



An Australian Government Initiative

## THE FAMILY RELATIONSHIP CENTRE PORT AUGUSTA

### SUBMISSION: Inquiry into Access to Justice by Productivity Commission

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#### Introduction

With a population of around 15,000 of which 20 per cent identify as Aboriginal, Port Augusta is a regional railway and port city at the head of the Spencer Gulf, some 322 kilometres from Adelaide. It is a place of significance for Aboriginal people across the mid-north and north of the State.

The Family Relationship Centre (FRC) at Port Augusta is funded through its auspicing agency, Centacare Catholic Family Services, Country SA, Catholic Diocese of Port Pirie (CDPP). Centacare Country provides a range of services, including counselling, relationship education, financial support, foster care and family and relationship services, including family dispute resolution. The organisation actively promotes the employment of Aboriginal people and is committed to delivering culturally appropriate services.

The Port Augusta FRC was established in 2007 (in the second round of 65 Commonwealth-funded FRCs situated across Australia), and is a gateway to services for Aboriginal and non-Aboriginal families across the northern region of South Australia, from Ceduna and Port Lincoln to the west of the State, the Upper Yorke Peninsula, the Flinders Ranges to the east, and north to Coober Pedy, the mining town of Roxby Downs, and the remote and traditional Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. During the summer months in particular, there is a steady stream of families who travel from the APY Lands and Coober Pedy to Port Augusta to visit family and escape the searing heat. Many families remain in Port Augusta for some months at the Davenport Community some 3 kilometres out of town or in Aboriginal conclaves scattered throughout the town.

#### Family Dispute Resolution (FDR)

In 2006 amendments to the *Family Law Act* introduced significant changes to the Australian family law service landscape, particularly with respect to mandating that any person who wishes to file an application for a parenting order with respect to their child or children's matters must first make a

genuine attempt to resolve their dispute by attending family dispute resolution (s60I). Further, that the court must not hear an application in relation to children's matters unless the applicant files a certificate given to them by a family dispute resolution practitioner (s60I(7)). The Act also provides a list of exceptions to s60I(7), for example, if there is a history of family violence, if a child is at risk, the likely safety of the parties, inequality of bargaining power between the parties or if the matter is urgent.

Whilst participating in FDR is voluntary and many families sort out their disputes without intervention by mediation or proceeding to court, it is also the case that the parties may be ordered to attend FDR. In that respect, it can be said that FDR operates very much in the "shadow of the court".

Family Dispute Resolution Practitioners (FDRPs) are bound by confidentiality and the process is privileged. At all times parties are encouraged to focus on the best interests of their child or children. The process raises awareness about the serious and deleterious impact that high long-term conflict and family violence have on children. Built into the FDR process is the opportunity (or obligation in some FRCs) for attendance at a Child Focused Information or parenting session, and depending on the age and maturity of the child, Child Inclusive (Informed) family dispute resolution may also be offered to assist families in coming to a suitable arrangement for their child or children – but always putting the best interests of the child first.

### **S60I Certificates**

Paragraph 60I(8)(aa) of the Family Law Act, states accredited FDRPs may issue certificates where it has been deemed appropriate. Certificates are valid for 12 months after the latest FDR or attempted FDR. Five certificates are available to be issued, but once a certificate is issued, one or both parties may proceed to court with an application. To practise, FDRPs must be accredited and have an appropriate degree such as law, social work, psychology, conflict resolution, or a vocational graduate diploma in family dispute resolution. Of the five s60I Certificates that may be issued perhaps one certificate causes the most consternation with FDRPs: s60I(8)(aa) which indicates that the matter is unsuitable or inappropriate for family dispute resolution. Because of confidentiality provisions, FDRPs are unable to provide the court with information as to the reasons the practitioner came to the conclusion the matter was unsuitable for FDR. Particularly where there are reports of family violence, practitioners often feel frustrated they are unable to alert the court of their concerns. The debate continues as to whether s60I certificates should include information as to why FDR was determined as inappropriate (Australian Government Australian Law Reform Commission: A National Legal Response (ALRC Report 114)/22. Confidentiality and Admissibility section 60I Certificates: information about family violence).

### **Models of FDR**

Whilst the FDR process is uniform in all FRCs throughout Australia, the actual models of FDR may vary. For instance, if appropriate, some FRCs interview children of various ages, and other FRCs have made a decision to limit interviewing children, or not interviewing them at all. Some FRCs may have

lawyer-assisted FDR, however, most encourage their clients to obtain legal advice at any point in the FDR proceedings, and particularly before the parties sign their Parenting Plan. The Port Augusta FRC has a qualified and experienced Child Consultant who interviews children if both parents consent, and if it is in the best interests of that child. At this time, there is a policy to only interview children 10 years and over. There are several reasons for that, but principally, lack of resources, lack of qualified Child Consultants, additional pressures on the family to attend separate interviews, particularly if significant travel is involved, and the fact that child inclusive practice doubles the time and resources of a traditional mediation session. Child Inclusive mediation will not be undertaken if it places at child at risk or if the matter is likely to proceed to court.

In order to provide ongoing support to families, the Family Relationship Centre at Port Augusta offers an initial three-hour family dispute resolution session to families. Depending on the issues raised by the parties to the dispute during the Intake and Assessment sessions, a range of FDR sessions may be offered: round-table, shuttle mediation, where parties negotiate from different rooms, telephone conferencing or telephone shuttle. At other times the practitioner may make the final decision, particularly if there are safety issues involved. A fee of \$30 is charged for any party to the process who earns over \$50,000. However, no person is turned away by an inability or unwillingness to pay the fee. The majority of Port Augusta FRC clients have their fee waived on grounds of limited earnings.

A follow-up review of the Parenting Plan is offered to families approximately three months after the initial family dispute resolution session. Often that review is written into the Parenting Plan. It is not unusual for families to seek further reviews as their circumstances change. In that respect, a Parenting Plan may be seen as a 'living, breathing' document, rather than a one-off arrangement. Follow-up sessions also enable the practitioner to assist with referrals to other services and to generally support the family through the post-separation period. In order to effectively manage families the Port Augusta FRC has adopted a file management approach, whereby a practitioner is assigned to that family at the point of first contact and manages the family, extended family (eg if a grandparent seeks to mediate with the mother), and any re-partnering into the future. In that way a more concise picture of the family situation is obtained, particularly if there is a history of family violence.

### **Aboriginal Families**

When dealing with Aboriginal families, however, a different culturally-appropriate approach is taken. Consideration needs to be given to such factors as cultural protocols, kinship ties, language, knowledge of family groups and their relationship to each other, and their ways of providing support and nurturing to each other and their children which may be quite different to the way non-Aboriginal families may act. Whilst the Port Augusta FRC is a well-respected and well-known service provider in the Aboriginal communities in the region that does not necessarily mean that Aboriginal families may see it as a relevant option to assist them in their family disputes. It is still the case that many Aboriginal families choose to sort out their disputes amongst themselves rather than seek the assistance of organisations like the FRC which they may view as non-Aboriginal.

That does not mean that the Port Augusta FRC is irrelevant to Aboriginal communities. On the contrary, community engagement is driven by a strong commitment to social justice and equity, and a strong belief that change comes from the grassroots. The Port Augusta FRC has demonstrated its commitment to the Aboriginal community through its involvement in NAIDOC Week, employment of Aboriginal staff, its leadership as a community organisation, and its open door policy, as a public space for use by Aboriginal and non-Aboriginal families and service providers. Much effort has gone into making the centre a culturally appropriate and welcoming space for all families, with Aboriginal and non-Aboriginal art, photos, Language grouping maps and Aboriginal artefacts. During the annual NAIDOC Week celebrations the centre dresses up with Aboriginal and Torres Strait Islander flags, streamers and balloons. It hosts the Boomerang colouring-in competition for schools and collaborates with other organisations in major events such as the NAIDOC Adult Ball and Mini-Ball for under 10's – a highlight of the local NAIDOC calendar.

Without doubt, because the FRC is situated in a relatively small community, with a large and diverse Aboriginal population, it cannot isolate itself from the family and social issues experienced by the community. In that respect, the public and private spaces merge. In times of great distress (for example, youth suicide) Aboriginal staff and their families have utilised the FRC to seek a quiet haven away from visiting families, to prepare for the funeral and to come together for support.

At other times, Aboriginal leaders and community organisations meet at the FRC to prepare activities and events. In some respects, the role of the FRC for Aboriginal families is more a meeting place rather than a place to resolve their family differences. This altering role should not be underestimated. By providing a safe and culturally sensitive environment which allows the FRC to deliver and engage with the Aboriginal community on sensitive issues, it means that when there is a matter which the community deems appropriate for our service, we are at the forefront of people's minds.

With respect to providing services to the remote APY Lands, other factors come into play. For instance, the provision of family dispute resolution services requires an understanding of the language groups, kinship ties and family networks. It also requires an understanding of the traditions, customs and specific cultural traits of the region. Whilst the social issues experienced by communities in the Lands is similar to those experienced by more regional Aboriginal families, in many ways those issues are exacerbated in more remote communities. It takes many years to gain the trust of more remote Aboriginal communities, particularly considering their experiences in the past with 'government' organisations, including the courts. A backdoor, low-key approach, is essential to gain acceptance.

Travel to the APY Lands is costly and uses up available resources, including staff. A trip to the Lands by at least two staff takes a week. Preparation includes safety plans, knowledge of ceremonies which may impact on whether a trip can go ahead, and the weather. Many families who live in the Lands are transient, making contact prior to the mediation going ahead difficult. Communication is also a challenge, as many families do not have access to telecommunications (including video conferencing). Family meetings require face-to-face contact rather than by telephone. Family violence is another factor as to whether a matter can proceed to the family conference or family meeting, as FDR is referred to.

Despite these challenges, the availability of family dispute resolution provides Aboriginal families with an access to justice in the Family Law. For the majority of families, travelling to the courts in Adelaide is not an option because of costs, transport, language difficulties, stigma associated with going to court, and the fact that many families have never travelled further south than Port Augusta. The Family Court is alien to them. The Port Augusta FRC provides a flexible model of mediation to families to assist them in making arrangements for their children. In that respect we have produced an animated Child Focused DVD in Language, our Child Focused practice is culturally appropriate, using pictures rather than words, and the session is delivered by Aboriginal staff. Interpreters are essential to working with families in the Lands, adding another expense for service providers.

The mediation session may take place outdoors or in a suitable community centre. Terms like 'family meeting' have replaced 'family dispute resolution', and there is ongoing consultation with community leaders, community members and service providers to ensure the service remains relevant. The mediation session may bear little resemblance to the more structured forms of FDR. For instance, family members may come and go during the session, children may be playing nearby and dogs may also wander in and out. The length of the FDR session depends on how long each member wishes to engage. The family meeting may consist of two shorter sessions rather than a 3-hour session. Often FRC staff are required to drive to a family member's residence to collect them. Interpreters must be available. To ensure confidentiality and neutrality, the practitioner must have an understanding of the interpreter's standing in the community, and whether there is any family conflict between them and the family in dispute. Sourcing trained interpreters who can remain impartial is another challenge.

In spite of the challenges, the FRC in partnership with wrap-around support services can provide an important means of ensuring regional and remote Aboriginal families access justice. It allows families to resolve their disputes through family meetings in their communities in a culturally-sensitive way, by travelling to remote regions to meet with families, by providing parenting education to men and women about the impact of family violence on their children and by taking away the stress and costs of travelling to the city to attend court and providing easy ongoing access to wrap-around services to support the family.

Family Dispute Resolution in all its forms is educative, child focused, culturally sensitive, and places the responsibility for children in the hands of their parents rather than in the courts. Delivered appropriately, FDR is an empowering process which can be used to support cultural practices. It may be considered an example of two laws working together. FDR does not seek to extinguish cultural lore or practices, but to incorporate aspects of Aboriginal and non-Aboriginal considerations of family to ensure the best interests of the child are the main focus. This is particularly effective in FDR as it allows those considerations to be altered dependent on the community, the people, their culture and the services available to them. FDR does not seek to provide a blanket approach to all Aboriginal people.

It is an ongoing process that aims to support families, to help them deal with conflict and to negotiate with each other about important issues with respect to their children. It is cost effective, and alleviates families of the stresses and costs of going to court. The FDR process can identify family violence, family conflict and children at risk early and puts in place community-based support services to assist vulnerable families.

## **Legal Services**

In partnership with Legal Aid, WestSide Lawyers in Port Pirie (approximately 90 kilometres from Port Augusta) and private lawyers in the region, FRC clients are encouraged to seek legal advice to ensure they understand their responsibilities and obligations under the Family Law Act. If a matter is deemed unsuitable because of family violence or children at risk, every endeavour is made to assist clients to access the legal services by assisting them with Legal Aid application forms or making 'warm' referrals. Follow up telephone inquiries with the client then take place to ensure the client's needs have been addressed.

WestSide Lawyers are also available to prepare Minutes of Order free of charge should the parties seek to file their Parenting Plans. Referrals to the FRC from the Federal Circuit Court are given priority.

## **Family Violence**

One of the most significant factors affecting Aboriginal and non-Aboriginal families in the northern region of the State is family violence. Where family violence has been reported (generally through the Intake and Assessment sessions) a decision as to whether or not to mediate depends on a number of factors. First, the safety of the party or parties and their children, whether it is in the best interests of the children and what model of mediation may be employed to ensure the safety and comfort of the parties, the practitioner and FRC staff. Other considerations are whether there is a pattern of violence (for example, does the victim move from one abusive relationship to another), and have the children been exposed to violence or high conflict and what support services are available to assist the family? Centacare Catholic Family Services Country SA and UnitingCare Wesley Country SA provide a number of support services across the region, with the Family Violence Aboriginal Legal Service also providing legal services to Aboriginal victims of family violence across the region.

Through the intake and assessment sessions, FDR practitioners have estimated that around 75 per cent of FRC clients across our outreach region have been exposed to family violence, with many women having experienced significant levels of physical violence, including strangulation, kicking, punching and rape. Other forms of violence reported include emotional and financial abuse. Often children are involved in the violence, either directly or as witnesses to the violence. Many women are reluctant to acknowledge violence or abuse or report it. There are a significant number of women who are unaware that emotional and financial abuse are now included in the Family Violence Act 2012 and are taken into account when the court makes orders with respect to children.

Other factors which impact on families in the region are drugs and alcohol, mental health, youth suicide and family transience (particularly in the Aboriginal communities) and youth unemployment.

## **FDR Practitioners**

To be accredited as a family dispute resolution practitioner under the Accreditation Standards set out in the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*, a person must meet specific criteria, including appropriate qualifications and competencies. For example, the person must have a degree in law, psychology, social work, conflict management, mediation or dispute resolution or a Vocational Graduate Diploma in a field or discipline that is relevant to the provision of FDR. That diploma may be delivered by a registered training organisation. The cost of accreditation varies, however, FRC Port Augusta practitioners are trained by Relationships Australia SA through its training arm, the Australian Institute of Social Relations, at a cost of approximately \$5,750 per person for a full qualification which takes six months to complete, unless they meet Recognised Prior Learning requirements.

Like many FRCs, the demand for accredited FDR practitioners is outpacing supply, placing additional pressures on auspicing organisations. Client numbers have risen steeply in the last seven years since the Port Augusta FRC was established, but the challenge to recruit and retain professional staff remains. Increasingly, lawyers are coming into the profession placing pressure on organisations to increase wages. At this time all practitioners at the FRC Port Augusta have a background in law. All are committed to working in the community, although they could obtain work elsewhere at higher salaries. The family dispute resolution 'industry' has professionalised over the years, but wages and conditions do not reflect the level of qualifications and experience required. Additional costs of FDR practitioners maintaining accreditation are met by the auspicing agency, including training and attending conferences.

Draft recommendation 8.5, 'that Australian law schools should ensure core curricula for law qualifications encompass the full range of legal dispute resolution options' is certainly worth consideration. It may place family dispute resolution as a valued career pathway for new lawyers, particularly those who aspire to practising family law; it would legitimate non-adversarial ways of resolving family disputes and it would assist FRCs in recruitment of FDR practitioners. For lawyers who remain in the profession including family dispute resolution in legal education would enable them to provide their clients with a range of options rather than seeing court as the first option. A cultural shift would surely be the result, with lawyers also becoming more aware of the support services suitable for their clients and their families.