

Review of the Family Law System

Submission on the Discussion Paper 86 (DP 86)

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Megan's PhD research (completed 2016), was undertaken as part of an Australian Research Council Linkage grant awarded to Professor Halford as the Chief Investigator, and administered through University of Queensland and Relationships Australia (Queensland). Her PhD research included a randomised controlled trial of mediation aimed at enhancing mediator skills and techniques to improve outcomes for separated families.

Kim Halford is Professor of Clinical Psychology at the University of Queensland, a registered clinical psychologist, and internationally recognized researcher on couples and families He has more than 35 years experience working with couples and separated families, and has approximately 200 scientific publications on couple and family relationships, with many focusing upon work with parents and children. Kim is a Fellow of the Australian Psychological Society, the Australian Association of Cognitive and Behavioural Therapy, and the North American Association of Behavioural and Cognitive Therapies; and is a non-executive Director of Relationships Australia (Queensland).

Executive Summary

In the following submission, we have taken the opportunity to expand on those Australian Law Reform Commission proposals that we believe are particularly important to improving outcomes for separated families. In particular we suggest available evidence strongly supports the need for a more comprehensive post separation services for families with children, a more tailored approach to meet the needs of individual families, and greater attention to the need of the most high risk and disadvantage families. We have included a summary of supporting literature and a draft model that proposes a stepped model of service provision.

Proposals and Questions:

2. Education, Awareness and Information

We agree with all proposals for Education, Awareness and Information. Increased knowledge of the impact of parental conflict after separation, and availability of services is likely to enhance uptake of services by families in need.

3. Simpler and Clearer Legislation:

We agree with all proposals that endeavour to make the legislation clearer, simpler and more user-friendly.

4. Getting Advice and Support:

We agree with all proposals made regarding section 4.

Comments in regard to Proposal 4-1 and 4-3:

Proposal 4-1;

The Australian Government should work with state and territory governments to establish community-based Family Hubs, that will provide separating families and their children with a visible entry point for accessing a range of legal and support services. These hubs should be designed to:

- Identify the person's safety, support and advice needs and those of their children
- Assist clients to develop plans to address their safety, support and advice needs and those of their children
- Connect clients with relevant services
- Co-ordinate the client's engagement with multiple services

Proposal 4-3;

Families Hubs should advance the safety and well-being of separating families and their children while supporting them through separation. They should include on-site out-posted workers from a range of relevant services, including:

- Specialist family violence services
- Legal assistance services
- Family dispute resolution centres
- Therapeutic services (such as family counselling and specialised services for children)
- Financial counselling
- Housing assistance
- Health services (such as mental health and alcohol and other drug services)
- Gambling help services
- Children's contact services

- Parenting support programmes, or parenting education programmes (including a program for fathers).

Comment:

We agree with the proposal regarding the implementation of a Families Hub to facilitate the safety and well-being of separated families before, during and after the separation process. We strongly support the implementation of an accessible hub for families as fragmentation of services can lead to poor uptake of needed services.

Meta-analysis of the available evidence suggests that, on average, parental separation is associated with negative outcomes for children such as reduced educational attainment, more negative parenting and parent-child relationships, and more child internalizing and externalizing problems. Studies (Bierman, Fazio, & Milkie, 2006; Lorenz, Wickrama, Conger, & Elder, 2006; Hughes & Waite, 2009) and meta-analysis (Amato, 2010) also find that, on average, relative to men and women in intact couple relationships, separated men and women have lower levels of physical and mental health and that in the long term, people who divorce and remain single are somewhat more likely to be poor, less satisfied with life, and lonelier in later life, than those who remained married (Caruana, 2011). While these effects tend to be small (Amato, 2010), it is possible that a high-risk subgroup within these samples experience more of the negative consequences and with a greater intensity.

There is also a substantial over-representation of adults and children from separated families among the general population who suffer from serious problems. For example, relative to adults and children from intact families, adults and children from separated families are two to three times more likely to be diagnosed with depression, to have substance abuse problems, or to be in poverty (Amato, 2010). This over-representation of separated families in those with severe problems points to the need to identify what might account for the severe negative outcomes for a subset of separated families.

Contemporary perspectives conceptualize family separation as a process of transition and that people respond to this process quite differently. Amato (2000) proposed a stress-adjustment model of separation, which emphasizes the role of multiple moderators and mediators that shape individuals' adjustment after separation. The most influential

moderators that attenuate the impact of separation include access to interpersonal resources (e.g., family relationships and support), and economic resources (e.g., education, transport, government support for child care and access to affordable health care). Crucial mediators of adjustment include conflict with the former partner, and the individual's interpretation of the meaning of separation (e.g., relief from escaping a negative relationship, versus a sense of loss or rejection). The stress adjustment model emphasizes separation as a being a series of changes across time, and that adjustment across time reflects the balance of protective factors and risk factors.

Healthy adjustment to separation is characterized by managing physical and mental health and wellbeing, parenting competently at home, functioning at work and leisure, managing the responsibilities of competing roles and the development of an independent identity, free from the marital relationship (Kitson & Morgan, 1990). In contrast, maladjustment is characterized by the presence of anxiety, depression and emotional distress, loneliness and an inability to engage with social networks (Kitson & Morgan, 1990; Birnbaum, Orr, Mikulincer, & Florian, 1997).

Experiencing some conflict is an inevitable part of family life, but certain types of parental conflict are particularly harmful to children. Children experience stress, unhappiness, fear and insecurity when parents engage in hostile communication (Maccoby & Mnookin, 1992) and the presence of parental conflict *both in intact families and in separated families* reliably predicts poor psychological wellbeing, parent child relationships, and child adjustment (Cummings & Davies, 2002; Amato, 2010). Parental conflict is also associated with poorer sibling and peer relationships (Stocker & Youngblade, 1999).

Parental conflict can be categorized into two distinct types: constructive or destructive. Constructive conflict is characterized by parents demonstrating mutually supportive behaviors; by supportive behavior by the parents toward the child around the conflict, such as the provision of explanation or meaning about the conflict to children; and parental resolution of the conflict; all of which are likely to elicit positive reactions from children such as happiness and understanding (Cummings, Goeke-Morey, & Papp, 2004; Goeke-Morey, Papp, & Cummings, 2013). In contrast, destructive conflict is characterized by verbal and physical aggression between parents; a lack of resolution of the dispute; parental withdrawal from each other and the children; which evokes negative behaviors from children such as anger and sadness (Cummings et al., 2004; Goeke-Morey et al., 2013).

Research shows that many separating families experience interparental conflict during the separation period which can continue for many years after separation (Amato, 2010; Morris, Halford & Petch, 2018). While most families adjust to their separated lifestyles after 2-3 years (Lucas, 2005), approximately 10% to 15% of separated families remain highly conflicted 3 or more years after separation (Hetherington, 2003), with inter-partner violence and family violence common in these highly conflicted separated families (Morris, Halford, Petch & Hardwick, 2016; Kaspiw et al., 2015).

The high number of separated parents using mediation facilities or making applications to court for parenting disputes, is evidence that many separated parents struggle to adjust to parenting their children between newly separated adults and households. Not only do a majority of mediating parents report high levels of interparent conflict, many separated parents also report that they are under financial duress and that they and/or their children suffer from high levels of psychological distress (as measured by anxiety, stress and depression levels) (Morris, Halford and Petch, 2018). Research has shown that for many separated parents, these high levels of acrimony and psychological distress do not significantly decline even after parenting agreements have been mediated or court orders issued (Morris, Halford and Petch, 2018). In addition to experiencing conflict and psychological distress, separated parents also report high levels of child adjustment issues in comparison to non-separated parents (Morris, Halford and Petch, 2018).

After separating, separated parents have to renegotiate their co-parenting responsibilities and adjust their parenting behaviours to their newly separated lifestyle. Co-parenting between households can lead to the exposure of further differences between co-parents in parenting behaviours and values, which can then create further conflict between the separated parents.

The well-being of the separated family members and their family system depends on the quantity and quality of stressors to the separated family (such as poor financial resources, conflict, co-parenting dissonance, a lack of parenting skills, psychological distress, and acrimony) and the quantity and quality of protective factors (such as high co-parent communication, low acrimony, extended family involvement and social support). Amato's model (2010) of stress and divorce depicts a higher likelihood of negative psychological and psychosocial consequences for families with greater stressors and less protective factors,

than those separated families with fewer stressors and more protective factors. It is also plausible that by minimising the quantity and quality of the separated parent's stressors (ie. reducing psychological distress and improving parenting knowledge and behaviours), and increasing the protective factors, that the interparental conflict will be significantly reduced.

To date, there is no known single intervention that significantly reduces the level of conflict between separated parents. However, there are evidenced-based psychological interventions, that have been proven to assist people to minimise psychological distress (eg. Cognitive Behavioural Therapy, Emotion-Focused Therapy) and to upskill parents with helpful parenting education and behaviours (eg. Triple P, Parenting under Pressure, Parenting Interaction Therapy), thereby creating a greater likelihood of improving parenting, and minimising the negative psychological impact on children from separated families.

Our Model of Family Support:

We propose that conflicted parents who connect with the proposed Families Hub, are offered a stepped process of support, providing family members with evidenced-based interventions that aim to upskill their parenting behaviours and minimise their psychological distress. It is suggested that this process begin with a brief assessment of family members that uses systematic measures of both a quantitative and qualitative nature. Such an assessment process would enable nationwide comparison of data, standardised scoring and the opportunity to collect outcome data. All of which are imperative for providing a service that can be continually measured and therefore systematically enhanced.

The proposed stepped model of family support presented below has been configured on the basis that the parent initiating contact with the Families Hub has done so with the objective of seeking mediation for parenting issues. However, as the concept of the Families Hub has been proposed as being a contact point for a range of family support services, it is conceivable that the parent initiating contact with the families Hub may not be seeking mediation, but initiating contact for another service. In which case, the steps involving the mediation process (5, 5A, 6 & &), may be removed from the stepped process.

It is suggested that for each of the family support services provided by the Families Hub facility, the stepped process provide a range of options for the clients from short

educational sessions to intense therapeutic intervention. For example, a range of interventions for better managing conflict between co-parents might include:

- a) A short educational session outlining the impact of conflict on adults and children along with key strategies for minimising conflict
- b) A series of sessions that include both educational components, key strategies and skills-based conflict coaching
- c) A series of sessions that include educational components, strategies, skills-based conflict resolution coaching and a series of individually tailored counselling sessions

Clients who endorsed items on their assessment that indicate a moderately conflicted co-parent relationship might complete only step A, while clients who endorsed scores indicative of a highly conflicted co-parent relationship are more likely to require the more intense assistance available with step C.

The first step in the model of family support is the client engagement with the Families Hub. Step 2, the assessment, is ideally completed online in the comfort of the parent's home. However for those parents who do not have access to an online facility or do not have a home environment that supports them to complete the assessment, then assessment could also be made available at the venue by paper and pen or Ipad.

It is also proposed that these assessments be evidenced-based quantitative measures for key stressors to the family well-being and the family system. Examples of known stressors include family violence, financial pressure, acrimony, depression, anxiety, stress and parenting behaviours.

Step 3 is the provision of a face-to-face feedback session to the family member/client. Similar check-ups with intact couples have been shown to significantly improve intimacy, satisfaction and acceptance in the couple relationship partners (Cordova et al., 2014). This feedback session is ideally performed by a qualified psychologist/counsellor, who has received specific training in providing feedback to clients and assisting them with prioritising their concerns. After providing results of the online assessment, the counsellor then encourages the clients' perspective of the results. The aim of the discussion between parent and the counsellor is to plan a pathway for providing the

services desired by the client and additional support services to minimise any stressors that clients have indicated as negatively impacting their own or their family's well-being.

Step 4 is the implementation of the support service or intervention as identified by the parent and the counsellor in step 3. The nature and number of sessions to be completed by the parent in the primary intervention is dependent on the issue identified. For example, the intervention may consist of a referral to a financial counsellor, a series of psychological sessions targeting anxiety or a course of education or parenting skills and behaviours.

Steps 5-7 are all concerning mediation and are to be completed according to the guidelines and risk assessments for family mediation.

Step 8 is a follow-up service that allows the parent, after receiving their initial support intervention, to speak with a counsellor, provide feedback on how helpful the intervention has been and discuss their progress to date. Also in this review, the counsellor has the opportunity to organise the client's engagement with a new service or to assist them pursuing further assistance on the same issue.

Model of family support; (Morris and Halford).

1. Family member initiates contact with agency	
2. Family member completes online Assessment	2. The assessment is comprised of evidenced-based measures for psychological distress, acrimony, family violence, parenting behaviours. The assessment is scored and a feedback session is prepared.
3. Face-to-face feedback session	3. The family member is provided with their results for each of the concepts assessed. Scores that fall in the higher ranges of risk/concern are further discussed with the family member, and they are offered appropriate support services to address the areas of concern.
4. Intervention	4. The family member receives the appropriate intervention for the concern they have chosen to address. Eg. psychological counselling for anxiety.
5. Intake Session for Mediation	5. If the family member is seeking mediation and the mediator and the family member are comfortable to proceed with family mediation, a mediation intake session is completed with the initiating parent.
5A. After assessment for suitability, mediator invites second parent to mediation. Second parent begins process from step 1.	5A. Second parents is invited to mediation and begins the stepped process from step 1.
6. Mediation (1 or 2 sessions)	6. Mediation proceeds after assessment for suitability by the mediator and both parents have indicated they are comfortable to proceed.
7. Mediation Follow-up session	7. A mediation follow-up session takes place at a time mutually agreed upon by the clients and the mediator to check-in on the success of parenting arrangements or make adjustments if necessary, or decide on an alternate course of action.
8. Further intervention and or warm referrals to additional support services	8. Further support interventions are provided to family members to assist them to maintain their parenting plans and improve their general well-being.

5. Dispute Resolution:

We agree with all proposals made in regard to section 5.

6. Reshaping the Adjudication Landscape:

We agree with the proposals for section 6.

Comment to proposals 6-9 and 6-11:

Proposal 6-9:

The Australian Government should develop a post-order parenting support service to assist parties with parenting orders to implement the orders and manage their co-parenting relationship by providing services including:

- Education about child development and conflict management
- Dispute resolution
- Decision-making in relation to implementation of parenting orders

Proposal 6-11

The proposed Family Law Commission should develop accreditation and training requirements for professionals working in the post-order parenting support service

Comments:

In our study of parents engaged with family mediation in Australia (Morris, Halford and Petch, 2018) parents continued to report elevated levels of acrimony and psychological distress after mediation. It is likely that many agreements will collapse if conflict persists. The high rate of demand for parenting order programs, which are designed to educate and support separated parents maintain their court ordered co-parenting arrangements, are evidence that many parents fail to uphold their court ordered parenting arrangements (Relationships Australia Queensland, 2014).

Post separation co-parenting education programs designed to assist parents uphold their agreements and manage conflict more effectively could be delivered after mediation or court orders are issued.

It is suggested that after receiving parenting arrangements, parents contact the Families Hub facility (or a designated service provider) and complete a brief assessment that will help identify their needs and shape their support and treatment path. After completing the assessment, it is proposed that the parents then receive a feedback session followed by a stepped process of support. The stepped service approach that was outlined in our response to proposal 4.3 follows.

It is suggested that for each of the family support services provided by the Families Hub facility, (eg. conflict management, parenting behaviours, co-parenting communication, managing emotions) the stepped process provide a range of options for the clients from short educational sessions to intense therapeutic intervention. For example, interventions for co-parenting after separation might range from:

- a) A short educational session outlining the key components of court orders and the repercussions of non-compliance to court orders, the impact of conflict on adults and children along with key strategies for being a child-focused co-parent
- b) A series of sessions that include education regarding parenting orders and adjustment to separation and co-parenting routines, learning and rehearsal of key strategies for co-parenting and skills-based parenting coaching
- c) A series of therapeutic sessions that include educational components, strategies, skills-based parenting behaviours and individually tailored counselling sessions

Clients who endorsed items on their assessment that indicate moderate co-parenting concerns might complete only step A, while clients who endorsed scores indicative of problematic parenting behaviours are more likely to require the more intense assistance available with step C.

This stepped process of support can be implemented at a designated facility such as the proposed Families Hub. The first step in the model is the client engagement with the Families Hub. Step 2, the assessment, is ideally completed online in the comfort of the parent's home. However for those parents who do not have access to an online facility or do

not have a home environment that supports them to complete the assessment, then assessment could also be made available at the venue by paper and pen or Ipad.

It is also proposed that these assessments be evidenced-based quantitative measures for key stressors to the family well-being and the family system. For example, family violence, financial pressure, acrimony, depression, anxiety stress and parenting behaviours.

Family consultants can assist parents to manage co-parenting orders after they have received their final parenting orders. This support may occur in the form of adjustment counselling to assist parents individually accept and cope with their newly separated lives, or managing different parenting styles and the integration of new partners. Step parents experience higher levels of stress than biological parents (Shapiro, 2014) and this can create further layers of complexity to assisting separated families. Parental counselling and support may include an opportunity for the family consultant to monitor and discuss parenting across the two homes and the provision of an objective sounding board for parental decision making.

Family consultants can also provide monitoring of adjustment issues for children of separation, particularly while parents are trialling parenting plans and new parenting agreements. They can provide valuable objective feedback to parents concerning a child's coping ability and help parents increase appropriate moderators that buffer negative consequences of separation.

Finally, family consultants can monitor the family's engagement with their support interventions and assist them with choosing helpful pathways for improving their family communication, and co-ordinating their parenting between parents.

Accreditation of Family Consultants:

Comment: The university sector is strongly positioned to provide accreditation and training of family consultants. In the development of accreditation for family consultancy, consideration should be made to how such training might be articulated with existing professional training in relevant professions like psychology, social work, and law. For example, family consultant training might be offered as an extra program of professional

training, building upon existing professional skills in each of these disciplines, and recognized as an area of advanced professional practice in existing professions.

It would be important that the proposed training programmes for accreditation of Family Consultancy have sector advisory bodies to inform and guide sector needs. The model used by most professional training programs at universities in Australia includes an independent accreditation body. For example, the Australian Psychology Accreditation Council accredits psychology degrees, and the Australian Medical Council accredits medical training programs.

There are many advantages to developing accreditation for Family Consultancy roles which could be experienced at the individual, the family and the community level and have the opportunity to create health and economic benefits to society. These advantages include standardising benchmarks for treatment and support pathways for separated families, providing opportunities for measuring the lifestyles and well-being of separated families, providing opportunities to enhance programs for support and assistance, providing a seamless path of support for children and adults experiencing difficulty during and after separation, developing increases to funding, research and training of family consultants, and the provision of more qualified professionals across Australia to assist with enhancing the outcomes of separated families.

7. Children in the Family Law System:

We agree with the proposals made in section 7, particularly with respect to the need to provide children, where practicable with age appropriate opportunities to express their views. We note that there are a range of models of child involvement in post separation services (McIntosh, Smyth, Kelaheer, Well & Long, 2010), and further research is required to determine which might be the most appropriate models.

8. Reducing Harm:

We agree with all proposals for reducing harm in the family law processes. We also note the need for psychometrically sound methods of screening for harm risk.

9. Additional Legislative Issues:

We agree with the proposals in section 9.

10. A Skilled and Supported Workforce:

We agree with all proposals in section 10.

11. Information Sharing:

We agree with proposals made in section 11.

12. System Oversight and Reform evaluation:

We agree with proposals made in section 12.

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