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Families with complex needs Meeting the challenges of separation

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THIS CHAPTER IDENTIFIES SOME of the main challenges pertinent to program development in relation to family law parenting disputes. The basis of this discussion is evidence from a recent evaluation of a family dispute resolution program for matters involving a history of family violence. As the evidence base about the families who use family law system services has expanded in recent years, it has become clear that better ways of meeting complex needs are required. Families that have the most need for services are those affected by issues such as family violence, child safety, mental illness and substance abuse. The evidence highlights the need for holistic, multidisciplinary responses in meeting the needs of these families, whose engagement with the system often requires solutions that address both legal and psychosocial issues in parenting disputes. This analysis draws on evidence from a recently released evaluation of the Coordinated Family Dispute Resolution (CFDR) pilot program (Kaspiew, De Maio, Deblaquiere, & Horsfall, 2012) to reflect on the service requirements of families with complex needs and the challenges in meeting them.

Challenges at three different levels are discussed. The first is the systemic level, through a consideration of empirical evidence on unilateral engagement with relationship support services, where one member of a former couple engages with a service but the other doesn't. The evidence suggests the existence of potentially significant, but unmet, support needs in these circumstances. The second is at the interagency level, in the context of using collaborative partnerships to provide holistic services. The third is at the interprofessional level through a discussion of the complexities and tensions that arise for lawyers and support service professionals working with alleged perpetrators of family violence.¹

¹ The CFDR model uses the language "predominant aggressor" and "predominant victim". These terms will be used in the remainder of this chapter.

Background

The Australian Institute of Family Studies (AIFS) *Evaluation of the 2006 Family Law Reforms* (hereafter “the Evaluation”; Kaspiew et al., 2009) highlighted the prevalence of a history of family violence among separated parents. The Evaluation revealed that 26% of mothers and 17% of fathers surveyed for the Longitudinal Study of Separated Families (LSSF) Wave 1 reported a history of physical hurt before separation, and 39% of mothers and 36% of fathers reported emotional abuse before or during separation. About one-fifth of separated parents (17% of fathers and 21% of mothers) reported having safety concerns (relating to their child, themselves or both) as a result of ongoing contact with the other parent. Mental health problems were reported by 29% of mothers and 22% of fathers (the phrasing of the question was general and did not require the respondent to identify whether the respondent, the other parent or both had the concerns and whether the problem was diagnosed by health professionals). The Evaluation report concluded that the system had “some way to go in being able to respond effectively to these issues” (p. 364). The subsequent findings of the LSSF Wave 2 study (Qu & Weston, 2010) confirmed that family violence remained an ongoing problem after separation. Among parents who participated in Wave 2 ($n = 6,565$), 53% of mothers and 46% of fathers reported experiencing family violence between Waves 1 and 2 (mainly emotional abuse, with reports of physical hurt falling to 5% for fathers and 4% for mothers). Similarly, safety concerns were pertinent for close to a fifth of Wave 2 participants (20% of mothers and 16% of fathers), with a core group of about 10% of parents (11% of mothers and 8% of fathers) holding such concerns through both waves.

A number of different initiatives to improve the family law system’s response to family violence and child safety concerns have been implemented in the past three years. Most significant have been amendments to the *Family Law Act 1975* (Cth),² which introduced a wider definition of family violence (s 4AB(10)), and provisions specifying that where there is conflict between the aims of protecting children from harm and maintaining a relationship with both parents after separation, greater weight is to be accorded to protection from harm (s 60CC(2A)). Other measures included the development of a free family violence training package (AVERT) for use throughout the system³ and the formulation of a universal family violence screening tool.⁴ A third initiative was a pilot of a multidisciplinary process (CFDR) for addressing parenting disputes where there has been a history of family violence (Kaspiew et al., 2012; Women’s Legal Service [WLS], 2010). This pilot program was based on a model developed by the Women’s Legal Service in Brisbane (and other consultants) and was conducted from early November 2010 to 30 April 2013.⁵ It was implemented in five sites/lead agencies across Australia: Perth (Legal Aid Western Australia), Brisbane (Telephone Dispute Resolution Service [TDRS], run by Relationships Australia Queensland), Newcastle (Interrelate Family Centres), Western Sydney (Uniting Care Unifam) and Hobart (Relationships Australia Tasmania). TDRS made adaptations to the model to accommodate its telephone-based service.

2 The amending legislation is the *Family Law Amendment (Family Violence and Other Matters) Act 2011* (Cth).

3 See the AVERT Family Violence website: <www.avertfamilyviolence.com.au>.

4 The Detection of Overall Risk Screen (DOORS) framework (see McIntosh & Ralfs, 2012).

5 Data collection for the AIFS evaluation of the CFDR pilot was completed in August 2012 (see Kaspiew et al., 2012).

The CFDR pilot was developed in response to a perceived need in the family law system for a non-court based mechanism for resolving post-separation parenting disputes where there has been family violence. Recent empirical evidence demonstrates that a significant number of parents in this situation are using family dispute resolution (FDR; Kaspiew et al., 2009; Qu & Weston, 2010). In some circumstances appropriately delivered standard FDR may be adequate, and in other circumstances this approach appears to be falling short. Concerns that arise in the latter set of circumstances relate to whether the process itself maintains safety, whether it produces outcomes that reflect genuine (rather than coerced) agreements, and whether these outcomes are in the best interests of children. A further set of concerns relates to families who present with both previous and ongoing concerns about family violence and safety whose matters remain unresolved despite their engagement with Family Relationship Centres (FRCs) or similar services. The evidence suggests that some of these families may be experiencing difficulties over a protracted period of time, with limited assistance. A substantial proportion of respondents (53% of mothers and 45% of fathers) interviewed in Wave 2 of the LSSF reported that emotional abuse continued after separation (Qu & Weston, 2010). Furthermore, a number of studies have highlighted an association between separation and its aftermath and familicide against a background of family violence (e.g., Walsh, McIntyre, Brodie, Bugeja, & Hauge, 2012).

The CFDR model of mediation aimed to address the concerns arising from these circumstances. It was a process where parents were assisted with post-separation parenting arrangements where family violence had occurred in the relationship. Lead organisations were responsible for coordinating a partnership providing a range of services. The overall process involved a multidisciplinary team comprised of a case manager/FDR practitioner, a specialist family violence professional (SFVP) for the person assessed to be the “predominant victim” in the language of the model, a men’s support professional (MSP) for the person assessed to be the “predominant aggressor” (when they were male),⁶ a legal advisor for each party and a second FDR practitioner. Child consultants were part of the professional team and were called upon to feed into case management decisions and, in some cases in some pilot locations, were involved in providing services to clients and/or children. Specialised risk assessment and management took place throughout the process, which unfolded over several steps involving screening, intake and assessment, preparation for mediation, mediation (up to four or more sessions) and post-mediation follow-up. The approach recognised the multiple needs created by separation against a background of family violence and attempted to develop a coordinated approach where family violence support, and legal and dispute resolution needs could be met within one process, rather than placing families in the position of having to engage with multiple services in a splintered and potentially incoherent way.

An evaluation of the program, based on a number of data sources—including case management data, interviews and surveys with professionals, and interviews with parents—highlighted the complexities involved in delivering the service in a multi-agency,

6 The party assessed as the “predominant aggressor” was male in 89% of cases and female in 5%; the determination was missing or uncertain in 6% of cases. Given the ethical issues that arise in dealing with participants from groups that contain small numbers (see further discussion in Kaspiew et al., 2012, Chapter 1), the particularity of the experience of male “predominant victims” and female “predominant aggressors” is not explicitly explored in this report. However, where data were collected from individuals in these groups, it is reflected in relevant parts of the discussion.

multidisciplinary setting.⁷ Although a decision not to fund the program on an ongoing basis has been made, the evaluation provides valuable insights into the challenges involved in delivering such services. The first challenge—relevant at a systemic level—is considered in the next section.

Unmet service needs

As part of the CFDR evaluation, case management data relating to process and outcomes for all cases in the pilot ($N = 126$) were collected and analysed. Information was also gathered from a comparison group sample ($N = 247$) of standard/traditional FDR service users who were also identified as experiencing family violence. The differences between the CFDR and comparison groups highlight a significant gap when only one parent engages in a service (single-party cases). A significant number of cases (49%) dealt with in the CFDR pilot involved one partner in a former couple seeking assistance in circumstances where the other partner was not engaged with the process. These cases usually involved a mother ($n = 52$ cf. 10 fathers) who was also often considered to be a predominant victim. In contrast to CFDR, 31% of comparison group cases were found to involve a single party. The aim of the CFDR pilot was to provide dispute resolution services premised on an assumption of bilateral engagement from both members of a former couple. However, as practice in the pilots evolved, it became clear that the dynamics concerning the engagement of the non-initiating party were complex. Evaluation evidence showed single-party cases arose in two main ways: the non-initiating party refused to engage with the process (44%) or the CFDR professionals made an assessment that it was not safe to invite the other party into the process (36%).

In either of these circumstances, the initiating parties found that parenting arrangements were at issue but could not be resolved unilaterally. The implications of this are concerning, particularly in light of evidence indicating that single-party cases are more than twice as likely as two-party CFDR cases to involve a previous history of involvement with child protection departments (15% cf. 6% respectively) and just as likely to involve current allegations of child abuse or neglect (19% cf. 18%).

The evaluation evidence indicates that single-party cases received significantly more support in the CFDR process than such cases in the comparison group: 86% of single-party comparison group cases received no service beyond intake processes, against 19% of CFDR cases. Just over half (52%) of the CFDR single-party cases received multiple services as a result of their engagement with the process, compared with just 1% of comparison group cases. These services included advice and referral from the lead service in the CFDR process and services from pilot partners, including legal services

7 The evaluation methodology is set out in full in Chapter 1 of the report (Kaspiew et al., 2012). In brief, the samples for the different studies comprised: (a) analyses of case file data from all CFDR cases up to 30 June 2012 ($n = 126$), and a sample of comparison group files ($n = 247$) drawn from services run by each of the lead partners where CFDR services were not offered; (b) qualitative studies based on mixed-profession focus groups (participants: $n = 37$, August–November 2011), and interviews with professionals working in the early stages of the pilot implementation ($n = 37$) and near the end of the evaluation data collection period ($n = 33$, April–June 2012); (c) an online survey of professionals, conducted in June–July 2012 ($n = 88$, with a response rate of 68%); (d) a qualitative study based on interviews and surveys with parents who received CFDR services ($n = 36$, 29 interviews and 7 surveys; as there were a smaller than expected number of pilot cases, the seven online parent surveys were analysed qualitatively); and, (e) requests for information conducted at each pilot site towards the end of the evaluation period that examined how the model was adapted and implemented in each location.

and family violence support services. Over one-third (40%) of single-party cases were referred to legal aid, 15% to courts and 13% to post-separation support services.

Although the CFDR process did not facilitate the resolution of the concerns that triggered engagement with the service in the first place, the evidence indicates that the parents in single-party cases were assisted through CFDR in a range of ways that would allow them to understand their options and to access other services. The evidence of the number of single-party cases encountered in the CFDR pilot (49%) and the high level of service provided to them in comparison with single-party cases in the comparison group highlights an unexpected aspect of implementing and evaluating the CFDR pilot. It suggests a need for referral and support for complex cases at a level of intensity currently not available in services that are an initial port of call for parents experiencing difficulty with post-separation parenting arrangements.

Collaboration: Challenges and possibilities

As the preceding sections indicate, the CFDR pilot required collaboration between professionals in different agencies and from different disciplines in a way that meant optimum operation would occur when the professionals across the different agencies were able to operate effectively as a clinical team. Where appropriate, the perspectives of all professionals involved in CFDR fed into risk-assessment and case-management decisions, with some additional limitations for lawyers (see below). The evaluation found that the quality of the collaborative relationships established in CFDR was critical to the effectiveness of the service provided to clients in each location.

The evaluation findings indicate that the challenges in establishing and maintaining collaborative relationships between each of the partners in the five locations could be significant. The challenges were evident at several levels, to varying extents. At an agency level, some policies and approaches needed to be reconsidered. An example of this was the application of child-inclusive practice. In one location, a community-based organisation considered this should occur routinely, while the lead partner took a cautious approach. Protracted negotiations took place over the life of the pilot, producing an agreement reflecting a position in favour of applying child-inclusive practice, with some caveats.

Interdisciplinary engagement required reconsideration of professional practices to ensure that the engagement of each set of professionals was consistent with the aims of the pilot. Disciplinary practices and approaches had to be explicitly discussed and reconsidered in a range of ways (the specific example of information sharing is discussed further below). Other areas where interprofessional understandings had to be expressly developed included approaches to family violence. Evidence from the pilot indicates that differing views on family violence, including what behaviours constitute family violence and what implications they have for post-separation parenting involvement, were evident among the professionals involved in some locations. Varying approaches to risk assessment were also adopted. An example of efforts to develop consistent practices and understandings came from the SFVP and MSP in one location who embarked on a process of clarifying their own understandings and approaches and those of their services in order to set up a consistent understanding to apply in the pilot.

The format of FDR sessions also had to be reconsidered. The FDR sessions were generally conducted face-to-face, although “shuttle” sessions (where the parties were separate and the FDR practitioner moved between them) also occurred. The evaluation evidence indicates that in the location where the shuttle methodology was adopted as

the first choice, particularly for initial sessions, no predominant victims reported feeling fearful in FDR sessions. In locations where this approach was not applied, the accounts of some parents indicated that the face-to-face approach did result in some parents experiencing fear and intimidation in the FDR sessions.

A further indication of the need for “standard” approaches to be reconsidered when providing services for families with complex needs emerged from the evaluation concerning the number of legal, support and FDR sessions provided in the pilot in cases where both parties engaged with the process. Clients in these cases had multiple appointments with legal advisors and support workers. Nearly three-quarters of the CFDR cases that reached mediation had more than one mediation session (compared with 15% of comparison group cases), and 37% had four or more sessions (none in the comparison group had four or more). CFDR matters were dealt with over a significantly longer time frame than comparison group matters, with CFDR matters taking, on average, more than double the amount of time from intake to mediation (211 days cf. 99 days).

Interprofessional practice

The evaluation evidence demonstrates particularly clearly the complexity involved in developing holistic service responses to issues that have both psychosocial and legal dimensions. The tensions involved in working with predominant aggressors in CFDR exemplify these challenges, and information-sharing processes are critical to resolving them. There are a number of issues that are relevant to understanding the complexity in working with people who perpetrate family violence. It is well recognised in the family violence literature that frank disclosure is uncommon for a range of reasons, including shame, lack of insight that the behaviour constitutes family violence and lack of willingness to admit to committing what amounts to criminal conduct (e.g., Blacklock, 2001; James, Seddon, & Brown, 2002). Family violence practitioners and researchers recognise that denial is common, full admission is rare, and that, more commonly, some behaviour may be admitted and accompanied by exculpatory discussion, including blaming the victim, mutualising the violence, minimising what occurred, and attributing responsibility for the actions to external circumstances, including stress or substance use.

The CFDR model was premised on there being some acknowledgement from the predominant aggressor of past and/or current violence or safety concerns that were “relevant to future arrangements of their children” (WLS, 2010, p. 16). Such acknowledgement, however, has significant implications in a quasi-legal process since it involves admitting to potentially criminal behaviour. The absence of such acknowledgement compromises the aim of the process to achieve safe and child-focused parenting agreements. Professional approaches to addressing the issues arising from whether or not family violence is acknowledged illustrate the possibilities and challenges for professionals working together in support-based and legal roles.

Information-sharing was a critical aspect of collaborative practice in the pilot and was particularly important in working with predominant aggressors. The flow of information to and from lawyers was complex, since lawyers have an obligation to maintain client confidentiality and can encounter ethical difficulties in receiving information that contradicts what their clients have told them. Different approaches were adopted in various locations, but the practice of lawyers routinely obtaining client consent to share information, which applied in one location, had specific strengths. Where this occurred, each professional could develop a more holistic picture of the client’s circumstances and consequently an understanding of acceptable dispute resolution outcomes. Legal advice

and support services could thus be provided in ways that were consistent with differing professional roles but complementary to the overall aims of the pilot: to produce parenting arrangements that were safe and in the best interests of the child. A further practice related to information-sharing, and concerned with client management and collaborative practice more generally, was having SFVPs and MSPs attending legal advice appointments with clients. Where this happened, the teamwork approach appeared to strengthen the program's ability to manage client expectations in the CFDR process.

In the CFDR pilot, the professionals working closely with predominant aggressors, especially support workers and lawyers, faced particular challenges in ensuring complementary practice approaches to their involvement in the process. From the perspective of men's workers, one MSP explained the challenges involved in understanding the story:

I always feel as though I've arrived at something with the client that contributes to furthering the understanding of the team. I don't ever delude myself thinking I have the full picture. [MSP, Later Stage Interview]

The interviews with professionals, particularly with MSPs, highlighted the way in which working to build understandings of an alleged perpetrator's own behaviour, and its implications for ex-partners and family members, was a key part of their task in the CFDR process in many instances:

We're forcing them to consider their actions towards the other parent, at least in light of the children that they have and what the effect of that will be. [MSP, Later Stage Interview]

So one of the things that the counsellors would do would [be to] ask how the violence impacts on significant others, and this can sometimes gently—well, not gently—sometimes it is quite confronting for the client then to have to think about how their violence impacts others and how they talk about that. So the counsellor would also validate the difficulty in talking about violence but then gently encourage them to be more explicit so the counsellor gets an understanding of [the violence]. Because that is what this is about—they are assessing the degree of violence in this relationship. [MSP, Early Stage Interview]

Lawyers pursued a parallel set of objectives. They also faced significant challenges in providing advice that was supportive of the aim of maintaining client engagement in the process, in the face of the option of going to court. They were also providing legal advice on the client's position in relation to parenting arrangements, based on uncertain facts and client expectations of an entitlement to shared care. It was apparent that in some cases, this parallel engagement yielded results in circumstances where clients were able to develop insight and were susceptible to accepting lawyers' messages about parenting arrangements and best interests. In other cases, this parallel engagement could not produce the desired results, meaning clients disengaged from the process, and in some cases resolved to pursue what they considered a better outcome for them in court.

Lawyers who took part in the evaluation studies articulated a number of dilemmas involved in advising predominant aggressors. These included being unable to get honest instructions from their clients, and being involved in CFDR sessions where information at odds with the clients' instructions emerged. For example, some lawyers described

experiencing ethical dilemmas when becoming aware of a history of family violence that was unlikely to be provable in court (yet being concerned for the children) and being unable to convince a client that their history of perpetration stood in the way of achieving the parenting arrangements they wanted. Challenges in negotiating these issues are illustrated in the following quotations:

It becomes difficult when the alleged perpetrators have limited insight into their behaviours and become aggressive when their limited options are presented to them in terms of spending time with their children. The failure of the client in gaining insight into their violence is the biggest hurdle to being able to give effective legal advice. [Lawyer, Professionals Survey]

When working with one aggressor, I found he was not honest with me in disclosing what was going on. I felt quite disadvantaged not knowing what the history of the couple had been. My client initially portrayed himself as being extremely reasonable and very concerned for the welfare of his children. CFDR was stopped because the other client could not proceed because of my client, yet I was not aware of what was happening. From my experience in this [case], the family violence was not named. [Lawyer, Professionals Survey]

I haven't been able to get information about the DV [domestic violence]. He gave me the impression it was a one-off isolated incident, but the actions of the mother indicate otherwise ... It's hard to advise him. And then I thought, gosh, I'm advising him on spending time with them when possibly that's not in the best interests of the children. [Lawyer, Later Stage Interview]

The evaluation findings indicate that professionals working with clients who were predominant aggressors found this to be particularly intensive work and not all clients were amenable to hearing the messages being conveyed. One MSP, when discussing the difficulties of encouraging a father in the pilot to understand his behaviour, said:

Partly because he's a very rigid personality and he's got his view and he's not shifting from it. [MSP, Early Stage Interview]

Similarly, an FDR practitioner commented:

Those men are very reactive and can play out their abusive behaviour with us ... We have to really set strong boundaries, and at some point it helps you make a decision [about whether there is] any potential for change, even in this program. [FDR practitioner, Later Stage Interview]

There were many aspects of the interprofessional collaboration that were challenging in the CFDR pilot, but the work of lawyers and MSPs with predominant aggressors highlights particularly clearly the difficulties and advantages of close collaborative practice. Supported in some locations by information-sharing protocols, the collaborative nature of the process increased the potential for their practice in any given case to be complementary rather than compartmentalised or even conflictual. The evaluation data yielded examples of where this complementary practice produced results in contexts where clients were amenable to developing some level of insight into their behaviour

and consequently accepting advice about the limitations in their legal position. This achievement occurred even though the CFDR model was not intended to be what is known as a “transformative” model of family dispute resolution, aimed at shifting attitudes and behaviours (Women’s Legal Service, 2010). Other clients, however, were not amenable to developing insights, underlining the inherent limitations in professional practice in this context.

Conclusion

The insights from the evaluation of CFDR underline challenges at several levels that face the family law system when assisting families with complex needs. The intensive level of support absorbed by single-party cases, where one party engaged with the CFDR service and the other didn’t, raises questions about the unmet needs of single-party cases in the family law system generally. The level of service, including legal advice, support services and referrals, provided to CFDR single-party clients compared with this subgroup in the comparison non-CFDR sample, suggests that this is an area requiring further scrutiny. The need for such scrutiny is particularly acute in light of the issues pertinent to these families and the possibility that parents and children may be in difficult and even unsafe circumstances during their search for appropriate services. Outside of CFDR, such families would be engaging with multiple different services in a time-consuming and uncoordinated way. There is also potential for the cases of such families to be in abeyance when exempt from standard FDR due to family violence and if they are reluctant to enter further into the court process.

The CFDR evaluation data highlight the complex needs of families affected by family violence and child safety concerns, and underline the extent to which they have problems that are both legal and psychosocial in character. In attempting to provide a means of addressing these holistically, the agencies involved in the CFDR pilot faced a number of challenges. Frameworks and policies at agency level had to be re-considered, interdisciplinary practice had to be accommodated, and service delivery models required adaptation so that a more intensive level of service delivery could occur.

At a level more intimately connected with specific practice approaches, the work by MSPs and lawyers demonstrated how legal practice and support-based practice can be mutually supporting where close collaboration, such as information-sharing, occurred. The evaluation evidence yielded some examples where the legal and non-legal dimensions of the client’s circumstances could be addressed through intensive collaborative work that produced insight on the part of the predominant aggressor into the effects of violent behaviour on their family, and an acceptance of what this meant for their post-separation parenting status. Rather than treating these issues separately in potentially conflicting professional modes, the CFDR approach was based on complementary collaborative practice. The data also show this required a high level of resources and professional effort, and that not every case is amenable to resolution in this kind of process.

The lessons to be learned from the CFDR pilot indicate that finding effective ways to support families with complex needs requires approaches to be rethought at a range of levels, from the way in which the system is configured to the way in which practice approaches are managed. Complex needs demand collaborative approaches, which in turn require significant thought and effort to implement effectively.

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