Family relationship centres (FRCs) are required to liaise and work with local communities to provide services relevant to those communities. Among other things, FRC staff and processes must take account of and be sensitive to the cultural backgrounds of clients. This has led many FRCs to begin to develop innovative approaches to assist and provide family dispute resolution to Indigenous and culturally and linguistically diverse communities. The University of Western Sydney is a consortium partner with CatholicCare and Anglicare, which manage family relationship centres in Bankstown and Parramatta respectively. These agencies have initiated research, still in progress, to develop culturally responsive family dispute resolution (FDR). This paper will synthesise some of the issues identified in the literature to provide a framework for thinking about how FRCs, and other services in this sector, might provide culturally responsive FDR.

“Cultural responsiveness” in the context of service provision is the active process of seeking to accommodate the service to the client’s cultural context, values and needs. The rationale for this is not only to ensure appropriate and effective service provision, but also to give practical effect to the goals of substantive equality and justice (Australian Law Reform Commission, 1992). As Ayelet Shacher has observed, this is a demanding task requiring the reconciliation of “potentially conflicting goals of respecting difference, protecting rights, facilitating equality, and nurturing our shared citizenship” (Shacher, 2001, p. 297).

There is significant potential to respond to a family’s cultural context in family dispute resolution. This potential is grounded both in FRC operational requirements to engage with and respond appropriately to diverse clients, and in the very nature of processes such as FDR, which can be tailored to suit each family. The flexibility is facilitated in part by the statutory emphasis on the best interests of the child, and the principle that children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture) (Family Law Act 1975 (Cth), s.60C(2)(e)). However there are also limits to this potential, including:

- the readiness of families from culturally diverse backgrounds to engage with FRCs;
- the increased prescriptiveness of the Act about the FDR process and the framework for reaching parenting agreements;
- the challenges of developing cultural competence among a large number of family dispute resolution practitioners (FDRPs) with differing levels of expertise who may be practising various models of FDR; and
- the operational context of FRCs where there are, in some centres, significant resource limitations and high demand for the free 3 hours of FDR.

There are a number of ways FRCs may provide culturally responsive services and family dispute resolution and many FRCs are exploring how best to respond to their particular communities. Different approaches to cultural responsiveness are considered below.

**Culturally immersed practitioners**

Many FRCs have sought to employ multi-lingual and ethnically diverse practitioners and staff. This practice enhances the possibility that FRC clients will be assisted by professionals who share or who are immersed in a common cultural context. Some FRCs have partnered with agencies such as migrant resource centres and, among other strategies, are training centre workers to be bilingual and bicultural mediators (Flahavin, 2008). In one evaluation of an Aboriginal and Torres Strait Islander family program, the availability of culturally immersed mediators received mixed responses. While nearly half the respondents indicated that having an Indigenous mediator made a difference, with one respondent stating that “it was so much easier to talk—we didn’t have to lay out or the explain the unwritten Kooris laws” (Cuneen, Luff, Menzies, & Ralph, 2005), the other half said it made no difference. The evaluation of the program concluded that “it might be more important that the service is Indigenous rather than that the mediators be Aboriginal themselves” (Cuneen et al., 2005). An Indigenous mediation service can be identified by policies and...
processes adapted to the specific circumstances of Indigenous people, and by the field officers who are responsible for encouraging Aboriginal people to use the mediation program (Cuneen et al., 2005).

Culturally competent services, practitioners and processes

Culturally competent services

Sawrikar and Katz (2008) suggested that “culturally competent service providers are those who are aware of differences without making people feel different” (p. 14). They argued that cultural competence requires that service providers develop several capabilities:

- staff should be aware of cultural norms, values, beliefs and practices within a cultural group;
- they need to be able to respond sensitively to clients with an understanding of how cultural diversity expresses itself among individuals within a cultural group; and
- staff should also be conscious of their own cultural norms and that of their professional practice (Sawrikar & Katz, 2008).

The little data we have on the engagement of culturally diverse families with the family law system suggests they are proportionally over-represented in litigated disputes concerning children, but under-represented as clients of family mediation (Hunter, 1999; Love, Moloney, & Fisher, 1995; Moloney, Fisher, Love, & Ferguson, 1996). This is confirmed by demographic data. While nationally 16 per cent of people speak a language other than English at home, only 8 per cent of FRC clients were born in countries where the lowest proportion of people speak English well (FaHCSIA, 2009; Australian Bureau of Statistics [ABS], 2007). So where they have a choice, it appears that disputing parents from culturally diverse backgrounds do not generally seek the assistance of family law professionals, including mediators.

FRCs need to understand whether parents from specific cultural communities in their catchment area would be likely to use FRC services and how best to engage with them. This requires outreach to communities and other agencies in order to:

- build trust and develop partnerships;
- see if parallel community dispute resolution processes exist;
- assess the need for further understanding of family law processes;
- discuss how FRCs may assist separating parents in that community; and
- decide what FRCs could do to facilitate this (e.g., information campaigns, further relationship building, training community members, etc).

Sawrikar and Katz (2008) recommended that family service providers partner with organisations such as migrant resource centres to access advice about how to provide more holistic and appropriate support to culturally diverse families, and several FRCs have done this.

Culturally competent family dispute resolution practitioners

There is no requirement that family dispute resolution practitioners develop cultural competence, although more effective practitioners will do this. The FDRP registration requirements make awareness of cultural contexts optional. The Australian National Mediation Standards (Practice Standards), under which many practitioners will operate, are minimum standards that require mediators develop knowledge of “cross-cultural issues in mediation and dispute resolution”, and be able to “support parties in assessing the feasibility and practicality of any proposed agreement” taking account of “cultural differences and where appropriate, the interests of any vulnerable stakeholders” (National Alternative Dispute Resolution Advisory Council, 2007, pp.10–12). To develop the cultural competency of their

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2 Place of birth is, of course, a very crude cultural indicator, as is language spoken. (See ABS, 2000).
3 See, for example, the strategies developed by the Family Court of Australia (2008).
5 Only FDRPs registered on the Commonwealth Attorney-General Department’s Family Dispute Resolution Register may issue certificates under s.601 of the Family Law Act 1975. National Mediator Accreditation System accreditation does not give practitioners this ability.
FDRPs, FRCs will need to devise an ongoing program of staff development which includes different forms and sources of cultural awareness training, develops ongoing relationships with local communities and agencies and encourages reflection on professional practice.

**Culturally competent processes in FRCs**

Elements of a culturally responsive family dispute resolution process within Family Relationship Centres might include:

**Intake**

FRC operational guidelines instruct that intake staff must “take account of and be sensitive to the cultural backgrounds of clients” and identify any “barriers which need to be overcome before a client is able to benefit from the services offered” (Attorney General’s Department, 2006, p.8). Fundamentally, intake staff must be able to focus on the client as an individual, with sufficient awareness of cultural contexts, their relevance and an ability to probe these. Intake officers should ask whether the client would benefit from the presence of family or other support. They need to recognise that second language competence may be compromised during times of stress and that an interpreter or cultural facilitator may assist. Ultimately however, language facility may be less significant in family disputes than “an awareness of shared cultural and religious perspectives” and an interpreter may not always accurately convey these (Dimopoulos, 1998, p.379).

**Assessment**

Statutory rules require that before providing FDR, an FDRP must assess the parties’ suitability for FDR, taking into account the parties’ capacity to freely negotiate in light of any history of violence, their health, safety, and equality of bargaining power, and “any other matter” considered relevant (Family Law Regulations 1984 (Cth). r. 62(2)). The cultural dimensions of potential gendered (and other) power differentials must be considered in assessing clients’ capacity to freely negotiate. FDRPs need to be aware of the personal, cultural and religious, language and structural factors that may inhibit women from culturally diverse backgrounds identifying and disclosing violence, and should adapt screening tools and questioning accordingly (Mouzos & Makkai, 2004; Rees, 2004).

**Preparing for the process**

If clients are assessed as suitable, practitioners may need to consider a number of culturally relevant factors to “ensure that the family dispute resolution process is suited to the need of the parties involved” (Family Law Regulations 1984 (Cth). r. 64). These could include: cultural communication patterns; concepts of self, time and space; attitudes to the role, gender, age and cultural background of third parties; and approaches to conflict, problem solving and compromise (Boulle, 2001; Fisher & Brandon, 2009). FDRPs will need to ensure parties understand the FDR process, the role of the practitioner, and the self-determinative role of parties in FDR, particularly where mediation may be culturally unfamiliar. FDRPs should also inquire whether clients understand the best interests principle and explore cultural expectations of child-rearing and development (Family Court of Australia, 2008; Hand & Wise, 2006). Many FRCs require parties to attend group information sessions to encourage parents to focus on their children’s needs, and the cultural fit and context of such programs and groups sessions will need to be explored with each party. These matters indicate that a longer period of preparation for the process may be needed where parties are from culturally diverse backgrounds.

**The FDR process**

Mediator neutrality rests on its claims to impartial and ethical practice and capacity to ensure fair process. Because of the broad range of FDRP statutory obligations created by the Family Law Act and Family Law Regulations, outlined below, FDRPs cannot necessarily assure clients of their impartiality in the sense of freedom from bias. They can, however, ensure fair management of the FDR process (Cooper & Field, 2008). This requires particular practitioner skill and vigilance in a cultural context. They must confirm parties’ informed consent to the process and voluntary and informed agreement to the outcome; ensure equal time to speak and to be heard; monitor communication patterns; manage power imbalances; recognise vulnerabilities; and maintain safety protocols.

These demands are overlaid with obligations under the Family Law Act to inform parties that they “could consider” developing a parenting plan and the option of an arrangement where children spend equal time with each parent or substantial or significant time with each parent, unless this is not reasonably practicable or not in best interests of children (Family Law Act 1975 (Cth) s.63DA). The extent to which FDRPs routinely do this in practice is not known, as...
many of the disputes coming to FRCs are highly conflicted and may therefore be unsuitable for such arrangements. Practitioners need to balance these statutory expectations with the parties’ cultural parenting practices, whilst ensuring any agreement they make is also in their children’s best interests. This is a fluid concept, so practitioners have some latitude to reconcile the statutory emphases with their own evaluation of the most appropriate parenting arrangement for particular children following separation and any cultural parenting practices relevant to the family.

FDRPs are also required to facilitate an outcome which promotes a child’s right to enjoy his or her culture (Family Law Act 1975 (Cth) s.60B(2)(e)). Research suggests that children from culturally diverse backgrounds often feel caught between cultures, and are concerned about conflicting cultural expectations (Chuan & Flynn, 2006; Kids Helpline, 2000). Where possible and appropriate, these issues should be explored with children and with parties. This might include inquiring about the role of the extended family and the significance of cultural events, and assisting parties to develop flexible, open arrangements about location, timing and length of visits and associated costs (Gibbs & McKenzie, 2006; see also Family Law Act 1975 (Cth) s.63DA(3)).

Culturally competent services and practitioners supporting informal community FDR processes

It may be that genuine responsiveness to culture in the context of FDR is best achieved by supporting or working with existing community dispute resolution practices. Informal dispute resolution systems, often based on community customs or familial relationships, may have a greater impact on the lives of those who use them than formal state-sanctioned systems (Macfarlane, 2007). Some FRCs are working with leaders from ethnically diverse communities to determine how the FRC can best support existing community dispute resolution processes for families. In another context, the Australian Human Rights Commission (2009) is currently exploring how quality frameworks might support alternative dispute resolution processes in some Australian faith communities.

Conclusion

The literature suggests that accommodating culture in the resolution of parenting disputes will be a challenging and complex process. The possibilities outlined here are just that—possibilities. Experience and research may identify the value and limitations of particular approaches, but they will only ever be a guide to practice. Ultimately, the value and relevance of culturally responsive family dispute resolution will need to be worked out in collaboration with each family and its individual members.

References


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