

Family Relationships Quarterly

THE NEWSLETTER OF THE AUSTRALIAN FAMILY RELATIONSHIPS CLEARINGHOUSE



Welcome

Elly Robinson, AFRC Manager | June 2010

Welcome to this edition of *Family Relationships Quarterly*, the newsletter of the Australian Family Relationships Clearinghouse.

There has been much interest in the concept of "genuine effort" since the 2006 family law reforms. In our lead article, an opinion piece by Professor Hilary Astor, the issues surrounding the use of the "genuine effort" principle in practice are considered. To give the article some practice context we asked for thoughts on the article from service providers, which is also included.

Myfanwy McDonald provides a summary of the findings from the *Engaging Hard-to-Reach Families and Children* study, which was conducted as part of the former Stronger Families and Communities Strategy national evaluation. The article builds upon the study by applying the findings to practice. Ann Black presents the second article in our two-part series on shariah law, which examines the Islamic law as it applies to divorce.

Our Program Spotlight, by Heather Brookes and Tony Smith from Anglicare Tasmania, examines the interesting and innovative methods they have used to address the geographical isolation of some of their clients, by providing a Virtual Online Counselling Room.

In other articles, Clare Witnish and Catherine Caruana overview the Mental Health Support Program in the Family Law Court, and Bridget Tehan summarises the findings from a report on social inclusion outcomes for families who live in non-metropolitan areas of Australia.

We hope you enjoy this edition. Feedback is always encouraged and very welcome at [<afrc@aifs.gov.au>](mailto:afrc@aifs.gov.au)



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The Australian Family Relationships Clearinghouse (AFRC) is an information and advisory unit funded by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs and the Attorney-General's Department. The Clearinghouse aims to enhance family relationships across the lifespan by offering a resource and a point of contact for providers of family relationship and support services, policy makers and members of the research and broader communities. The Clearinghouse collects, synthesises and disseminates information on family relationships and facilitates networking and information exchange.

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Family Relationships Quarterly

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Genuine effort in family dispute resolution

Hilary Astor

In this opinion piece, Hilary Astor, Professor of Dispute Resolution in the Faculty of Law at Sydney University, provides a commentary on issues associated with the “genuine effort” provisions of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. We also asked service providers to give a practitioner perspective on the complexity surrounding genuine effort in practice by responding to the issues raised in Professor Astor’s article, and a summary of their responses follows the main article. This article and its conclusions should be considered in conjunction with requirements under the *Family Law Act 1975* and regulations as well as guidelines provided by the Attorney-General’s Department in implementing the reforms.

The legislative context

Section 60I of the *Family Law Act 1975* (the Act) as amended by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* provides that all persons who have a dispute about children (under Part VII of the Act) must make a genuine effort to resolve that dispute by family dispute resolution before they can litigate.¹ Family dispute resolution practitioners are responsible for certifying whether or not the parties have made a genuine effort and therefore have a new role involving evaluating the performance of their clients in family dispute resolution (s60I(8)).

The court may take into account the kind of certificate granted in considering whether or not to make an order referring the case to family dispute resolution (s13C) and in determining whether to award costs against a party (s117). Consequently, if one party is assessed as not making a genuine effort, they may become liable to pay all or part of the costs of subsequent legal proceedings. Anecdotally, but unsurprisingly, this latter provision has made parties and their lawyers particularly anxious to avoid being given a certificate certifying that they have not made a genuine effort.

¹ Section 60I(1) states that: “The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a Part VII order) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.”

Defining genuine effort

Despite the various exceptions, it is intended that most people who have a dispute concerning their children and who cannot resolve it without help will attend family dispute resolution and therefore make a genuine effort to resolve their dispute without litigating. Making a genuine effort is a gateway through which parents must pass before they can access a court (Kaspiew, 2008). However, what constitutes genuine effort is not defined in the Family Law Act.

Cases decided since these amendments came into force have also not provided any assistance. Cases dealing with the provisions of s60I mainly concern the exceptions to the requirement (in subsection 9) that the parties must obtain a certificate. In particular, there have been a number of cases where it was argued that the urgency of the application justified the absence of a certificate. No case has so far contributed to a definition of genuine effort.

Clarity about the meaning of genuine effort is important to ensure fair and consistent decision-making and to prevent “forum shopping” between different dispute resolution services (Astor, 2008; Altobelli, 2006). Further, parents and their legal representatives need to know what is expected of them, so that they can prepare for and behave appropriately in family dispute resolution. Some family dispute resolution practitioners report that where they have issued a certificate that a genuine effort was not made, it is frequently challenged by that party’s lawyer. Practitioners dealing with these challenges need to provide clear information for the parties and lawyers about what behaviour is required for genuine effort and how their client has fallen short of the standard.

The Attorney-General’s Department provides some guidance by suggesting that genuine effort involves a real, honest exertion or attempt, realistically directed at resolving the issues (Attorney-General’s Department, n.d.). The difficulty with this is that assessing what is real or honest or realistic is just as subjective as judging what is genuine. The professional judgements of family dispute resolution practitioners may be informed and reliable, but it is hard to defend such judgements against a client or lawyer arguing their counter opinion. Consequently, elsewhere I have suggested that a definition of genuine effort should be based not on such subjective criteria,

The legislative framework: Overview of provisions

Family dispute resolution practitioners can grant one of five different types of certificate for the following:²

- non-attendance at family dispute resolution because the other party refused or failed to attend;³
- non-attendance because the family dispute resolution practitioner considers that family dispute resolution would not be appropriate having regard to matters such as violence, the safety of the parties, inequalities of bargaining power, the risk of child abuse and the parties' health;⁴
- that a person attended family dispute resolution and that all parties made a genuine effort to resolve the issue(s);
- that a person attended family dispute resolution but that person, or another party did *not* make a genuine effort to resolve the issue(s); and
- that a person began attending family dispute resolution but the practitioner considered that it was inappropriate to continue due to the risk factors outlined above.

There is no need to issue a certificate at the end of family dispute resolution unless a client requests one. Certificates can be issued up to 12 months after the family dispute resolution process has concluded. If a "non-genuine effort" certificate is issued, the court may order the parties to attend family dispute resolution before hearing an application.

There are exceptions to the requirement to have a certificate before commencing Part VII proceedings. These are set out in s60I(9) and include: where

the application is for a consent order; where it involves child abuse or family violence; in certain situations involving contravention of a recent order under Part VII; where one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); and, in cases of urgency or where the circumstances specified in the regulations are satisfied.

Regulation 25 of the Family Law (Family Dispute Resolution Practitioners) Regulations requires that before providing family dispute resolution, the practitioner must be satisfied that an assessment of the parties to the dispute has been carried out and that it is appropriate to provide that service to the parties. In determining whether family dispute resolution is appropriate in any given case, the practitioner "must be satisfied that consideration has been given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:

- (a) a history of family violence (if any) among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties;
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.

but on the behaviour of the parties. It should require that participants in family dispute resolution demonstrate willingness to do three things that are at the core of the essential negotiating behaviours required to resolve disputes involving children under the Act. They should: first, consider options put forward by the other party; second, consider putting forward their own options; third, focus on the interests and needs of the children (Astor, 2008). These three elements of genuine effort still require professional judgements from family dispute resolution practitioners and do not dispose of all the dilemmas that practitioners face in assessing genuine effort. However, they require a focus on the parties' behaviour rather than what the practitioner thinks was the parties' state of mind. They should assist the practitioner to give the parties concrete advice about what is expected of them in family dispute resolution.

Commentary on genuine effort

Since the genuine effort provisions came into operation, there has been some concern that the requirement to certify whether a genuine effort has or has not been made alters the role of family dispute resolution practitioners. The traditional role of practitioners was described by Cooper and Brandon (2008) as being "an independent role as facilitators with their primary goals being to assist parents to work towards arrangements in their children's best interests

2 *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth), added paragraph (d) to 60I(8).

3 The Family Law (Family Dispute Resolution Practitioners) Regulations 2008, Reg 26(4) provides that the party or their lawyer must be contacted at least twice, including in writing, giving a reasonable choice of days and times to attend family dispute resolution and warning of the possible consequences of failure to attend.

4 Family Law (Family Dispute Resolution Practitioners) Regulations 2008, at Reg 25

and to provide a voice for children in their parents' discussions" (p. 109). Now, however, practitioners have a role as "assessors" in deciding whether the parties have made a genuine effort, and as "gatekeepers" between the parties and the court (Cooper & Brandon, 2008; see also Polak, 2009). Some family dispute resolution practitioners are content with this new role, and are sanguine that they can use the genuine effort requirements to remind parents of their obligations to take family dispute resolution seriously. However, others are uncomfortable with their changed role and argue that it compromises their independence and can change their relationship to the parties (Cooper & Brandon, 2008; Fisher & Brandon, 2009). The issue of how genuine effort certificates are handled is therefore situated within an emerging discussion of the changing role of family dispute resolution practitioners (e.g., see Bickerdike, 2007).

The private, unregulated and subjective nature of judgements about genuine effort make family dispute resolution practitioners vulnerable to criticisms that their judgements may be biased. Critiques have already been made concerning the possible bias of practitioners. Field (2006) has argued that women may be disadvantaged in family dispute resolution, for instance, where post-separation stress and trauma make it difficult for a woman to appear to be reasonable, consensus-orientated and cooperative; therefore they may fail to satisfy the practitioner that they are making a genuine effort. She has argued that gendered assumptions about appropriate behaviour may also affect judgements about genuine effort; for example, there may be a tendency to judge strong, assertive or angry behaviour by women more harshly than the same behaviour by men (Field, 2006). When family dispute resolution practitioners make judgements about genuine effort that are affected by their values or opinions, they do so in a private, confidential environment. This makes it harder for parents to challenge those judgements and for family dispute resolution practitioners to defend them and thereby fortifies the arguments for a clearer definition of genuine effort.

Conversations with family dispute resolution practitioners

There is presently no research or other data about how the genuine effort provisions are working. What



follows is anecdotal and arises from discussions with practitioners, including their responses to conference presentations about genuine effort. Practitioners are conscious of the difficulty of making assessments about genuine effort. Many report that they have never given a certificate of "no genuine effort". Reasons include that some clients are struggling with very complex and difficult situations in their lives and have general problems of capacity, so that any attempt, even simply to attend family dispute resolution, constitutes a genuine effort. Others point out that evaluating genuine effort involves assessing the intrapsychic processes of individuals, and that this is an impossible task: a parent may appear to be making little effort, but it can be very hard to judge if they could do more or if they are genuinely doing all that they can in the circumstances. Family dispute resolution is no longer solely a forum for those who value consensual decision-making and have chosen to be there, but a gateway through which all who wish to go to court must pass. Parents may therefore be struggling with grief, anger, depression, mental illness, addictions or other factors. A certificate that family dispute resolution is not appropriate may not be called for, but it may become apparent in a session that the parties do not have much to give to the process. The argument that the genuine effort provisions of the Act are unworkable and should be removed has been put to the author by a number of practitioners.

Nevertheless, other practitioners (impressionistically a minority) report that they have assessed some people as not making a genuine effort and that such an assessment is appropriate in some cases. However, some also report that a "no genuine effort" certificate frequently results in strong protests from that party or their lawyer, coupled with demands that the manager of the service reconsider the certificate. Also reported is pressure from some clients to certify that their ex-partner has not made a genuine effort, where that conflicts with the practitioner's assessment that a genuine effort was made.

Conclusion

While it is early to make any firm judgement, the indications are that the genuine effort provisions of the Act are posing some difficulties in practice, that they may not yet be working effectively, and that some further attention to the meaning of genuine effort is called for.

References

- Altobelli, T. (2006). A generational change in family dispute resolution. *Australasian Dispute Resolution Journal*, 17, 140–156.
- Astor, H. (2008). Making a genuine effort in family dispute resolution: What does it mean? *Australian Journal of Family Law*, 22, 102–121.
- Attorney-General's Department. (n. d.). *Frequently asked questions: Family dispute resolution certificates*. Canberra: AGD. Retrieved from <tinyurl.com/ya6zxn>.
- Bickerdike, A. (2007). Implications for family dispute resolution practice: Response from Relationships Australia (Victoria) to the Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings report. *Family Matters*, 77, 20–25.
- Cooper, D., & Brandon, M. (2008). Non-adversarial advocates and gatekeepers: Lawyers, FDR practitioners and co-operative post-separation parenting. *Australasian Dispute Resolution Journal*, 19, 104–113.
- Field, R. (2006). Using the feminist critique of mediation to explore "the good, the bad and the ugly": Implications for women of the introduction of mandatory family dispute resolution in Australia. *Australian Journal of Family Law*, 20(1), 45–78.
- Fisher, L., & Brandon, M. (2009). *Mediating with families* (2nd Ed). Sydney: Lawbook Co.
- Kaspiew, R. (2008). Advent of compulsory family dispute resolution: Implications for practitioners. *Family Relationships Quarterly*, 6, 6–8.
- Polak, N. (2009). No longer neutral: Practitioner power in compulsory (family) dispute resolution. *Australasian Dispute Resolution Journal*, 20, 88–95.

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Contributing to Family Relationships Quarterly Guidelines for contributors



The *Family Relationships Quarterly* newsletter aims to provide a lively forum for ideas, argument and comment on family relationships. The newsletter includes literature highlights, research updates, upcoming conference and event listings and information about training opportunities. Articles include reviews of policy developments, program spotlights, summaries of research, and practitioner updates. These range from short reviews of books, conferences, workshops and projects to more substantial articles on significant issues relevant to family relationships.

Service providers, researchers and those interested in family relationships in Australia are encouraged to contribute to the newsletter. We welcome readers' letters, comments and feedback on issues discussed in AFRC publications.

The average length of contributions is 1,000–1,500 words, but may be as short as 300–500 words. If you would like to submit a longer article, or if you are unsure about the appropriateness of a piece, contact the Manager of the Australian Family Relationships Clearinghouse prior to submission.

Acceptance of all material is subject to a review process. Articles may be accepted for publication, returned for revision or rejected. Clearinghouse staff are committed to providing feedback and working with authors to assist in the development of the article to meet the required standard for publication. Minor amendments may be made by editorial staff following review to ensure consistency in content, presentation and readability.

Please email contributions in a Microsoft Word document to afrc@aifs.gov.au, or post to the Australian Family Relationships Clearinghouse, Level 20, 485 La Trobe Street, Melbourne, Victoria, 3000 (electronic provision of material is preferred where possible). For further information contact Elly Robinson, Manager of the Australian Family Relationships Clearinghouse, phone (03) 9214 7888, fax (03) 9214 7839, email: elly.robinson@aifs.gov.au

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What impacts on a practitioner's willingness to issue a no genuine effort certificate?

We asked service providers for their thoughts on Professor Hilary Astor's article, and the genuine effort principle in practice.

Family dispute resolution practitioners identified a conflict between the philosophy and practice of mediation, which supports a non-judgemental approach, and a requirement to commit to a judgement of effort. A key element of mediation is the trust relationship built between the clients and the mediator, and this was potentially compromised by the more enforced judgement of effort.

Many factors were identified that made it difficult to judge a client's effort on the day, such as personality type, coping skills, power imbalances, and vulnerability due to issues such as mental illness and substance use. Grief, anger or stress associated with the separation may impact on the ability of a client to focus on children's needs, which could be misconstrued as a lack of effort.

If a client had already attended assessment, education and preparation prior to joint session, this may be seen as contributing to a genuine effort.

When legal assistance is present, it may be difficult to make a judgement about who is obstructing a settlement – the lawyer or the client.

The possibility of cost orders being awarded against a party who had been given a non-genuine effort certificate was seen as a consideration in decisions regarding effort.

General thoughts on genuine effort

There was a mixed response to the ongoing use of the genuine effort principle. It was felt that very clear criteria and a firm definition was needed.

It was deemed useful as an incentive for people to treat the process seriously, and to promote discussion about expectations and consequences in

the joint mediation process. Clients and lawyers should clearly understand what is expected of them, and the potential impact of refusal to attend or, if attending, not making a "genuine effort".

Examples of genuine effort decisions

Case study 1

A client involved in a shuttle family dispute resolution session engaged in a number of non-cooperative behaviours, such as rubbing the agreed agenda items off the board when the practitioner left the room, engaging in belligerent and abusive behaviour toward the practitioner, and eventually leaving the service without the knowledge of the family dispute resolution practitioner. A non-genuine certificate was issued. The client made an official complaint about the family dispute resolution practitioner.

Case study 2

Over the course of a 3-hour dispute management conference, the father had conceded to almost all of the proposals put forth by the mother to allow progressively increasing time with their pre-school aged child, leading to overnight stays. At the last minute, the mother changed her mind and no agreement was reached. The chairperson, frustrated by the back flip at the end of a long negotiation, agreed to the issue of a non-genuine certificate to the mother. On reconsideration, and after consultation with a supervisor, the chairperson reversed this decision on the basis that the mother was unable to deal with separating from the child after a highly traumatic marriage breakdown. The mother was judged as having made a genuine attempt to participate, but lacked the ability on the day to withdraw from her rigid position. The chair consequently received a letter of complaint from the father regarding the revised assessment.

Engaging disadvantaged and socially isolated families with young children in child and family services

Myfanwy McDonald

This article is a summary of a CAFCA Practice Sheet (McDonald, 2010), a new series of publications from the Communities and Families Clearinghouse Australia (CAFCA) (www.aifs.gov.au/cafca). The Practice Sheet builds upon the findings from *Engaging Hard-to-Reach Families and Children* (Cortis, Katz, & Patulny, 2009), one of three themed studies undertaken as part of the national evaluation of the Stronger Families and Communities Strategy.

Research has demonstrated that involvement in high-quality early childhood and parenting support programs benefits children and families (Department of Education, Employment and Workplace Relations [DEEWR], 2009; Howes, 1997; Moran, Ghate, & van der Merwe, 2004), particularly children from disadvantaged backgrounds (Melhuish, 2003). Parents with young children can also benefit from programs, such as parenting support activities, that enable them to socialise with other families, develop support networks and gain confidence in their parenting skills (Moran et al., 2004).

Although these programs and activities are clearly beneficial, service providers can find it challenging to engage families and often those families who are the

Challenges faced by service providers in engaging disadvantaged and socially isolated families include:

- Making initial contact: for example, finding out where disadvantaged and socially isolated families gather in a community.
- Complex needs: some disadvantaged and socially isolated clients have complex needs (e.g., homelessness, poverty and trauma).
- Community infrastructure: access to safe transport can impact upon client's ability to engage with services, especially within rural and remote communities.
- Staff turnover: high turnover of staff can have a negative impact on the development of relationships with clients and communities.
- Time: building relationships with disadvantaged and socially isolated groups requires a greater investment of time than with other clients.

most difficult to engage are also the families experiencing disadvantage and/or social isolation (Carbone, Fraser, Ramburuth, & Nelms, 2004; Statham, 2004). Similarly, in some cases families may find it challenging to engage with services and many of these factors can also be related back to disadvantage and social isolation. The reasons behind these difficulties with engagement are explored further below.

Due to the negative impact of disadvantage upon children's development and family functioning, and the relationship between disadvantage, social isolation and lack of engagement, there is a strong incentive for reducing the barriers that inhibit the engagement of families with child and family services.

Why do some families not engage with child and family services?

The reasons why families do not engage with services can be attributed to two overarching factors (Carbone et al., 2004, pp. 13–19). They are:

- *Service level (structural) factors*: For example, is the service affordable, welcoming and non-judgemental? Has the service been publicised? Is the service location accessible? Are the hours of operation suitable for families? Is the service culturally inclusive?
- *Child/family specific factors*: For example, are the parents/guardians able to plan and organise attendance at a service (i.e., are they experiencing extreme stress, mental or physical illness)? Does the family have transport to get to the service? Can they afford the service fee? Do they believe that the service is necessary or useful? Do they trust service providers?

What methods can child and family services use to engage disadvantaged and socially isolated families?

Go to where the families are

Effective methods for social inclusion of disadvantaged children during early childhood “must incorporate methods of outreach”, according to Vinson (2009, p. 5). Yet not all service providers are able to deliver their services in this way. Therefore it may be

more useful to think of outreach as a general philosophy, that is, instead of waiting for families to attend a service, go to where families are (i.e., outreach = reaching out).

Questions for planning and delivering services

- Where do local families with young children gather (e.g., parks, shopping centres, religious centres)? When are they most likely to be there? For example:

Local knowledge was used to establish a suitable location in the CBD where the most effective contact could be made with community members. A walk-through area in a shopping arcade was identified as a popular meeting place for young parents and the socially disadvantaged, so the van is regularly parked outside an empty shop in the arcade. (Mobile Family Resource Centre (Bernie on Wheels), CAFA Promising Practice Profile)

- Where do local dads gather (e.g., sporting events)? Is it possible to provide information and/or promote your service at these venues?
- Is there a business in the area that employs a large number of local parents? Is it possible to engage with parents through that business?

Promote and deliver services in a non-stigmatising and non-threatening way

Research findings commonly report (and practice wisdom supports) that disadvantaged families are more likely to engage in services that are promoted and delivered in a non-stigmatising and non-threatening way (Flannery, Watson, & Tully, 2008; Statham, 2004).

Questions for planning and delivering services:

- In the minds of the community, is the program venue “universal” (e.g., health clinic or school) or is it associated with a “problem” (e.g., mental health service)? Can the program be held in a venue that is more “neutral”?
- How are you promoting your service? What message are the images in your promotion materials conveying? For example:

We promoted the project using a photo of the young pregnant women, with their pregnant bellies out proud. It looked fun; they were having a laugh. Young people think, “It looks like me, it looks normal.” There’s [a] taboo [around] looking like you’re getting help from a charity. (Participant, cited in Cortis, et al., 2009, p.20)

- Would a less formal word of mouth approach to promotion be more suitable to your target group?



Employ strategies that empower families

There is robust evidence to demonstrate that the empowerment of families within child and family services not only increases families' level of engagement but also enhances outcomes for participating families (Katz, Spooner, & valentine, 2006; Statham, 2004). By listening to families about what they need and implementing their suggestions, service providers not only empower families but also help to make their service more useful and relevant to families (Family and Parenting Institute, 2008).

Questions for planning and delivering services

- Are parents confident about expressing what they need and want from a program or activity? For example:

[The activity] needs to be focused on what the group wants to do. The facilitator can't impose what [they] think is a good idea. You have to tune in to deal with what is at the forefront of people's minds ... You also need to empower the group to be comfortable enough to tell you what they want. (Participant, cited in Cortis et al., 2009, p. 21)

- Are parents actively participating in decisions about the planning and/or delivery of services?
- Are parents encouraged to take on facilitation and/or leadership roles?

Develop relationships

Research strongly suggests that early childhood services working in isolation (often referred to as working in a "silo") cannot meet the needs of families as effectively as services that have relationships with other agencies (Centre for Community Child Health, 2006). This is because families using early childhood services often have complex needs—such as housing, employment, parent mental health, and citizenship issues—that require the skills and expertise of a range of service providers (Family and Parenting Institute, 2008).

Questions for planning and delivering services:

- Does your service have a relationship with local Indigenous networks and/or Indigenous organisations? Who are the trusted representatives of Indigenous perspectives within the local community?
- Does your service have a relationship with local culturally and linguistically diverse (CALD) communities? Who are the trusted representatives of CALD groups within the local community?

References

- Australian Institute of Family Studies. (2010). Mobile Family Resource Centre (also known as Bernie on Wheels). Melbourne: Australian Institute of Family Studies. Retrieved from <<http://tinyurl.com/25x7z88>>.
- Carbone, S., Fraser, A., Ramburuth, R., & Nelms, L. (2004). *Breaking Cycles, Building Futures. Promoting inclusion of vulnerable families in antenatal and universal early childhood services: A report on the first three stages of the project*. Melbourne: Brotherhood of St Laurence.
- Centre for Community Child Health. (2006). *Quality in children's services* (Policy Brief No.2). Melbourne: Centre for Community Child Health.
- Cortis, N., Katz, I., & Patulny, R. (2009). *Engaging hard-to-reach families and children*. Canberra: Department of Families, Housing, Community Services and Indigenous Affairs. Retrieved from <<http://tinyurl.com/39u2xkg>>
- Family and Parenting Institute. (2008). *Hard to reach families: engagement in the voluntary and community sector (summary)*. London: Family and Parenting Institute.
- Flannery, K., Watson, J., & Tully, L. (2008). *Prevention and early intervention update: Trends in recent research*. Sydney: NSW Department of Community Services.
- Howes, C. (1997). Child outcomes of child care programs In B. Spodek & O. N. Saracho (Eds.), *Issues in child care*. New York: Teachers College Press (pp. 31–46).
- Katz, I., Spooner, C., & valentine, k. (2006). *What interventions are effective in improving outcomes for children of families with multiple and complex problems*. Sydney: University of NSW and ARACY.
- Melhuish, E. (2003). *A literature review of the impact of early years provision on young children, with emphasis given to children from disadvantaged backgrounds*. London, UK: National Audit Office.
- McDonald, M. (2010). *Are disadvantaged families "hard to reach"?* *Engaging disadvantaged families in child and family services* (CAFCA Practice Sheet). Melbourne: Communities and Families Clearinghouse Australia, Australian Institute of Family Studies.
- Moran, P., Gbate, D., & van der Merwe, A. (2004). *What works in parenting support: A review of the international evidence*. London, UK: Policy Research Bureau, Department for Education and Skills.
- Statham, J. (2004). Effective services to support children in special circumstances. *Child Care, Health and Development*, 30(6), 589–598.
- Vinson, T. (2009). *Social inclusion: Social inclusion and early childhood development*. Canberra: Department of Education, Employment and Workplace Relations. Retrieved from <<http://www.socialinclusion.gov.au/Resources/Pages/Resources.aspx>>.

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Window into shariah family law

Part 2—Aspects of divorce

Ann Black

This paper provides a brief overview of key aspects of Islamic family law as it relates to divorce. A companion piece in *Family Relationships Quarterly* 15 discussed the diverse application and significance of Muslim family law and focused on aspects of shariah law as it relates to marriage. Both articles aim to provide a contextual framework for practitioners working with Muslim families in the family relationship services sector. Box inserts appearing throughout the article outline and contrast family law as it applies in Australia,¹ providing some insight into the gulf navigated by Australian Muslims in regulating relationships within the context of a secular society.

Aspects of divorce

Although divorce is allowed in Islamic law, it is seen as undesirable with the Prophet Mohammad noting that there is nothing God dislikes more than divorce. The percentage of Muslims in Australia who were divorced at the time of the 2001 Census was 13.5%—slightly higher than that of Greek Orthodox (11.7%) but lower than Anglicans (18.2%), Buddhists (18%) and those citing no religion (22.3%) (de Vaus, 2004).²

Under Islamic law, divorce follows a different legal path according to the spouse's gender. A man can declare divorce (*talaq*) extra-judicially and the wife must accept this. *Talaq* divorce requires no cause or fault to be established and does not typically require court approval though registration may be required. There is a 3-month period in which a reconciliation can occur and after this time has passed he can remarry.

The Australian context: In Australia, the only ground for divorce is irretrievable breakdown of the marriage with 12 months separation establishing this. The court must be sat-

isfied that proper arrangements have been made for any children of the marriage.

It is not necessary under Australian law for fault to be established. Unlike shariah family law, there is no provision for extra-judicial, or informal divorce declared unilaterally by one party.

Whilst a wife lacks the same power of unilateral divorce pronouncement she does have several divorce options. However, unless there is mutual agreement (*mubarat*) to divorce, each divorce option requires a determination by an Islamic judicial authority and she must find an authoritative Muslim individual or body to effect an Islamic divorce. As there is no shariah court or tribunal in Australia, a



1 This information has been provided by Catherine Caruana, Senior Research Officer, Australian Family Relationships Clearinghouse.

2 These data are not divorce rates per se, simply the percentage of people currently divorced at the time of the Census. De Vaus notes that, while the proportions of divorced people from those religions that strongly disapprove of divorce are quite similar to each other, they are not vastly different from those of the mainstream religions.

woman seeking a lawful divorce in Australia may go to a local legal scholar or group of scholars, such as Majlis Ulama (Council of Islamic Scholars in Queensland), an organisation such as Australian Federation of Islamic Councils,³ an Imam or a Sheik from her own or another state, or she may choose to go overseas to a court in Muslim jurisdiction.

Her divorce options include *kbula*—divorce whereby the wife returns her *mahr*⁴ effectively buying her way out of the marriage; *ta'liq* or *talaq-i-tafwid*—where the husband has breached a condition in the marriage contract (outlined in)⁵; and *fasakh* which requires her to establish fault in one of the recognised categories, such as absence, impotency, certain illnesses, cruelty, or failure to maintain his wife and child.

There are other forms as well, but in all cases, the absence of an established state (such as the shariah Court, Singapore) or community designated authority (such as the unofficial *Shari'a* Courts in England) can leave some Muslim women in Australia in a vulnerable position. This is especially true for recent immigrants whose English is limited or who are not well educated. Without a divorce in accordance with Islamic law she may be regarded as not lawfully divorced in the eyes of her Muslim community, nor in her own (or her husband's) eyes.

The Australian context: A "religious divorce" granted in Australia by a person or body with religious authority within an Islamic community group is not recognised by Australian law as the "dissolution" of a previous marriage for the purposes of remarriage. The Family Court must have awarded a divorce if one of the parties wishes to remarry.

Financial support

A husband is required to maintain his wife or wives and children. Even if a wife works (for which she may require the permission of her husband) the income earned is hers and as with the *mahr* does not relieve the husband of his maintenance obligations. In Muslim countries this right to maintenance can be lost through a wife's misconduct. There are

3 The website for the Australian Federation of Islamic Councils can be found at <www.afic.com.au>.

4 *Mahr* is a payment of value to the bride, which becomes her property. It can be a sum of money, material goods, investment or other.

5 See <www.aifs.gov.au/afrc/pubs/newsletter/newsletter15#shariah>.

various forms of disobedience (*nusyuz*), and cultural practices in some countries have impacted upon the ways in which maintenance is provided, however, the principle is enshrined in the Qur'an (2:233) and maintenance obligations continue throughout a marriage and for 3 months after divorce.

The Australian context: When a marriage or a de facto relationship breaks down, either party can apply to the court for the provision of spousal maintenance from the other party. The obligation to support a former party is determined by the extent to which one party is unable to support themselves adequately and the capacity of the other party to pay.

Parents who have separated are required to make provision for the financial support of any child under the age of 18. In most cases, this is done by way of an administrative assessment under the Child Support Scheme.

Arrangements for children after separation

When a Muslim couple separate, decisions about the custody of children are based on the presumption (*badhanab*) that a young child should be with the mother. Depending on the school of law, this presumption can end when a child is old enough to make an informed choice as to which parent he or she wishes to be with. A mother can lose custody in situations where she mistreats a child, remarries, converts out of Islam or makes it difficult for the father to have contact with his children.

The Australian context: Under Part VII of the Family Law Act the "best interests of the child" is the paramount consideration in making decisions about where, and with whom a child should live, and have contact.

Irrespective of custody arrangements, the father will retain guardianship of his children until they are adults. If the father is deceased or incapable it will devolve along paternal lineage to the grandfather or uncle.

The Australian context: Until a court rules otherwise, each parent has parental responsibility, (formerly known as guardianship), for children under the age of 18, whether they are together, separated, divorced or have remarried. When parents separate and are unable to agree on arrangements for their children, except in some circumstances such as child abuse, the court must apply a rebuttable presumption that they will have equal shared parental responsibility.

Where an order for shared parental responsibility is made, the court must consider whether an order for the child to spend equal, or substantial and significant time with each parent would be both in the best interests of the child and reasonably practicable.

Conclusion

This paper has highlighted features of Islamic family law relating to divorce. While many Muslims are willing and able to negotiate the two family law systems—the religious and the secular—others would prefer a dual approach in which a shariah court or arbitration board would be established to make determinations for Muslim Australians in accordance with Islamic family law that would be legally recognised and enforced by our courts. As any consideration of the establishment of a dual system in Australia involves constitutional considerations,⁶

⁶ Section 116 of the Australian Constitution states that: “The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.”

the issue is likely to be the subject of considerable debate for Muslims, non-Muslims and governments in the years ahead.

References

De Vaus, D. (2004). *Diversity and change in Australian families*. Melbourne: Australian Institute of Family Studies.

The following sources were used in the preparation of this article:

Ali, Y. (1989). *The Holy Qur'an: Text, Translation and Commentary*. Brentwood: Amana Corporation.

Black, A. (2008). Accommodating Shariah law in Australia's Legal System. *Alternative Law Journal*, 33, 214–219.

Poulter, S. (1990). The claim to a separate Islamic system of personal law for British Muslims. In C. Mallat & J. Connors (Eds), *Islamic Family Law* (pp247). London: Graham & Trotman.

Additional information on Islam in Australia:

Hussain, J. (2004). *Islam: Its law and society*. Butterworths.

Saeed, A. (2003). *Islam in Australia*. Sydney: Allen & Unwin.

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Anglicare Tasmania

Servicing rural and remote communities through e-counselling

Heather Brookes and Tony Smith

Anglicare Tasmania is a state-wide non-government human services agency which employs over 750 staff and delivers more than 45 social support programs to disadvantaged Tasmanians. It is funded primarily through state and commonwealth government agencies with some funds through foundations and benevolent trusts as well as the Motor Accidents Insurance Board. Anglicare's services and programs are categorised into the following streams of activities:

- children, families and community;
- mental health services;
- accommodation services;
- alcohol and other drugs services;
- employment services; and
- disability support services.

Anglicare Tasmania has more than 25 years experience in delivering and managing counselling and family support services, drug and alcohol services and mental health services within the state. It provides a wide range of services across crisis intervention, assessment, case planning, case management, counselling, family support and education.

Anglicare Tasmania is part of a national network of community welfare agencies through Anglicare Australia. Staff across the network share knowledge, innovation and expertise to provide continuous improvement opportunities.

Background to program

Anglicare Tasmania's experience of service provision in North Western Tasmania identified the need for greater access and intervention in relation to counselling support and family relationship skills development. This was a particular issue for the more remote parts of the northwest coast, including the west coast and King Island. While the organisation already provides support to the region through some conventional services, the face-to-face component of these services is limited to fortnightly or sometimes monthly visits. This is due to the cost and time involved to travel to these remote areas.

To better address the needs of couples and families in these areas, Anglicare undertook a pilot project to provide increased accessibility to early intervention

counselling and ongoing support services. This project aimed to make use of information and communication technology to enhance and expand the availability of services in the northwest region. It was designed to complement existing Anglicare services, rather than replace or reduce them.

A number of options were investigated at the start of the project. Real time communication was decided upon as the most suitable means. This is achieved by providing a Virtual Online Counselling Room (VOCR), using software sitting on Anglicare's secure servers to ensure privacy, security and confidentiality. A VOCR is an online space in which a counsellor can converse with a client in real time using a variety of dialogue tools. The VOCR has provision for voice, camera, chat, live document exchange and sharing, graphics, as well as shared website access. A further significant feature is the ability to email a link to an outside person from within the VOCR, who can immediately join those in the room via the link. Within the virtual room, most of the face-to-face resources such as written permissions and other documentation can be discussed, shared, downloaded to the client, printed and signed, and faxed or scanned and emailed back to the counsellor if needed.

Obviously, the provision of an e-counselling service requires people to have access to a computer and Internet connection, as well as the skills to use these tools. It was acknowledged, however, that many clients could not afford such facilities, and that computer skills were still developing for some members of the community. To address these needs, another feature of the project was to provide the needed equipment through local community partners.

At the first pilot site (King Island) a number of local organisations were brought together to form a support group. This group consisted of representatives of the district hospital, local council and school. A laptop with wireless connection was supplied to the site and training provided in the use of the laptop to access the VOCR.

On the west coast of Tasmania, a partnership was established with the local council in Queenstown. Anglicare's e-counselling fills a service gap by providing financial and gambling addiction counselling, in addition to the face-to-face family counselling

services that the council provides locally to the community. At Zeehan, the community partnership is with a neighbourhood centre and at Rosebery, a district high school. The partnership with the district high school is considered potentially important as it is visited by a school social worker. In the future, the social worker may be able to take the laptop with her to other school sites in the district on a needs basis. At all these sites, training was provided in supporting the use of the laptop and the VOCR.

These local support sites ensure clients are provided with a “human touch” when accessing the VOCR. The helpers at the support site set up the computer and connection and provide a private room where the client can be left to meet online with the counsellor. The support staff can also provide help if any IT difficulties occur. The local community support means that clients who wish to use the service from home can access the necessary information and become familiar with the use of the virtual room.

Issues and challenges faced in developing and setting up the services

There were a number of issues and challenges encountered in providing the service. Broadly these can be placed under the headings of: technical, counsellors, local community and clients.¹

Technical

On the *technical side*, the quality of the live video can at times be an issue due to variable bandwidths in regional areas, both in terms of upload and download speeds. There has, however, been a significant improvement in this regard over the 2 years of the project, due to a constantly improving broadband service across Tasmania, and there will be greater improvements as new speeds are further rolled out. From a software point of view there have also been some significant developments, with improvements to both video and audio at lower bandwidth speeds. This has helped to provide a more reliable and effective counselling space.

Protocols have been put in place to ensure appointments proceed on time. Prior to the client arriving, a

volunteer member of the community partner organisation sets up the laptop in a private room. They log into the VOCR, thereby making sure it is available. Once the counsellor logs on, the volunteer is now ready to introduce the client when they arrive for the session. The volunteer then leaves the client in the care of the counsellor, but is available should the need arise. Having on-site support available is also important for times when technological hitches occur, such as the server going down. This experience led to the development of protocols to ensure clients and counsellors are not inconvenienced. A further strategy has been to have a user guide and simple handout sheets available, written with each of the user groups in mind. This has helped to provide and consolidate the skills of those accessing the services.

Counsellors

In regard to *counsellors*, cultural change is necessary in embracing the online service, to overcome habitual ways of approaching tasks. Some counsellors approach a session from a purely therapeutic point of view and others include an education component. Changing the spatial environment for counselling can be challenging for counsellors until they become familiar with the new space in which services are provided.

Some counsellors, however, seem to have less trouble adapting than others. There may be a number of reasons for this, including age, computer literacy or even personality. It may also be linked to the type of intelligence applied in counselling sessions, particularly the ability to apply spatial intelligence, as part of our multiple intelligences (Gardner, 1993).² Research into what characteristics help counsellors adapt to the online service environment would be useful to inform practice. The experience of the pilot project is that, given the time and opportunity, counsellors can learn the necessary skills and increase their level of comfort in providing online counselling. Research done on telephone counselling provides relevant information, with similar issues being faced (Barnett & Scheetz, 2003; Lynch, Tamburrino, & Nagel, 1997; Reese, Conoley, & Brossart, 2002, 2006; Tutty, Simon, & Ludley, 2000).

1 In this pilot the individual community partners, as well as potential clients of the service, are considered to be clients.

2 For more information on Gardner's theory of multiple intelligences, go to: < http://en.wikipedia.org/wiki/Theory_of_multiple_intelligences>.

Local communities

A further challenge lies with the cultural change faced by *local communities*, in terms of thinking “outside of the box” with regard to service provision and the use of new technologies. Readiness for online counselling tends to vary from site to site. Most times, community empowerment and ownership (ownership and meaning making) take time to establish. This is best done by offering face-to-face services prior to counselling services in a VOCR.

The right level of marketing and information sharing about the service is also needed. This requires a trusting partnership between Anglicare and the local community. The correct form of marketing is essential not only to community groups but also to individuals.

Clients

Issues and challenges for *clients* are similar to those faced by counsellors. The perception of privacy is very important as these services are offered in small communities. Clients do not want to be seen to need counselling. A way around this is to offer the service in clients’ own homes via their own computer. If the client does not have access to a computer, another possible solution is to have volunteers take a laptop into the clients’ home. The volunteer will then set up the service, before introducing the client and leaving the client in the counsellor’s care until the end of the session.

What’s possible in the future?

Three possibilities are being considered for the future by Anglicare:

- From an organisational point of view, not only can e-counselling services be provided to clients, but also clinical supervision support to counsellors living and working in local rural communities.
- Initial contact can be made with clients, through email and/or an interactive website, before engaging them in the use of the VOCR.
- As more sophisticated software becomes available, other means of providing e-counselling services become possible. An example of this is the use of three-dimensional VOCRs, already used successfully in virtual spaces such as Second Life.³

3 For information on the way that counselling services are offered in Second Life, a free 3D virtual world where users can socialise, connect and create using free voice and text chat, go to: <www.metaversejournal.com/2007/03/03/interview-wellman-and-wellman-counselling>

Conclusion

Anglicare’s online e-counselling provision brings services such as financial and gambling counselling support to Tasmanian rural and remote clients. It also frees counsellors from excessive travel time and so makes available more counselling time.

Whilst the service is still in its infancy and needs to be rolled out through a marketing strategy and website development, it has been well received in the pilot communities. The project has employed new thinking in its approach, and is providing support to people living in minimally serviced areas of Tasmania. This project provides a starting point for the expansion of e-counselling services to other rural and remote areas of Australia.

References

- Barnett, J., & Scheetz, K. (2003). Technological advances and telehealth: Ethics, law, and the practice of psychotherapy. *Psychotherapy: Theory, Research, Practice, Training*, 40(1–2), 86–93.
- Gardner, H. (1993). *Multiple intelligences: The theory in practice*. New York: Basic Books.
- Lynch D., Tamburrino M., & Nagel R. (1997). Telephone counseling for patients with minor depression: Preliminary findings in a family practice setting. *Journal of Family Practice*, 44(3), 293–298.
- Reese, R., Conoley, C. & Brossart, D. (2006) The attractiveness of telephone counseling: An empirical investigation of client perceptions. *Journal of Counseling & Development*, 84(1), 54–60.
- Reese, R., Conoley, C. & Brossart, D. (2002). Effectiveness of telephone counseling: A field-based investigation. *Journal of Counseling Psychology*, 49(2), 233–242.
- Tutty, S., Simon, G. & Ludman, E. (2000). Telephone counseling as an adjunct to antidepressant treatment in the primary care system. A pilot study. *Effective Clinical Practice*, 3(4), 191–193.

Further reading

Online counselling, therapy and dispute resolution: Research review and application to family relationship services. (2009). Robinson, E. (AFRC Briefing No. 15). Available at: <www.aifs.gov.au/afrc/pubs/briefing/briefing15.html>

Telephone counselling and therapy in family relationship services. (2009). Robinson E. Family Relationships Quarterly, 13, 13–14. Available at: <www.aifs.gov.au/afrc/pubs/newsletter/newsletter13.html#telephone>

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Facilitating psychological support for Family Law Court clients

The Mental Health Support Program

Clare Witnish and Catherine Caruana

Services working with families involved in family law litigation may be interested to learn more about court protocols relating to the management of client mental health problems. The courts' Mental Health Support Program also provides a potential template for services wishing to improve both their support of distressed clients and their partnerships with organisations available to assist them. The following article provides an overview of the strategy as it applies in the Family Law Courts,¹ including insights from one of the architects of the strategy, Justice Le Poer Trench² of the Family Court of Australia.

Background

Involvement in family law litigation can be an extremely stressful experience at the best of times, but particularly so for those clients struggling with issues such as mental illness, the emotional fallout from family breakdown and the personal issues often implicated in that breakdown (Rodgers, Smyth, & Robinson, 2004). This can make the navigation of court processes problematic. While the courts do not have a direct role in providing mental health services to court users, they recognise their responsibility to ensure that court staff are equipped to deal sensitively with affected clients and to refer them to appropriate services (Attorney-General's Department [AGD], 2009). When developing the Integrated Service Delivery Program, the courts consulted with experts in areas such as mental health, communication and client service delivery, as well as drawing on the insights of their staff, to develop ways of better supporting clients through the challenges of separation and litigation.

The Family Court of Australia developed the Mental Health Support Program with funding from the Department of Health and Ageing, under the National Suicide Prevention Strategy. The program aims, as set out in the final report (AGD, 2009, pp.6–7), are:

- to provide clients with access to the resources, counselling, and support they need to look after

1 That is, the Family Court of Australia and the Federal Magistrates' Court.

2 Justice Le Poer Trench was chair of the Steering Committee for the project.

their mental health and overall wellbeing (these are services that are not available in the courts);

- to ensure clients, particularly those who may be mentally ill or distressed, are treated with respect and without judgement by staff; and
- to ensure clients receive services tailored to their particular needs, with particular attention paid to the needs of culturally and linguistically diverse clients and clients with fears for their safety.

The program was first piloted in the Adelaide and Northern Territory registries of the Family Court from 2005 to 2006 and, following an evaluation, rolled out nationally in all registries of the Family Law Courts in early 2007. It forms part of the Integrated Client Service Delivery Program, which, according to the Chief Justice of the Family Court of Australia, "aims to ensure that best practice, client-focused principles are incorporated into the courts' service delivery" (AGD, 2009, p. 1).

The program

The development of the Mental Health Support Program was informed by the Living is For Everyone (LiFE)³ framework, which stipulates that suicide prevention initiatives must be outcome focused, evidence-based and include expert involvement. The program has four key elements:

1. Referral

- Court clients who appear to be affected by mental health problems are linked directly to existing community-based counselling services. This can be done by "warm-linking"⁴ or by other means that ensure the contact is made.
- Statements of Understanding have been developed between the courts and mental health support providers.⁵ These agreements help clarify the roles and responsibilities of each party and to identify the operational mechanisms and infrastructure needed to support the arrangements.

3 For more details, go to <www.livingisforeveryone.com.au>

4 The staff member will initiate contact with the service, with the client's permission, before passing the call on to client.

5 These included the national telephone crisis counseling services, Lifeline and Mensline, ensuring all clients have access to some form of support, regardless of location.



- Self-help brochures for clients containing information on available services are freely available at the courts.

2. Protocols

- The program has clear guidelines for staff when dealing with clients presenting with a broad range of mental health problems ranging from stress to behaviour indicating threat of harm to self or others.
- There are distinct protocols relating to different perceived levels of risk:
 - preventative referrals, to guide staff though dealing with all new clients;
 - responsive referrals, when dealing with clients demonstrating a mental health need; and
 - emergency procedures, when there is an immediate concern.
- The program protocols are:
 - limited to one page;
 - contain a series of steps;
 - are colour coded for easy identification;
 - include tips and suggested scripts; and
 - explain the purpose of each step.

Copies of all protocols are available on the resources CD attached to the final report (AGD, 2009), which is available from the Family Law Courts (see details below for obtaining a copy of the report).

3. Staff skilling and support

- Ongoing training, targeted to each specific staff group within the courts, from administrative personnel to judicial officers, is delivered by a court trainer in conjunction with a mental health expert. These sessions provide education about mental health problems, and aim to de-stigmatise mental

illness and equip staff to identify those who may require support.

- A number of strategies have been put in place to reinforce and support the use of these new skills by staff. These include a Peer-to-Peer Support Program to assist staff after a difficult interaction with a client.

Copies of actual training materials used, including six training scenarios and a detailed overview of the courts' training program are also included in the CD attached to the Attorney-General's (2009) final report.

4. Evaluation

The independent evaluation of the program, which included client surveys and staff focus groups, informs a process of continuous improvement.

Evaluation

Following independent evaluations on previously determined performance measurements, the pilot program (see Family Court of Australia, 2006) and the national roll out of the final program were found to have resulted in positive outcomes, for both clients and staff. This included some unanticipated benefits. The program was found to be successful in developing relationships between local court registry staff and mental health services. This in turn helped community agencies to be more familiar with court processes, insights they could then pass on to their clients. There was general support amongst referral bodies for the warm-referral process as a strategy to prevent those in need falling between the cracks.

Across all court locations, staff reported greater confidence dealing with difficult situations and clients and in making appropriate referrals. They reported a 90% rating of confidence in their ability to empathise with clients (AGD, 2009), and appreciated the opportunity to offer clients concrete assistance, rather than send them away with a brochure. This has not only led to improvements in client perception of the courts and their services, but has also helped to reduce staff anxiety in responding to clients with mental health problems. Just as clients were being treated with more compassion, managers reported greater understanding amongst staff for colleagues dealing with personal issues.

The training of staff was successful in all areas, but most particularly in the area of increased knowledge,

and the retention of that knowledge (such as safety and emergency protocols) over time (AGD, 2009). In an interview regarding the program, Justice Le Poer Trench commented that training was a far more effective tool to increase staff knowledge as compared to staff accessing such knowledge via a website. He has found the regular training for judges at Judge's Conferences to be extremely useful, for example, a session on the manifestation of mental illness and the likely impact of particular judicial styles on such clients.

Clients have also reported benefits from the program, with 91% of those surveyed indicating they were satisfied with the service they received (AGD, 2009). Information provision led to clients being better prepared for the court environment, which in turn reduced client stress. For those referred to external agencies for counselling, 81% indicated they were satisfied with these agencies (AGD, 2009).

National roll out of the program

There were few changes to the program for the national roll out in 2007, funded by the Department of Health and Ageing, apart from the fine-tuning of the protocols and tailoring of the training program to more specifically address the needs of particular staff groups. Since the program became a permanent feature of the Family Law Courts' client service delivery, the majority of court staff at registries around Australia (excluding Western Australia) have undergone training. Over 100,000 self-help brochures have been distributed to clients. A set of mental health messages for clients has also been included in a range of relevant court brochures. In addition, a key mental health message was included in the style manual, which guides the development of all court documentation. The program has received two awards—a 2007 LiFE Award in the public

sector category, and a silver award in the 2008 Australia and New Zealand Mental Health Service Achievement Awards which promote innovation and excellence in the mental health field.

The Mental Health Support Program of the Family Law Courts is a unique forensic initiative in Australia. This program, viewed in conjunction with the less adversarial trial process, which is now standard procedure in parenting matters in the Family Court of Australia, appears to be helping to humanise the often stressful and alienating experience of litigation in family law disputes. The success of the Family Law Courts in taking the emotional wellbeing of its clients and its staff seriously, and developing enduring relationships with mental health practitioners, is a model that may well be transferable to other agencies and services.

References

- Attorney-General's Department. (2009). *Integrated client service delivery, featuring mental health support. Final report: A Family Law Courts' skilling and client support program*. Canberra: Attorney-General's Department. Retrieved from <<http://tinyurl.com/25rkfqh>>
- Family Court of Australia. (2006). *Mental Health Support Pilot Project: Final report*. Canberra: Family Court of Australia. Retrieved from <<http://tinyurl.com/2eorhxs>>
- Rodgers, B., Smyth, B., & Robinson, E. (2004). Mental health and the Family Law System. *Journal of Family Studies*, 10(1), 50–70.

For a hardcopy of the final report, *Integrated client service delivery, featuring mental health support. Final report: A Family Law Courts' skilling and client support program*, complete with CDs, contact:

The Communications Office,
Family Court of Australia
Email: communications.office@familycourt.gov.au
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Upcoming conferences

Information on conferences of interest to family and relationship services providers and practitioners can be found at:

<www.aifs.gov.au/afrc/conferences.html>

This page also lists training providers throughout Australia who offer training and professional development opportunities relevant to working with families and relationships.

Families on the fringe

Promoting the social inclusion of young families moving to non-metropolitan areas

Healy, K., Rawsthorne, M., Donnet, A., Caniglia, F., Hampshire, A. & Michaux, A. (2009). School of Social Work and Human Services, The University of Queensland.

Reviewed by Bridget Tehan

In recent years substantial population growth within Australia has taken place on the urban fringes of large cities, coastal areas and the areas around mining towns. In June 2009, the University of Queensland and its partners (Office of Economic and Statistical Research in the Queensland Treasury, the Benevolent Society, and Mission Australia) reported the findings of a study of the experiences and needs of families who have made the move to the "fringes". This article summarises the main points raised in the study.

Background

Between 2001 and 2006, just over half of the population growth in Queensland and New South Wales occurred outside capital cities. Young families represent a significant proportion of this growth. Evidence suggests that the needs of these young families are insufficiently understood.

Reasons for relocation

Three main themes emerged as contributing to young families' decisions to relocate:

1. *Access to quality, affordable housing.* Housing choice was often accompanied by other factors such as employment, proximity to family and the perceived suitability of the area. Overall, the study found that for the majority of families, housing was a factor in their decision to relocate.
2. *Opportunities for employment* were found to be a significant factor for Queensland families, in particular access to well-paid employment opportunities in the mining industry. However, the lack of local employment opportunities and the need to commute long distances to work were identified as stressors following relocation for NSW families in the study.
3. *An improved quality of life* was a factor in the decision to relocate for families in both Queensland and New South Wales. Some families viewed rural or coastal locations as the main attraction; others felt they could enjoy a non-metropolitan lifestyle while maintaining access to employment opportunities offered in the cities.

The perception that non-metropolitan were safer than metropolitan areas to live was also a lifestyle factor for some respondents.

A further theme of pre-existing social connections emerged but did not appear to be as significant in young families' decisions to relocate.

Contributors to social exclusion

While families articulated positive reasons for relocation, their experiences didn't necessarily live up to expectations, with many feeling socially excluded in their new environment. The study found six major themes contributed to this sense of social exclusion.

1. *Dislocation from informal networks*

Many migrating families were isolated from existing family and friendship networks. Parents not in paid employment were found to be further vulnerable to isolation due to their partner commuting to work, as well as the lack of a vehicle to access local community engagement activities.

2. *Lack of local transport services*

The lack of local transport services limited young families' ability to access services and take advantage of the opportunities offered in the community.

3. *Commuting for work*

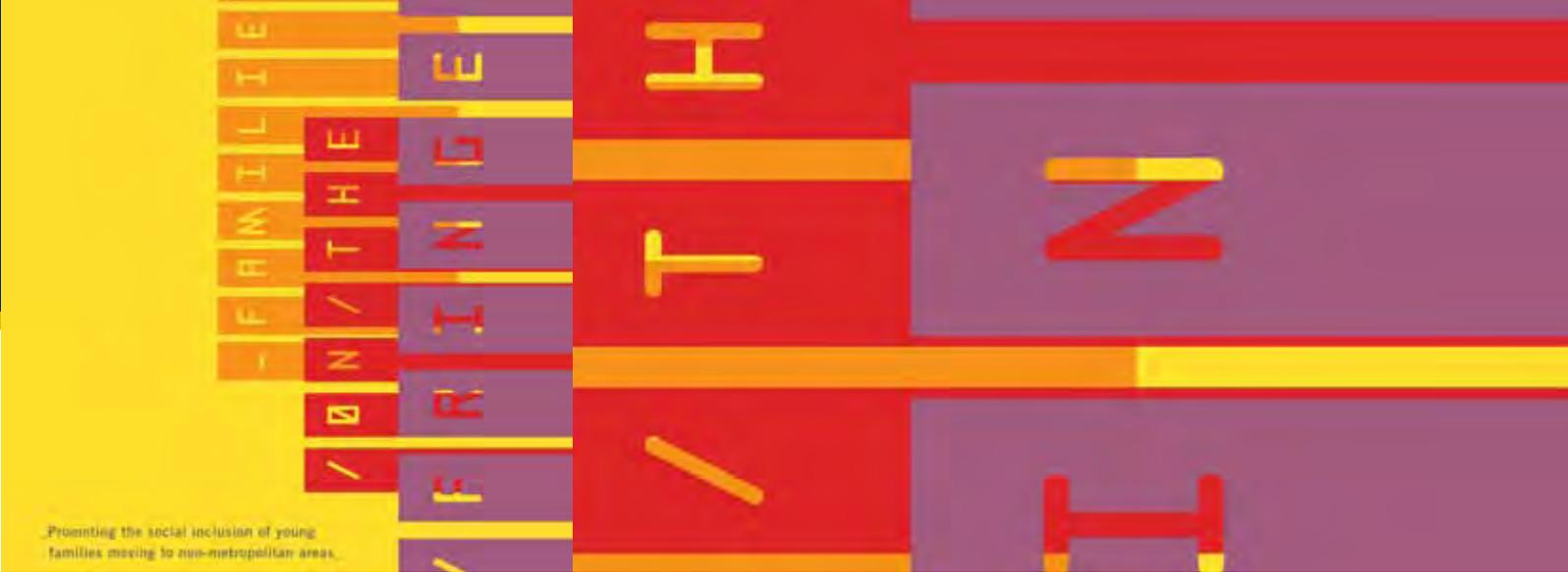
Lengthy commuting for work was found to disrupt the capacity of young families to participate in their new communities. Long commutes also contributed to exhaustion, which impacted on the ability of parents to spend time with their children in a social capacity.

4. *Insularity*

A substantial proportion of families reported that the insularity of the area to which they had relocated was a factor that limited their inclusion in social networks.

5. *Work-related mobility*

Families whose motivation to relocate was employment felt little incentive to build relationships within their new communities. Short-term contracts, common in the mining industry, contributed to population mobility that some families identified as a barrier to community participation.



Promoting the social inclusion of young families moving to non-metropolitan areas.

6. Inadequate service systems

Medical, allied health, dental, childcare and community support services were seen in all areas to be inadequate to meet the growing demands of young families.

Promoting social inclusion

At a formal level, access to affordable and high quality health, educational and community services facilitates social inclusion. Three types of local activities were identified in the study as contributing to the social integration of families into the community: low-key outreach of neighbours and colleagues, affordable recreational networks and proactive outreach by existing services.

Outreach of existing community members, although small in number, meant that the communities were seen as more open and welcoming to newcomers. However, service providers reported that the most common way of developing networks and feeling included was participation in social, cultural and sporting activities. Some families found that barriers to involvement in such events included cost, lack of interest in the activities or the fact that some were not suitable for young children. Local government and community services were also identified as providing opportunities for facilitating community engagement.

A further range of factors increased the chances of social inclusion, including the personal attributes of the families, employment and the subsequent access to networks as well as the availability of child-related or leisure activities.

Practice, program and policy implications

The study recommended that policy approaches to families deciding to relocate should operate at three levels.

Reduce the factors that lead to families considering relocating to non-metropolitan areas

- Address the housing affordability crisis in metropolitan areas.
- Develop strategies to ensure housing products meet the needs of young families.
- Strengthen planning provisions to include adequate housing mixes and family friendly residential developments in metropolitan areas.

Improve planning, transport and service infrastructure within non-metropolitan communities

- Develop an integrated public transport system that facilitates easy movement around the region.
- Develop area-based initiatives to deliver generalist medical, dental and community services.
- Provide Government support for local economic development to provide increased employment opportunities.
- Retain suitably qualified health and human services staff through better workforce planning.

Build community capacity to support and engage newly arrived families

- Provide low-key, non-stigmatising community based activities such as playgroups, which have a common positive focus (e.g., on children) and are not problem-based.
- Provide sporting activities and clubs.
- Encourage naturally occurring contacts with new families.

Families on the Fringe draws attention to the issues that young families face in moving to non-metropolitan areas. It aims to enable policy makers and service providers to develop responses to the challenges of social inclusion by providing a framework for promoting social inclusion for these young families.

Families on the Fringe is available at: <http://tinyurl.com/2a45vaz>

At the time of writing **Bridget Tehan** was a Project Officer with the Australian Family Relationships Clearinghouse.

Literature highlights – Supervision

The following are a selection of resources available from the Australian Institute of Family Studies library collection. Print resources are available via the inter-library loan system. Contact your local library for details of this system. Web addresses are included for electronic resources.

Compiled by Carole Jean, Librarian

Supervising family and parenting workers: A short guide. (2008). Rhodes, H. London: Family & Parenting Institute. Available at: <www.familyandparenting.org/Filestore/Documents/publications/SupervisingWorkers.pdf>

This guide is for new and experienced managers. Effective work with parents and families only flourishes when those undertaking it are looked after well, and good supervision is one of the best ways of achieving this. This guide covers key supervision techniques including: safe and excellent practice, planning, the challenging elements of parenting work, understanding agency roles and responsibilities, difficult circumstances, contracts, and resolving problems.

Confronting anxiety in couple and family therapy supervision: A developmental supervisory model based on attachment theory. (2009). Hill, W. E. *Australian and New Zealand Journal of Family Therapy*, 30(1), 1–14.

Referencing relevant supervisory literature and attachment theory, this article presents a developmental couple and family therapy supervisory model that emphasises the efficacy of the supervisory relationship. Issues concerning anxiety, cognition and learning theory are addressed and phases in the supervisory process are identified and described. Cognitive, emotional and social development are linked to attachment theory and discussed in the supervisory context.

Families, culture and supervision. (2008). Connolly, M., Crichton-Hill, Y., & Ward, T. *Social Work Now*, 40, 25–33. Available at: <www.cyf.govt.nz/about-us/publications/social-work-now.html>

Proactively considering cultural components in practice provides an opportunity to develop a complex understanding of how culture and diversity influence relationship dynamics. When working across cultural groups, much depends on how the social worker presents to the family and whether the family believes that it is being

understood. Cultural misinterpretation can confound practice, and barriers can make cultural signposts difficult to interpret. In these situations, supervision in child protection practice can offer alternate strategies and provide alternative explanations and interventions. This paper examines the diversity and patterns of communication in families. It explores cultural components of practice and some of the ways in which supervision can help workers navigate across cultural landscapes, including enhancing work with families (responsibility relationships, interpersonal relationships, risk management, practice enhancing techniques), and exploration of culture and practice in supervision (exploring the nature of difference and power, the importance of connectedness, and understanding meaning).

From mindless to mindful practice: On learning reflection in supervision. (2009). Carroll, M. *Psychotherapy in Australia*, 15(4), 38–49.

While there is much literature and research on reflection and reflective practice, there is relatively little to help individuals and small groups learn how to be reflective. Too much depends on reflection for it to be left to chance or the hope that it might be picked up during the journey of life. Rather, it seems wiser to teach or facilitate how to reflect, so that individuals and groups can be assured of having such a precious commodity. Michael Carroll describes what reflective learning means and considers the elements that support and block being reflective. A model of reflection is offered to help trainers to teach practitioners reflection and, in particular, how to use reflection in supervision. Suggestions are offered on how we can help others, in this case supervisees, learn how to be more reflective.

Managing stress or enhancing wellbeing? Positive psychology's contributions to clinical supervision. (2008). Howard, F. *Australian Psychologist*, 43(2), 105–113.

One of the key functions of clinical supervision as practised by health professionals such

as psychologists includes the restoration of wellbeing, but there are few guidelines in the supervision literature on how to go about this. Research into concepts from the field of positive psychology such as work engagement, sense of coherence, self-efficacy, flow and resilience has begun to provide detailed understanding of workers' happiness, health and betterment. These findings provide possible directions for supervision interventions that go beyond traditional review of self-care and stress-management strategies and seek to extend the wellbeing of the supervisee. This article explores the application of positive psychology to enhance the wellbeing of practitioners such as psychologists, who often work in inherently difficult work environments such as the mental health field. Specifically, a narrative approach is proposed as one possible method and practical examples are offered to demonstrate how positive psychology may be applied in the practice of clinical supervision.

One more time: What is supervision? (2007). Carroll, M. *Psychotherapy in Australia*, 13(3), 34–40.

What does clinical supervision offer contemporary professional life? The author reviews the changing meanings of supervision over time, tracing its history from the late 19th century through its travels and adaptations in different countries and professions. Scharmer's work is used to suggest that supervision is being challenged to provide a new modern service - creating the emerging professional future. Ways to understand what that means are explored and suggestions are given for how we can begin to create a framework for this kind of supervision.

Professional supervision and the development of working knowledge. (2008). Apte, J. *Developing Practice*, 21, 34–42.

The concept of working knowledge in the context of workplace learning is explored in relation to the developmental function of professional supervision. The functions of professional supervision are outlined and barriers to their implementation discussed.

The paper emphasises the importance of skilled and confident supervisors, who can assist new workers or those who have settled into a habitual comfort zone by using a range of adaptive approaches to engage workers with practice challenges.

Rethinking supervision and shaping future practice. (2008). Field, J. *Social Work Now*, 40, 11–18. Available at: <www.cyf.govt.nz/about-us/publications/social-work-now.html>

Effective social work responses to children, young people and their families rely on respectful, competent practice. Supervision enhances the social worker-client relationship by strengthening social work practice and ensuring robust decision making. Supervisory leadership is critical to safe practice in child welfare systems, and the competing demands of casework complexity, fiscal restraint, workload issues and shifting ideologies can present challenges to supervisors, who must balance the needs of families, workers and the organisation. This article explores the current shape of supervision and questions its future. It also reviews the literature regarding supervision practice, and describes the introduction of the group consult supervision model into frontline

child welfare practice in New Zealand. It argues that contemporary child and family welfare practice requires new ways of responding to supervision within care and protection and youth justice contexts, and presents a case for considering supervision differently in the statutory context.

Social work supervision: Contexts and concepts. (2005). Tsui, M. Thousand Oaks, C.A.: SAGE Publications.

This book outlines the basic theories, research, and practice of supervision. It addresses the needs of social work supervisors, frontline practitioners, students, and educators. It also contains a comprehensive literature review of the historical development, theories and models, and empirical research studies of supervision.

Supervision and transformational learning. (2008). Carroll, M. *Psychotherapy in Australia*, 14(3), 38–45.

If supervision is an intervention to help supervisees learn, it is important to know what kind of learning is needed, and what supervisors and supervisees can do to facilitate that learning. What sort of learning does supervision support and facilitate?

Is all learning of the same type or level? A review of the supervision literature indicates little concern with the learning aspect of supervision. Most supervision is based on unconscious models of learning that have not been articulated and are rarely questioned. This lack of clarity about what “kind of learning” is being facilitated within supervision suggests that supervisors are haphazard in the methodologies adopted to encourage that same learning. The author reviews the historical concepts of learning that have underpinned supervision in the past, as well as some modern influences on learning. A model of transformational learning suitable to contemporary supervision is presented.

Supervision in the helping professions. (3rd edition). (2006). Hawkins, P., & Shohet, R. Maidenhead, England: McGraw Hill/Open University Press.

This edition examines developments in the field in the past two decades, and includes updates on supervision maps and models, supervising groups, working with refugees and asylum seekers, adapting supervision to suit different learning styles, and offers a process model to aid understanding of how supervision sessions “work”.