

Maximising Children's Interests After Parental Separation - The Australian Experience.

This briefing gives an overview of policy developments in Australia aimed at maximising the interests of children when their parents separate. It touches on issues common to a number of countries, in particular attempts to promote a more conciliatory approach through the provision of early intervention and education programmes, alternative dispute resolution services and specific services for men. It discusses the re-focusing of counselling and mediation programmes and describes some initiatives targeted at the resolution of more difficult situations such as continuing disputes over children and situations where safety for one or more family members is endangered.

Key Points

- The use of legal processes alongside therapeutic interventions characterises the Australian approach to parents separating.
- No legal distinction is made between children from marital or non-marital relationships. All parents have the same responsibilities, unless it can be demonstrated that this is not in the child's best interests.
- The needs of separating parents are diverse and a wide range of co-ordinated services are required. Where there are on-going disputes, a co-ordinated approach in which families are offered a suite of services is demonstrating promising results.
- Parents are concerned about the impact of conflict on their children. They found the most helpful intervention was mediation or counselling that consulted children and addressed their needs.
- Balancing the child's rights with the rights and needs of other family members is a central concern of Australian family support organisations.
- Mediation services are available to most separating couples and have been funded generously by government. However, the take-up of these services by separating couples is low.
- Support and empowerment for many separating parents may come primarily from information, advice and direction rather than from participation in the mediation process.
- At separation, men's risk of suicide is nine times that of women's, and specific services have been targeted at them.
- Services are being reorganised, planned on the basis of need and funded in the non-government sector by government funding. There is an emphasis on evidence-based practice and outcome based funding.

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Relevant History/Statistics

In 1975, legislation was passed to promote a more conciliatory approach to divorce. The main changes were:

- Allowing only one ground for divorce - the irretrievable breakdown of the relationship, commonly referred to as “no fault” divorce. Divorce to be filed for after one year of separation.
- Promoting a combined therapeutic/legal approach to divorce by establishing a specialised Family Court which incorporated a comprehensive counselling service, as well as the use of conciliation and arbitration conferences for dispute resolution purposes. Separating couples could use the Family Court counselling service, whether or not they filed a dispute, although this is no longer the case.
- Establishing marriage/relationship counselling within a legislative and publicly funded framework. This has resulted in a strong network of non-government organisations known as the Family Relationship sector, which now deliver a broad range of coordinated services.

As a result of these changes, about 50% of separating couples access the Family Court and about 95% of these couples reach resolution by agreement. Not all of these disputes involve children (Nicholson 2002).

Recognising that approximately 30% of Australian children are born out of wedlock, no legal distinction is made between children born to married or unmarried parents, and unmarried couples with children can access services in the same way as those who are married. In 1995 the Family Law Act, was amended to underline the rights of children as a result of the adoption of the UN Convention on the Rights of the Child.

There are 27,500 divorces per year involving children under 18, amongst a population of around 19 million. However, the Child Support Agency, which is the main government institution that oversees child support collection from the non-resident parent, has 50,000-70,000 new cases per year, excluding cases that start again. This is probably related to the growth in non-marital relationships, pointing to the possibility that there is major change occurring in how people are conducting their relationships in Australia. We know very little about these relationships (AIFS).

These shifts in legislation and the nature of relationships have led to a reorganisation of services, rethinking of ways they are delivered, and reflection on what works best for different members of separating families. Services are being reorganised, planned on the basis of need and funded in the non-government sector by government funding. There is an emphasis on evidence-based practice and outcome based funding.

Supporting families in change: a shift in focus.

Organisations offering relationship counselling, education and mediation have significantly refocused their practice away from the couple, towards a focus on children and families, while also broadening the type of programmes offered. Feedback from parents who used these services confirmed that most were concerned about the impact of their conflict on their children and stated that they received more benefit from counselling or mediation when their children’s needs were addressed and when children were consulted directly. However, there was a major gap between the services parents said they wanted and what was on offer from Family Relationship organisations (Attorney General’s Department 1998). Parents wanted more assistance to help them support their children through the separation, while they also wanted specific services for the children themselves.

The re-focusing of many family relationship organisations from an adult focus to one that is child inclusive has resulted in a number of innovative service initiatives (Commonwealth of Australia 2002a). Organisations that have traditionally offered only individual and couple counselling, now offer counselling for children, children’s separation programmes and family counselling. The types of counselling being offered have also expanded. Positive parenting programmes after separation have also been established and linked to alternative dispute resolution programmes, while a number of models trialling children’s involvement in the mediation process have been developed. Many of the larger organisations have contact centres attached to them as it seems that this type of service functions better when it is embedded in a network of other family relationship support services (Commonwealth of Australia 2000a) and is viewed as a professional service with clear service standards. Some organisations have developed comprehensive domestic violence programmes for the whole family including children (Commonwealth of Australia 2002b), some of which are linked to mandatory group programmes for male perpetrators.

Including children, focusing on families

There have been many conflicts over what the term ‘the best interests of the child’ means. Traditionally, many practitioners working in relationship counselling have worked from a practice model that defines the presenting person or persons (usually a couple) as the client. Moving towards a more child inclusive practice model has meant making a shift to seeing the whole family as the client, regardless of whether all members of the family are seen. Practitioners now think about and raise the long-term consequences for all family members. At a minimum practitioners now raise issues with parents about how their relationship issues are impacting on their children while at a maximum children may be seen individually or with their families. Thus it has become critical for organisations

to address how the child's rights are balanced with the rights and needs of other family members. In practise this may be far from straightforward.

As the change process has progressed, it has become clear that couples in conflict, or in the process of separating or forming new families, need to be able to access a suite of services that will address the differing needs of family members. Sometimes a father may need to access a specific parenting after separation group for men, while both parents may need individual counselling/support. The children might need support to have their voice heard in the decision making process around the separation, or the parents might need to use a contact service to minimise conflict in front of the children.

Mediation

It has generally been assumed that separating couples should be encouraged to be less adversarial and "that the best way of doing this is to keep them out of the hands of lawyers and courts and provide them with mediation as an alternative" (Gribbens 2001). While there has been substantial government funding of voluntary family mediation, such take-up of family mediation by clients has been low. The role of mediation and where it fits within post-separation services is currently being reviewed. Support and empowerment for many separating parents may come primarily from information, advice and direction rather than from participation in the mediation process. (Gribbens 2001)

Services targeted specifically at men

The development of specific services for men was the result of a growing concern that existing services were not meeting their needs, in particular how to help men deal with separations that were increasingly being initiated by women. In general men use health and personal support services less than women but they are at more risk of suicide by a factor of nine to one when compared to women. (Commonwealth of Australia 2001)

It is now taken as a given that men do have specific relationship needs and that they can be reluctant to approach more mainstream family relationship services because they perceive them as more women-focussed. Many men are reluctant to go to counselling because they are reticent about asking for assistance.

A number of initiatives aimed specifically at men have been funded, as well as the more mainstream agencies undertaking a review of their programmes to ensure more 'men friendly' practices. These practices ranged from small issues, such as making waiting rooms more friendly by providing both women's and men's magazines, to recruiting more male counsellors and mediators, to specific training on engaging men in counselling and mediation.

Dedicated services for men, such as a national telephone counselling line for men's relationship problems, address many of the same issues as other family relationship programmes, in particular, bringing the needs of children

into focus and looking at the impact of the separation on the whole family. As in any single sex service, it is vital to find ways of addressing issues that do not polarise the couple further.

Initiatives to reduce the incidence of continuing disputes

The research literature is very clear that one of the major risk factors for children in their parents separation is on-going conflict. This places enormous stress on children, as their loyalties are often divided and they feel trapped in the middle. One of the most important objectives of social policy in this area is to reduce parental conflict. However, there has always been a small percentage of intractable disputes and the following three initiatives illustrate services that have been designed to address these.

a) The Contact Orders Pilot targets parents in continual conflict over residence and contact issues, including those who are breaching these orders. It is a comprehensive service in which a programme is tailored specifically to meet the needs of each family member. The aim is to establish agreement over contact and residence between parents and reduce the amount of conflict the child is subject to. Services provided include supervised contact, parenting groups, counselling, mediation, and children's programmes, in a combination that suits the needs of the family.

b) Mandatory parenting programmes for parents breaching contact orders is another and perhaps more controversial initiative which enables judges to order parents breaching a first and subsequent contact order to attend a post-separation parenting course. This is the result of criticism that the Family Court is not enforcing its orders and includes recourse to punitive measures, including controversially, prison.

c) As we have become more aware of issues of child abuse and domestic violence, it is becoming clear that a significant percentage of separations involve these issues. In these instances, encouraging co-parenting may not be appropriate. Indeed, in many situations it is counter-indicated. The dilemma is how to identify and expedite the management of these cases. A project fast tracking cases involving allegations of child abuse has demonstrated that early, intensive, specialised assistance, with coordination between the family and relevant other courts, dramatically improved the settlement rate in these types of cases and was more likely to ensure protection for the child (Brown et al 2002). Cases were intensively managed and handled by a judge, a registrar and a counsellor who remained involved to the end. This both provided continuity for the family itself and ensured that all relevant knowledge about the family was available.

Assessing change and future directions

In essence the policy shift in Australia has been one of promoting co-parenting post-separation by emphasising on-going parental responsibilities. Paradoxically, however, it seems that there has been an increase in disputation over contact (formerly known as access) and residence (formerly custody) and in judges granting more interim contact orders. This is the case even when there are major safety concerns, seemingly giving priority to a child's right to contact over the risk of continued intimidation or violence. There is also some evidence that shared parenting arrangements are ordered at final hearings in the cases of high conflict and where one of the parents seriously objects.

There is a debate in Australia about the reason for these negative outcomes (Rhoades et al 2000). From the Family Court's point of view, they are a consequence of the fact that the population of divorcing parents who use the Court is inherently different from the population who sort out their own arrangements (Brown et al 2002). From the government's point of view, the poor outcomes are partly due to the lack of early intervention and education, the lack of an integrated family law system, and the fact that counselling/mediation services based in the Family Court, combined with the long waiting times unwittingly encourages a litigious rather than a conciliatory approach.

The Australian experience underlines both the complexity of the needs of the separation and divorce population and the need to provide a range of interventions at different stages in the separation and divorce process. As we struggle to build a more integrated family law and support system, and promote a more conciliatory approach, it has become clear that the divorcing population is extremely diverse with a variety of needs. No 'one size fits all' policy intervention will work. However, the principle established in 1975 of providing both a legal and therapeutic approach to separation, which maximises the interests of the child and parental responsibility, underpins all new developments.

Resources and references

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This Briefing was written by Beth Seddon, honorary Research Fellow at CRFR, and author of the forthcoming book 'Creative parenting after separation' which will be published by Allen and Unwin (Australia) in March 2003. It was edited for this Briefing by Sarah Morton, Kathryn Backett-Milburn and Fran Wasoff

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