lodged across the system. Specifically, the overall number of such applications declined by 22% from 18,752 in 2005–06 to 14,549 in 2008–09 (Figure 2). The number of applications to the FCoA declined by 72% from 7,479 to 2,086 over this period and the number to the FMC increased by 17% from 9,405 in 2005–06 to 10,987 in 2008–09 and the number of applications to the FCoWA decreased by 21% from 1,868 to 1,476.[^364]


5.47 In addition, the Report found that:

There was an increase in the number of clients for all [Family Relationship Services Program] services over the period 2006–07 to 2008–09. The number of:

- [Family Relationship Centre (FRC)] clients increased from about 14,000 to 60,000;
- [Family Dispute Resolution (FDR) (including Regional Family Dispute Resolution (RFDR) clients] increased from about 14,500 to 22,500;
- [Children’s Contact Services (CCS)] clients increased from about 11,000 to 23,500;
- [Parenting Orders Program (POP)] clients increased from about 3,000 to 8,000;
- [Specialised Family Violence Services (SFVS)] clients increased from about 3,500 to 7,000;
- [Men and Family Relationships Services (MFRS)] clients increased from about 24,000 to 28,000;
- counselling services clients increased from about 63,500 to 101,000; and
- [Education and Skills Training (EDST)] clients increased from about 32,000 to 49,500.\(^{365}\)

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5.48 However, it must be noted that the time periods covered in this data were small and it is too early to say if these trends will be maintained. It is also important to note that there was a significant increase in the services rolled out over this period and therefore a report on an increase of service provision is to be expected.

Self-Auditing

5.49 Performance measurement undertaken by the services themselves was noted to occur in a number of the services studied in the research. Most of these services are required to forward information on client satisfaction to the Commonwealth government (among other data) and these are published each year in national aggregate. Data as to the position (with regard to client satisfaction and other measures) is then returned to the individual agency each year. Self-auditing is not an independent guarantee of quality or of improvement but it may be that those who carry it out are doing so because they are aware of its use in monitoring their work and its quality and because they do use it for this purpose. Administrative theory in the social services supports its use.

5.50 One study explored self-auditing for the SCaSP services and found that in the group of agencies it reviewed self-auditing did take place. They did this commonly by a combination of staff assessments of client satisfaction and client success as well as client assessments of satisfaction and success. The Frankston and Mornington study was commissioned by the agency as a more neutral form of self-auditing, in effect a different assessment mechanism. Other services may do self – auditing, for example the Secretariat of National Aboriginal and Islander Child Care is currently reviewing their Children and Family Centres (CaFCs) and AIFS is undertaking an evaluation of programs and services in relation to the Australian Childhood Foundation, CatholicCare Melbourne and Interrelate Family Centres, NSW.

Duplication of Services

5.51 Duplication of service provision, an indicator of poor quality, was not mentioned as an issue in any of the past research. Since the changes

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368 See Secretariat of National Aboriginal and Islander Child Care, description of this research/evaluation under heading ‘Current Focus’ at this link: http://www.snaicc.org.au/policy-advocacy/dsp-landing-policyarea.cfm?loadref=44&txnid=13&txnctype=post&txncstype=
369 See Australian Institute of Family Studies, description of evaluation under heading of ‘Evaluation of Programs and Services’ at this link: http://www.aifs.gov.au/cfca/research/currentresearch.html#programs
reviewed were to place increased and new services into localities throughout Australia, the focus was mainly on obtaining sufficient services, finding service sponsors and services staff, obtaining enough resources to operate the services at optimum levels as well as supporting service coordination and integration and not concerned with duplication.

Summary

5.52 The literature suggests that performance measurement in the FSP is at an embryonic stage although in respect of some aspects of service provision it is better developed. The literature on dispute resolution, where performance measurement and quality of service provision is best developed, highlights the complexity involved in conducting performance measurement and indicates that theoretical work may need to be undertaken for all performance measurement in the FSP (in terms of what are program goals, what are service goals, what then are the performance measures and how they can all be aligned).

5.53 Also performance measures may need to be defined, constructed and quantified and checked using a number of variable measures. Data sources need to be consistent and there must be consistency in what is being measured and how it is being measured and this is difficult given the spread of agencies and systems involved. The work that has been undertaken on co-operative approaches to address these issues, as with the work on dispute resolution, indicates that this is a complex ongoing endeavor where the nuances and differences in service provision will need to be considered in order to establish higher quality performance measurement with benchmarks for best practice.
Chapter Six - Service Effectiveness in Relation to Children

Introduction

6.1 This Chapter explores the ways in which the literature comments on how the Family Support Program (FSP) supports the best interests of children.

6.2 The Chapter addresses the following indicative questions outlined by Allen Consulting Group’s Project Plan for the AGD:

- Are FSP family law services meeting the needs of Australian families who are in conflict, separating or separated?
- How are the best interests of children being met by FSP family law services?
- What is the clients (encompassing age, gender and background) experience of their involvement with FSP family law services?

6.3 Commentators have often expressed uncertainty about the meaning and scope of the expression ‘best interests of children’. For example, Chisholm suggests that, as a principle, the best interests of the child is so broad in its meaning as to be ambiguous. Moreover, there can be barriers in its translation arising from the tension between the principles associated with parents’ interests and those associated with children’s interests.

6.4 In reviewing the literature on the suite of services provided to separating parents and their children through the FSP, Chisholm’s comments still resonate. The literature on recent FSP service provision that impacts on children, admittedly sparse due to the relatively short life of these services since their expansion following the 2006 family law reforms, has little information about impacts on children.

6.5 The literature mostly centres on service delivery issues facing services of all kinds, rather than on the service issues arising from the requirement to serve children’s best interests in what can be a highly charged adversarial atmosphere of parental separation. There is no current literature that reports on how well the services taken as a whole, or taken as individual services, assist children, as opposed to parents, nor is there any literature on how this might be determined or measured.

Best Interests of Children

6.6 The ‘best interests of the child’ is the paramount consideration when a court makes a parenting order.\(^{371}\) Outside court, parents making a parenting plan are ‘encouraged’ to regard the best interests of the child as the paramount consideration.\(^{372}\) Further, advisers (family dispute resolution (FDR) practitioners, lawyers, counsellors and family consultants) working with parents who are making decisions over the care of their children after separation are obliged to inform parents that the agreement they make in their parenting plan ‘should be made in the best interests of the child’.\(^{373}\)

6.7 Since 2006, courts have had to have regard to primary and additional considerations in determining what is in a child’s best interests.\(^{374}\) The ‘best interests principle’, also known as the welfare principle, has been a principle of family law legislation and court decision-making for well over a century in Australia and elsewhere.\(^{375}\)

6.8 Chisholm has argued that it is difficult to determine what children’s best interests are, and he has proposed instead that every child’s position should be assessed individually and not constrained by a rigid view or prescription of their best interests.\(^{376}\) He proposes a lengthy set of criteria as to how their needs have been determined by courts and how they might be in the future. Although he is writing about decisions in family law courts, his recommendations could equally apply to all family law service provision. In this regard, the FSP is provided in the framework of or in the ‘shadow of the law’.\(^{76}\)

6.9 Chisholm’s views are congruent with, but not written in, the language of the emerging frameworks on ‘best interests of the child’, now a powerful theoretical approach in the provision for all services for children in Australia and overseas.\(^{377}\)

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\(^{371}\) *Family Law Act 1975* (Cth), s 60CA.

\(^{372}\) *Family Law Act 1975* (Cth), s 63B(e).

\(^{373}\) *Family Law Act 1975* (Cth), s 63DA(2)(c).

\(^{374}\) *Family Law Act 1975* (Cth), s 60CC.


Involvement of Children in Determining Their Best Interests

6.10 With the adoption of the UN Convention on the Rights of the Child, Australia adopted a philosophical framework that empowers children in all service provision by promoting the principles of children having rights to knowledge about services decision-making processes and their outcomes and rights to involvement in decision-making (Art 12). Child welfare services provided by State governments have adopted some of these principles, for example, supporting lobby groups of affected children, but neither they nor the services of the family law service system give children decision-making powers, merely opportunities for involvement that vary from service to service.

6.11 In the family law service system, including the FSP services, children have no rights to information about, or involvement in, family law processes or services. Instead these newer principles have emerged in the form of policy models or a policy models continuum known as the Child Focused, Child Responsive or Child Inclusive continuum of service provision that is still subject to debate.

6.12 The philosophy of the UN Convention’s emphasis on children’s rights coupled with research about the views and experiences of children of separating parents in England378 and Australia379 led to recognition that children had their own concerns about parental separation and post-separation parenting arrangements. Their views were found to be different in some respects from what their parents believed their children’s views to be, and from the parents’ views as well. In the first comprehensive review of the Australian family law service system, it was argued that children needed to be involved in the decision-making process about their care in some way.380 At the same time, competing views, which are best outlined in Moloney and McIntosh’s work381 existed as to how to involve children in these services.

6.13 Three possible ways of involving children models for family law services were proposed. These have been further detailed in the Commonwealth-commissioned family law socio-legal services practice guidelines report as follows:

- Child Focused services - where the services encourage the parents to hear their children’s views but where the child is not actually present expressing his/her views;

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• Child Inclusive - where the child is included in decision-making processes in some particular recommended ways; and
• Child Centred - where the child is kept central to the process including a variety of opportunities for their participation.  

6.14 The latter two models (and perhaps the first model, implicitly) include the important notion that children move through a number of developmental stages and that their participation must be matched to their developmental needs and capacities. Those latter two models probably better comply with Australia’s international obligations under the UN Convention on the Rights of the Child. In a sense, all of these models are controversial because they move thinking about the children from the perspectives of parents to that of children. Children are seen as independent, to a certain extent, from their parents.

6.15 The Australian family law literature does not note that there is a fourth possible model, termed ‘Child-Directed’ that enables children to express their views and make their own decisions, with professionals but without their parents. However, this possible model is not in usage by services as yet, although a combination of the Guardian Ad Litem and Independent Children’s Lawyer model in the English family law system does come close to that. In the Australian family law services system literature, children are still tied to their parents and cannot be involved in any aspect of service provision without their parents’ agreement. This has been identified as a special problem relating to children in a number of service reviews.

Dependence of the Services on Parental Agreement to Service Provision

6.16 The dependence of services on parental agreement as a preliminary to providing services for children has been considered a difficulty as children became more directly involved in service provision. There is little information about the extent to which this impacts on the FSP. Some FSP services have, on account of the type of service they provide for parents and their children, found that some tension exists between the children’s views of their needs, the parents’ views of the children’s needs and the services’ views of the children’s needs.

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383 Under the Children Act 1989 and due to the adoption of the ECHR into national law, children are kept informed and allowed to participate – in Robyn M. Fitzgerald, Children Having a Say: A Study on Children’s Participation in Family Law Decision Making, PhD Thesis (Southern Cross University NSW, 2009) 58

6.17 At some services, such as children’s contact centres\(^{385}\) and FDR services,\(^{386}\) this tension occurs more frequently, whereas at parenting order programs less conflict between parents and children’s needs has been found.\(^{387}\) Resolution of parenting disputes relating to service provision is made more or less difficult according to the parents’ need for the child to have the service and the power that the service has been able to assume because of the parents’ needs, or parents’ view of their children’s needs, the ability of the service to satisfy these needs and the legal and service protocols in place.

6.18 Services such as contact centres, where children and carers are referred by the courts and work jointly with them, have the power to be linked to the court system, and can operate to carry out a court order with the power of accepting or rejecting parents’ needs with the consequent loss of contact that rejection would cause.\(^{388}\) FDR services have the power of the persuasiveness of the professional but little else.\(^{389}\) The degree of need of the child may be passed over in favour of the parent’s position. At the same time, the difficulties of offering an effective service if the parents are not willing to support it are also well known.\(^{390}\)

### Children’s Wellbeing Following Separation

6.19 Research has shown that children can experience psychological, social and educational problems and disadvantage following their parents’ separation in addition to any problems the parents themselves are facing.\(^{391}\) Rodgers and Pryor have shown from UK research that many children experience short-term problems, but that about one-third of children experience long-term problems.\(^{392}\)

6.20 More sophisticated data analysis in US research has supported this conclusion but with a slightly lower calculation of the proportion of children experiencing long-term problems in contrast to those children in intact

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\(^{388}\) Attorney-General’s Department, *A guideline for family law courts and children’s contact services* (2007).


families experiencing long-term problems. One implication is the need for service provision to children and their parents to overcome or mitigate these consequences, and indeed the FSP represents a strong Commonwealth initiative to achieve this end.

Children’s Wellbeing Since the 2006 Reforms

6.21 A number of commissioned Commonwealth studies have focused on children in the new family law legislative and service structures since 2006. The Australian Institute of Family Studies (AIFS) evaluation of the 2006 reforms examined how well children were faring under the new legislation. However, their work considered the impact of the shared care feature of the new legislation on children rather than on the impact of service provision on them. This study found that children in shared care were doing as well after separation as children who were spending shorter amounts of time with one or other parent, with the exception of children where family violence, mental illness or substance abuse was occurring. These children were thought to have difficulties according to one or other of their parents.

6.22 By implication, the AIFS study expressed a view that services implementing policies of shared care, such as Family Relationship Centres (FRCs), may not be acting in the children’s best interests. Other studies undertaken at the same time also suggested that, where family violence had taken place, children were experiencing difficulties as the shared care principle cut across the best interests of children as a paramount consideration. These studies included one where children were directly consulted, giving the findings greater strength.

6.23 McIntosh notes in her work, that lawyers, judges, parents, and even mental health professionals are often poorly equipped to apply developmental knowledge to post separation parenting decisions, including knowledge from the field of attachment theory. There is a growing body of research which suggests from neuroscience and developmental psychology that attachment relationships are a fundamental element of every child’s

396 Social Policy Research Centre, Shared Care Parenting Arrangements since the 2006 Family Law Reforms (Attorney-General’s Department, 2010). Children were also consulted in relation to a study which looked at their participation in Australian Family Relationship Centres, see Anne Graham, Robyn Fitzgerald, Renata Phelps, The Changing Landscape of Family Law: Exploring the Promises and Possibilities for Children’s Participation in Australian Family Relationship Centres, Prepared for Interrelate Family Centres (July 2009).
397 Jennifer McIntosh, ‘Guest Editor’s Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law, (2011) 49(3) Family Court Review 418-425
developmental pathway, regardless of their culture. As such, they argue that attachment theory must form part of the court’s considerations, but to date, there have been inconsistencies and complexities in applying attachment knowledge to divorce and separation matters. In this literature, views of eminent attachment experts are explored, who consider guidelines for legal and mental health practitioners in applying these concepts to post separation decision making. The journal also features an interview with Allan Schore, renowned scientist, clinical psychologist, and clinical neuropsychologist, which endorses the idea that courts and legal systems must incorporate these considerations in their decision making.

6.24 McIntosh et al also provided new data on the emotional well being of children and considered the implications of shared care arrangements where parents are in ongoing conflict. They argued that family law professionals should focus on social science, as well as legislation, when attempting to negotiate post-separation care arrangements. They focussed on the psychological theory regarding shared care of young children, and contextualised this into the legislation, with regard to the ‘paramount consideration’ principle. The paper considered the findings of the Children Beyond Dispute research program and the Child Responsive Program operating within the Less Adversarial Trial.

6.25 McIntosh’s work also explores the premise which underpinned the 2006 reforms, being that the majority of children from separated families benefit from the ongoing and warm involvement of both parents, in a climate of well-managed conflict. Drawing on data from a high-conflict divorce sample, this article challenges three assumptions that underpin legislative endorsement of shared parenting, being; that shared parenting is viable for divorced parents in conflict, that shared care enables improved cooperation between parents, and that as a result children will be less affected by their parents’ conflict. The article further explores the impact of the mediation process on the choice and durability of shared parenting arrangements.

398 Jennifer McIntosh, ‘Guest Editor’s Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law,’ (2011) 49(3) Family Court Review 418-425
399 Jennifer McIntosh, ‘Guest Editor’s Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law,’ (2011) 49(3) Family Court Review 418-425
400 Allan Schore and Jennifer McIntosh, ‘Family Law and the Neuroscience of Attachment, Part 1’ (2011) 49(3) Family Court Review 511
6.26 There is ongoing debate surrounding John Bowlby’s attachment theory which purports that attachment is the deep and enduring emotional connection established between a child and carer in the first few years of life.\textsuperscript{405} This attachment impacts on an individual’s functioning, well-being and competency and can influence every aspect of his/her life.\textsuperscript{406} There is an ongoing debate throughout the UK, America and Australia, about whether this view is still relevant and competing theories suggest that there are many reasons for dysfunction in adulthood and that they are not confined to the early maternal bond. Richard Bowlby (John Bowlby’s son) has written a number of books on the topic, and suggests that decisions made, post separation, in the context of family law, must bias its ‘thinking about these dilemmas in favor of knowing which adult the child would naturally turn to for comfort’.\textsuperscript{407}

FSP Services Expressly for Children

6.27 There has been only one study of a FSP service for children, the Supporting Children after Separation Service (SCaSP) service, which does include children’s as well as parents’ views through the inclusion of an older children’s reference group, although the children’s views of the service are not clearly drawn out in relation to that of parents and of staff.\textsuperscript{408} However, this review did focus on how effective the service was for the children. Using their identification of desired outcomes, the review found the service to be achieving its objectives for children, and they did suggest that a tighter assessment would assist to meet objectives (but not in a measureable sense).

6.28 Of interest was the fact that the full range of models for the services of the FSP were used in the SCaSP service suite, but that there was a variation in use from one agency to another. This by implication could lead to service inconsistency, a previously noted problem of the fractured structure of the wider FSP.

6.29 One major problem was the lack of availability of specialist children’s services staff.\textsuperscript{409} The rapid building of a new national network of services to support separating parents and their children following the 2006 reforms has taken place with little or no complementary development of additional

\textsuperscript{405} Mary Ainsworth, ary Blehar, Everett Waters and Sally Wall, \textit{Patterns of attachment: A psychological study of the Strange Situation}, (Hillsdale, NJ 1978).

\textsuperscript{406} Mary Ainsworth, Mary., S., Blehar, M. C., Everett Waters and Sally E., & Wall, , \textit{Patterns of attachment: A psychological study of the Strange Situation}, (Hillsdale, NJ 1978).

\textsuperscript{407} Richard Bowlby and Jennifer McIntosh, ‘John Bowlby’s Legacy and Meanings for the Family Law Field: In Conversation with Sir Richard Bowlby’ (2011) 49(3) \textit{Family Court Review} 549-556

\textsuperscript{408} Institute of Child Protection Studies, \textit{Evaluation of the Supporting Children after Separation Program and Post Cooperative Parenting Programs} (ACU, 2011).

staffing resources. This problem is particularly acute in rural and regional areas where the usual staff movement around agencies is limited due to there being fewer agencies, resulting in a loss of staff from rural localities to city ones.

6.30 A study into children’s participation in service provision at Lismore FRC in 2009 consulted 12 children and staff and parents on their views of a broad range of services offered at the FRC. The children interviewed expressed a clear preference for having their views taken into account in decision-making as a means of being recognised and respected in the processes offered at the FRC. These children were able to distinguish between being given an opportunity to explain how care arrangements would affect them, which they wanted, and having a determinative say over care arrangements, a role which the children recognised as belonging to concerned adults. At the same time the study identified an ambiguity in the role and purpose of the child consultation service at the Lismore FRC. Ambiguity existed over whether the child consultations were conducted for therapeutic reasons to assist the children, whether the consultations were conducted for evidentiary reasons to assist the parents to reach a child-focussed resolution or whether the consultations were initiated for advocacy reasons, to enable children’s participation in decisions which affect their future. Limited emphasis was put upon the potential for the advocacy role of child consultations. The researchers recommended clarification of the rationale for children’s participation in the decision-making process at that FRC.

Independent Children’s Lawyers

6.31 Perhaps slightly outside the scope of this literature review, it is important to note that the use of an independent lawyer to represent children’s best interests is an integral part of the family law service system but not of the FSP. Nevertheless, it requires some comment. The Independent Children’s Lawyer (ICL) is appointed by a judge or a magistrate of the family law courts to represent the children’s best interests, which will incorporate, but not merely be, the child’s wishes. As a service funded

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primarily by state Legal Aid Commissions in turn supported financially in family law matters by the Commonwealth Attorney-General, the ICL has received little attention as to role, efficacy, difficulties and future directions.

6.32 An evaluation of the role of ICLs is currently being undertaken by the AIFS. One study did show that the appointment of an ICL was associated with a speedy and long-term settlement of children’s matters in the Family Court of Australia,\(^\text{415}\) but there has been no consideration of the use of an ICL in services within the FSP. For example, use could be made of them in lawyer-assisted mediation.

**Summary**

6.33 The ‘best interests of children’ as a paramount consideration for guiding the FSP’s suite of services is a difficult principle to use in guiding and evaluation, but no better one has yet been found. Reviewing the effectiveness of the FSP from that perspective shows that there is little research considering the value of the services, either from the perspective of children or that of their parents.

6.34 New service models translating the principle into service provision have arisen, but there is little evaluation of these models from either a parental or child perspective. We do not know the extent, if any, to which child and adult clients value them. We do not know which produce better outcomes for children. We do know that, in services for children, staff value these models, but we do not know which are valued most and which are used most.

7.1 The literature on the various services, and aspects associated with them, within the FSP family law suite of services considered for this literature review is relatively sparse, due to the short history of most of these services in Australia, however the current research project will provide more data. In addition, many of these services have been pioneered in Australia and so there is only a limited discussion of them in overseas literature and, where there is such discussion, it loses relevance for Australia, due to the different political, constitutional and demographic Australian structure.

7.2 Much of the literature was designed to establish the progress of the new services in the FSP as each was established by the Commonwealth government. Consequently the literature focused on what the services comprised and the extent to which they met the government’s expectations. As they continued, efficacy measures were introduced, service by service, and these were placed within the FSP performance framework (with selected Key Performance Indicators for particular services). While the literature does contribute to notions of effectiveness of these services and how to measure this, that literature does not cover all the services. Furthermore, it achieves the necessary depth in only a few of them.

7.3 One group of services where the discussions of efficacy are more sophisticated are the various FDR services. FDR has a long history in Australia (previously known as family and child mediation and part of the Primary Dispute Resolution program) and overseas (known as family or divorce mediation). Consequently, a variety of outcome and quality measures for FDR have been developed, providing a rounded view of the program. However benchmarks have not always been achieved that take into account the particular issues of the nature of a service’s local population and how it may vary from one locality to another.

7.4 Another area where discussion of efficacy is more common is the area of collaboration between services due to the particular fragmented nature of the family law services system in Australia and the challenge it provides for the agencies working in it. The Commonwealth government has given funding to Family Law Pathways Networks to address this challenge and their activity and that of other agencies has produced notions of efficacy and measures of outcomes. These do not include quantifiable measures but current measures can be further developed to do so.
7.5 One of the gaps in the literature is around good or best practice, or practice standards. The literature on the new services covers the problems they have encountered in reaching out to vulnerable groups like victims of violence, indigenous people, the culturally and linguistically diverse, those with or those affected by mental illness and drug abuse, the disabled, the low income groups and those living and working in rural locations.

7.6 However, services do not often write about what they have been able to create to overcome the challenges, as they have been pre-occupied with delivering the new services. Some evidence of good practice is to be found, mostly in conferences, such as in the annual Family Relationship Services Association Conference and the bi-biennial AIHS Conference or National Mediation Conference. These conferences contain many papers on innovative practice that represent high quality practice. However this material is not brought together for publication apart from conference websites.
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