Foreword

Following a federal government inquiry into family law, a network of 65 new Family Relationship Centres was established throughout urban and regional Australia between 2006 and 2008. Family Relationship Centres provide information, referral and assistance to all families to strengthen family relationships and family dispute resolution services to separating families to assist resolving disputes about how children will be cared for following separation.

In 2008 CatholicCare Sydney and Anglicare as lead agencies formed the Family Connections Consortium with the University of Western Sydney and Interrelate Family Centres. The consortium was successful in the Commonwealth Government application for funding process to establish the Family Relationship Centres in Bankstown and Parramatta in Sydney. Both of these localities are characterised by high levels of cultural, linguistic, ethnic and religious diversity, as well socio-economic disadvantage. As a commitment to making these new services accessible and responsive to our communities, CatholicCare Sydney and Anglicare initiated a research project with consortium partner the University of Western Sydney. A key focus of the research was examining what Family Relationship Centres can do to enhance their services for people from culturally and linguistically diverse communities, and to identify the core components of effective culturally sensitive family dispute resolution practice.

We would like to extend our appreciation to the Australian Government for funding the project and to the work of Dr Sue Armstrong in conducting the research and preparing this report. We would also like to acknowledge the significant support of our local community partners and our staff. This research project will make an important contribution to informing the practices at the Bankstown and Parramatta Family Relationship Centres. It will also add to the store of knowledge in the sector in designing our services and practices to better respond to the needs of families from culturally and linguistically diverse backgrounds.

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Anglicare
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<th>Description</th>
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<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>ALRC</td>
<td>Australian Law Reform Commission</td>
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<tr>
<td>ATSI</td>
<td>Aboriginal and Torres Strait Islander</td>
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<tr>
<td>CALD</td>
<td>Culturally and linguistically diverse</td>
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<tr>
<td>CICMA</td>
<td>Commonwealth Interdepartmental Committee on Multicultural Affairs</td>
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<td>CLC</td>
<td>Community Legal Services</td>
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<td>ECCV</td>
<td>Ethnic Communities’ Council of Victoria</td>
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<tr>
<td>FaHCSIA</td>
<td>Department of Families, Housing, Community Services and Indigenous Affairs</td>
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<td>FCA</td>
<td>Family Court of Australia</td>
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<td>FSP</td>
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<td>LAC</td>
<td>Legal Aid Commission</td>
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<td>LGA</td>
<td>Local Government Area</td>
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<td>LSCSA</td>
<td>Legal Services Commission of South Australia</td>
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<td>MRC</td>
<td>Migrant Resource Centre</td>
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<tr>
<td>NAATI</td>
<td>National Accreditation Authority for Translators and Interpreters</td>
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<td>NADRAC</td>
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<tr>
<td>NCCC</td>
<td>National Centre for Cultural Competence</td>
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<tr>
<td>NESB</td>
<td>non-English speaking background</td>
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<td>NHMRC</td>
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Executive Summary

This research report provides a framework for enhancing access to and delivering culturally responsive family dispute resolution (FDR) services. It is particularly targeted at Family Relationship Centres (FRCs), but could be adapted by any service providing family dispute resolution and family mediation to clients from culturally and linguistically diverse (CALD) backgrounds. The report fills a large gap in the literature about the engagement with and service provision to CALD families in the context of family dispute resolution.
1.1 Research Context

A new network of 65 Family Relationship Centres was established in urban and regional Australian cities following a 2003 federal government inquiry into family law. Family Relationship Centres (FRCs) provide referral, assistance and mediation to all families, particularly separating families, to resolve disagreements about how their children will be cared for following separation. This mediation is called family dispute resolution (FDR).

Clients from CALD backgrounds are proportionally under-represented as clients of FRCs, as they are across the Family Support Program (FSP) and other mainstream family mediation services. In 2009, 9% of FRC clients nationally were born in a country where English is not the main language spoken, 8% of all FSP clients were classified CALD, when 14-16% of the Australian population were born in a country where English is not the dominant language or who speak a language other than English at home. Recent independent reviews of FSP and family dispute resolution services have highlighted:

- significant gaps in service provision to clients from culturally and linguistically diverse backgrounds;
- cultural and linguistic barriers limiting their access to the services; and
- lack of confidence by staff to engage with CALD clients.

The project was initiated by Anglicare and CatholicCare Sydney which were the lead agencies in a successful tender to manage two Family Relationship Centres in south western Sydney at Parramatta and Bankstown. The local government areas served by Parramatta and Bankstown FRCs are two of the most culturally, religiously, linguistically and ethnically diverse and socio-economically disadvantaged in Sydney. To support equitable, effective and sensitive services to potential CALD clients, the lead agencies formed a consortium with the University of Western Sydney (UWS) to undertake research to develop a model of culturally responsive and accessible family dispute resolution.

1.2 The Research

The research sought to understand some of the reasons families from CALD communities don’t readily use FRCs and so develop strategies to enhance accessibility to FRCs for CALD individuals and families. The research aimed to build on this understanding to develop a model of culturally responsive family dispute resolution (FDR) to promote the effective use of the services by families from CALD backgrounds. The research specifically sought to answer two questions:

1. What can FRCs do to enhance access to their services for CALD communities?
2. What is culturally responsive family dispute resolution and what can FRCs and family dispute resolution practitioners do to implement it?

The research used a variety of qualitative methods, primarily relying on data gathered through in-depth semi-structured interviews with 44 professionals who were experts in their area of work. The researcher interviewed 20 professionals from 11 culturally specific, multicultural and faith based organisations assisting families from culturally diverse backgrounds in western Sydney to find answers to the first question. To identify existing good family dispute resolution practice with clients from culturally diverse backgrounds, the researcher interviewed 24 professionals working in 16 Family Relationship Centres and as family dispute resolution practitioners in urban and regional cities across the country. The interview transcripts were analysed using a software program for analysis of text-based data. The analysis identified and grouped themes relevant to the research questions, which were confirmed by literature from a wide range of disciplines. The themes inform the substance of the research findings.

Whilst the research report was initiated by the agencies managing Bankstown and Parramatta FRCs, the research findings are not directed solely at their FRC practice, nor solely at FRCs. The research reflects good FDR practice across the country, and good practice of working with CALD families, and is consistent with existing literature and research in this field.

The recommendations arising from the research findings provide a comprehensive framework for working in partnership with CALD communities, leaders and services to develop more accessible and responsive family dispute resolution services. FRCs and other FDR providers and practitioners could adapt the recommendations to facilitate greater access to their services by CALD communities and to further enhance their service delivery to clients from culturally diverse backgrounds. They should evaluate the relevance of the recommendations for their service in light of the discussion of the research findings and the direction and experience of their FDR service.
1.3 Research findings (1): What can FRCs do to enhance access for CALD communities?

The clear message coming from this research is that to enhance FRC access for CALD families, it is essential to engage with communities, and particularly their service provider gatekeepers and community leaders, in a meaningful way. This engagement is likely to be a time consuming, challenging and slow process. It is essential for building trust between service providers and communities, for encouraging mutual learning and for developing reciprocal referral pathways, and is likely to reap returns in the long term.

The research findings indicate that culturally responsive Family Relationship Centres:

- Understand local communities’ service needs. To do this FRCs:
  - Identify local communities;
  - Recognise barriers to access for CALD families;
  - Audit FRC service capacity;
  - Enhance FRC understanding of communities.

- Implement strategies to develop relationships to better understand communities and to develop referral pathways. To do this FRCs:
  - Identify and build local networks;
  - Engage with community and religious leaders;
  - Work in partnership with community agencies;
  - Foster community capacity.

- Create service structures to facilitate access. To this FRCs:
  - Develop ‘cultural’ structures;
  - Anticipate client needs.

1.3.1 Understand communities’ service needs

1.3.1.1 Identify local communities

It is important for FRCs to identify the cultural, linguistic and religious backgrounds of potential and existing FRC clients to understand if FRCs are attracting individuals from CALD communities proportional to their presence in the local government areas served by the FRCs. This knowledge also provides a starting point for exploring if and how cultural contexts may be accommodated in the FDR process. However, it may be difficult for FRCS to identify this information, as data on several ‘cultural’ domains cannot be retrieved from the existing Family Support Program (FSP) data collection system.

The client profile and interpreter data of the Parramatta and Bankstown FRCs roughly aligns with local government demographic profiles, but over-represents some communities and under-represents others and does not reflect the lack of English proficiency reported in local communities. This information suggests that there may be areas of unmet need for some culturally and linguistically diverse communities served by the FRCs, although it is difficult to be conclusive. It does indicate that more could be done to monitor and understand these trends.

RECOMMENDATIONS

1. Put in place strategies to capture and analyse within FRCs more data about the cultural, linguistic and religious background of FRC clients, and use this data to inform FRC processes and strategic direction.

2. Consider undertaking a file analysis of a representative proportion of Bankstown FRC clients to determine the cultural, linguistic and (if possible) religious background of clients, distinguishing country of birth from country of cultural affiliation. Compare this data with the demographic profile of the LGAs served by this FRC to determine client base and potential gaps in service provision.
3. Include questions to identify a client's religious affiliation during intake and assessment.

4. Target communities who do not appear to be represented by current FRC client data to explore perceptions of need for or barriers to accessing FRC services (e.g., Vietnamese, Korean, and Turkish communities).

5. Review FRC policy and practice of interpreter appointment and use to ensure it is consistent with best practice in effective use of interpreters.

6. Collect and analyse data on interpreter usage, including use of bi-lingual staff to interpret or translate.

1.3.1.2 Recognise barriers to access

The research suggests that a number of structural, cultural and service factors and perceptions might inhibit CALD individuals and families using local FRCs, including:

- lack of knowledge and misunderstandings about FRCs, and about the confidentiality and nature of work they do;
- uncertainty about where FRCs fit in the family law or community service provision framework;
- perceptions that FRCs would destabilize families, facilitate divorce or favour women;
- preference for existing community dispute resolution processes;
- concern that service providers won’t understand clients’ cultural or religious contexts.

FRCs should consult key organizations, individuals and community leaders about CALD community needs in relation to separation, to discuss perceptions of barriers to accessing their services, and to consider how these might be addressed.

RECOMMENDATIONS

7. Review the discussion of potential barriers to accessing and using FRC services by CALD communities in light of FRC experience to date.

8. Identify strategies to address barriers to access, particularly service barriers and perceptions of FRCs, that is within FRC capacity to address.

1.3.1.3 Audit FRC service capacity

An organization’s capacity to conduct a ‘cultural self-assessment’ has been identified nationally and internationally as one of the key components of institutional cultural competence. It is a useful place to start in developing culturally responsive practices. Such a self-assessment provides an organisation with the means to:

- identify the extent to which it is effectively addressing the needs of diverse and underserved communities;
- determine individual and collective strengths and areas for development; and
- plan for and develop culturally and linguistically competent policy, structures and practices.

RECOMMENDATIONS

9. FRCs consider implementing an organisational cultural self-assessment which results in a Cultural Action Plan that responds to the outcomes of this process.

1.3.1.4 Enhance FRC understanding of communities

Cultural knowledge is a necessary starting point for better understanding by professionals of their own and of clients’ cultural frameworks and orientations to help seeking. It also provides FRC staff with a basis for identifying the questions about culture they might ask clients, the assistance they might offer or refer clients to, and the issues they might explore at intake, assessment and during the FDR process.
RECOMMENDATIONS

10. As part of FRC cultural self assessment, identify strengths and gaps in staff knowledge of local cultural communities and strategies to address these gaps.

1.3.2 Implement strategies to develop relationships

The research suggests that enhancing FRC relationships with culturally diverse communities and gatekeepers is an essential first step to address CALD community misunderstandings about FRCs, to develop FRC understandings of local CALD communities, and to foster mutual referral networks.

1.3.2.1 Identify and build networks

It is important for FRCs to identify and build networks with organisations which provide direct services to communities. This will assist FRCs to better understand and assist local communities as well as to develop their reputation as a quality service. Ethno-specific, multicultural and faith based organisations play an important role in linking their communities into the service system and supporting them to gain access to a range of needed services. Respondents referred to the need for FRCs to speak with a wide range of organisations and that this may be a slow process of information gathering about and getting to know communities.

A pervasive theme identified by respondents in encouraging CALD families to use FRCs was the critical importance of developing trust in FRC capacity to work sensitively and effectively with CALD families in crisis. One way of building trust was for FRC to be visible in community networks and to develop personal relationships with individuals in other agencies providing services to local communities.

RECOMMENDATIONS

11. Review the action that FRCs have already taken to identify and speak with community networks and organizations to identify any gaps in this process or need for follow up.

12 Review existing FRC involvement in local networks, particularly with migrant resource centres, and the benefits and challenges that have resulted from this involvement.

13. Refine FRC involvement in local networks in light of this review of network involvement, gaps in FRC service provision, feedback from MRCs and other agencies, communities presenting at FRCs and FRC strategic direction.

1.3.2.2 Engage with leaders

Many research participants remarked on the importance of meeting community and religious leaders and elders. Engaging with leaders provides the opportunity to dispel misunderstandings about FRCs and to initiate community education, and for FRCs to learn more about clients’ cultural contexts. Working more closely with leaders provides scope for further ‘early intervention’ opportunities with families, and the chance to refine referral pathways and to develop appropriate supports in FRC processes.

RECOMMENDATIONS

14. Review existing relationships with community and religious leaders and their understanding of FRC dispute resolution processes. Identify strategies to further develop these relationships and understandings.

15. Review FRC understanding of community dispute resolution processes and identify opportunities for developing this understanding.

16. Initiate discussions with community leaders about if and how FRC processes can supplement existing community dispute resolution processes.

17. Identify strategies to further refine mutual referral pathways between FRCs and community and religious leaders and/or organisations.

18. Identify opportunities for working with early intervention services to support CALD communities.
1.3.2.3 Work in partnership

A key theme identified by respondents, and affirmed by the literature on engaging with CALD communities and providing appropriate family services, was the need to work in partnership with communities, and with agencies which work closely with them. A fundamental principle of culturally responsive service delivery is to foster participatory, collaborative and mutually beneficial partnerships with local communities and with established and reputable community agencies. This requires genuine commitment to the goal of facilitating CALD access, to equality and mutuality of partnerships, and the resources and capacity to sustain these relationships. The benefits of such partnerships include:

- mutual learnings about communities, structures and processes;
- enhanced support for existing community dispute resolution processes;
- increased community capacity to navigate mainstream processes, and ultimately, make more informed choices; and
- insight into the potential for and limits to culturally responsive dispute resolution models.

RECOMMENDATIONS

19. Evaluate the purposes, possibilities, benefits and implications of FRCs engaging in community partnerships, particularly in collaboration with local migrant resource centres and other agencies, using best practice models for developing community partnerships.

1.3.2.4 Foster community capacity

The research indicates that one of the factors that may be limiting CALD access to FRCs is the lack of understanding about FRCs and their place in the broader service system. FRCs can play a role in enhancing this understanding, as well as building community knowledge and capacity to make effective choices and seek appropriate services. Suggestions were made by respondents that FRCs engage in community education initiatives, information campaigns for communities and community workers. FRCs must also ensure that communication strategies and resources are customised to the cultural, linguistic and educational needs and backgrounds of the participants.

RECOMMENDATION

20. Review existing FRC documentation, resources and programs made available to clients to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.

21. Review existing FRC communication and information strategies to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.

22. Consult reputable community agencies to provide input into the further development of communication and information strategies, particularly in light of expressed need for information and education about the family law system.

1.3.3 Create service structures to facilitate access

If FRCs wish to increase the proportion of families from culturally diverse backgrounds using their services, they need to establish appropriate and supportive structures to facilitate CALD family access to and effective participation in FDR.

1.3.3.1 Develop ‘cultural’ structures

A number of respondents referred to the value of developing ‘cultural’ roles and structures to facilitate communication with and to promote access for culturally diverse communities to FRCs. These might include devising cultural liaison or facilitator roles, employing bi-cultural staff and developing consultation structures.
23. Review existing staff structure and roles in light of current resources and staff interests and evaluate the potential for appointing staff in a cultural liaison role.

24. Review existing staff linguistic profile in light of LGA community languages profiles to assess if these are aligned.

25. Identify the benefits that bi-cultural staff have brought to the service and the challenges they have confronted. Review role descriptions and guidelines for using bi-lingual staff skills to reflect this experience and contribution.

26. Review existing community consultation mechanisms to ensure mechanisms are consultative, effective and efficient, that the purpose of consultation is clear and that structures are put in place to feedback to communities.

1.3.3.2 Anticipate client needs

The research suggests that FRCs which understand the demographics of local CALD communities can anticipate needs that might arise for these communities, and put in place structures and services that might encourage access and ensure appropriate assistance is provided. FRCs can take steps to make environments more welcoming and culturally familiar. Policy and practice can anticipate the needs of religiously observant clients and those who may require interpreter or translator assistance, or assistance understanding written materials.

Recommendations have already been made in relation to collecting data on FRC client religious background and reviewing existing FRC interpreting and translating practices.

27. Review FRC environments to ensure they are culturally familiar.

28. Review opportunities for using existing translated resources relevant to separation.

29. Review FRC signage and common areas to ensure they reflect the cultural and linguistic diversity of the FRC catchment areas.

1.4 Research findings (2): What can FRCs and FDRPs do to implement culturally responsive FDR?

There is no blueprint for culturally responsive family dispute resolution practice. Cultural responsiveness is the product of knowledge, orientation, self awareness, self reflection, humility, experience, sensitivity and skill. This research has identified key features or capacities in the existing practice of FDRPs and FRCs which characterise good professional and service practice in providing FDR to clients from culturally diverse backgrounds. Good FDR process and practice includes

- an awareness or understanding of the relevance of cultural contexts in parenting disputes following separation,
- the skill to sensitively explore these contexts with each individual and family, and
- the capacity and resources to respond appropriately to relevant cultural contexts in the family dispute resolution process.

This existing good practice provides a benchmark against which FRCs and FDR professionals can assess and enhance their interaction with clients from culturally diverse backgrounds. Culturally responsive family dispute resolution practitioners and service providers:

- Understand the value of and limits to accommodating culture in FDR. In doing this FDRPs:
  - Recognise the importance of cultural contexts;
  - Appreciate the cultural contexts of the communities they serve;
  - Understand the limits of cultural accommodation; and
  - Reflect on the influence of their own cultural contexts.
• Sensitive explore the relevance of cultures with each family. In doing this FDRPs:
  – Perceive each person and family as unique;
  – Are respectfully curious; and
  – Affirm common cultural ground.

• Respond effectively to cultural contexts in the family dispute resolution process. In doing this FDRPs:
  – Consider the relevance of culture to FDR processes;
  – Recognise that ‘best interests’ will be culturally constructed; and
  – Facilitate structural supports to assist clients.

1.4.1 Understand the value of and limits to accommodating culture in FDR
Culturally responsive FDRPs are reflexive practitioners. They recognize that a range of cultural contexts might be relevant to families, and develop a practice of ongoing critical reflection about the relevance of their own personal and professional cultures to their FDR practice. They have developed the skills to use this knowledge and reflection to assist parties and their children in a way that responds to their wholeness and to the things that are important to the individuals in each family.

1.4.1.1 Recognise the importance of cultural contexts
Culturally responsive FDRPs recognise the centrality of a client’s cultural contexts in disputes about parenting. They appreciate how and why the importance of cultural (and religious) norms, values and practices may be heightened at separation. They also recognise that their awareness and acknowledgement of cultural strengths could facilitate more effective client participation in FDR.

1.4.1.2 Appreciate communities’ cultural contexts
Culturally responsive FDRPs are culturally aware. They have sufficient understanding of the significance of culture and have enough knowledge about the client’s cultural contexts to explore how culture might be important to this person at separation. They recognise the limits of their cultural knowledge and seek clarification when they are uncertain. They also realise that cultural contexts are multi-dimensional and intersectional and that religion, and not ethnicity, may be of primary importance to some clients. Culturally responsive FDRPs
  • foster cultural awareness,
  • practise cultural humility and
  • acknowledge cultural complexity.

1.4.1.3 Understand the limits of cultural accommodation
The challenge for culturally responsive practitioners is to effectively explore with clients whether and how elements of an individual’s culture may be accommodated in the FDR process. They avoid the traps of cultural relativism by being clear about the legal limits of accommodating culture, particularly where violence is present, but also understand that this assessment is a complex one. They will know when law, and procedural justice, trump culture and have the capacity to make this clear to the parties. Culturally responsive FDRPs respond effectively to the cultural dynamics of violence and of gender.

1.4.1.4 Reflect on the influence of their own cultural contexts
A professional’s self awareness of their own cultural norms and the cultural norms of their professional practice is widely considered to be the most important component in the knowledge base of culturally competent practice. Self awareness highlights the professional power context of FDR processes, and also provides the basis for practitioners to empathetically engage with clients from culturally diverse backgrounds. An effective way for FDRPs to cultivate cultural self awareness is to develop a reflexive practice encouraging critical self awareness.
30. Develop opportunities, structures and protocols to foster the knowledge of and capacity of FRC staff and FDRPs to respond to client’s cultural contexts as part of the response to an FRC cultural self assessment:

a. Plan ongoing program of local cultural literacy development for FRC personnel, in light of strengths and gaps identified in organisational self assessment.

b. Facilitate regular critical reflection on the role of culture in professional practice.

c. Mentor, evaluate, extend the repertoire of professional behaviours, particularly in areas FRC staff and FDRPs identify as challenging in their engagement with CALD communities.

d. Develop structures and resources to provide culturally customised assistance to CALD parties to understand the law, their roles in the FDR, what is likely to occur during FDR and to prepare for FDR process.

e. Investigate with local migrant resource centres and other community agencies the opportunities for and protocols of accessing cultural advisors and/or facilitators.

1.4.2 Sensitive explore the relevance of cultures with each family

1.4.2.1 Perceive each person as unique

The culturally responsive practitioner lets the family be the expert of their experience and the educator of the practitioner in identifying what is problematic in the family. The competent practitioner will seek to explore the specific ways that this person is understanding, feeling and acting. To do this they must avoid making assumptions from the perspective of cultural dominance and naivety about the parties’ cultural contexts.

1.4.2.2 Are respectfully curious

A responsive practitioner knows how to make inquiries effectively and respectfully. They will appreciate how to frame questions, particularly to identify violence, when to probe further to elicit potential cultural dimensions of an issue, and when it is necessary to gather further information. Culturally responsive practitioners

• listen closely at intake and assessment,
• recognise the complexities of identifying violence,
• develop a cultural radar and
• respond to being lost in translation.

1.4.2.3 Affirm common cultural ground

Culturally able professionals understand the similarities between people everywhere, while maintaining an equally strong commitment to differences. They affirm commonality, recognizing that family is important in all cultures.

31. Review current screening and assessment processes and roles to determine if existing tools and practices are effectively identifying CALD clients, their cultural contexts, their preferences and needs and are referring them appropriately, particularly where violence might be present.

32. Review staff confidence and capacity to make sensitive inquiries about culture and associated issues, and identify staff development opportunities to address any gaps.

1.4.3 Respond effectively to cultural contexts of FDR processes

A culturally reflexive practitioner applies their personal and professional understandings to develop a repertoire of culturally responsive strategies and solutions in their FDR practice.
1.4.3.1 Recognise that children's best interests are culturally constructed
Responsive practitioners recognize that children's best interests are culturally constructed. They appreciate that there are different concepts of best interests, and that their role is to challenge these if they appear inconsistent with children's well being.

1.4.3.2 Facilitate structural supports to assist clients in FDR processes
A culturally competent practitioner will be flexible and creative in devising strategies to respond to clients’ cultural contexts, and be supported by their service to do this. The role of the extended family in caring for children of separated CALD parents suggests that it might valuable to explore the implications of adapting models of FDR to include the input of extended family members. Other structural supports which might accommodate the needs of CALD families included adapting processes to ensure sensitivity to gender; providing and monitoring interpreter use consistent with national best practice; and allocating sufficient time and resources to enable effective responses.

RECOMMENDATIONS
33. Review the interpretation and application in FRCs of the best interests principle in the context of working with CALD families, including the Family Law Act principle ‘children have a right to enjoy their culture’.

34. Review available information about the needs and experience of children from culturally diverse backgrounds relevant to a family law context, including child rearing practices and expectations.

35. Review existing practices for including extended family members in FDR processes and develop protocols for consistent practice.

36. Review existing practices for including support personnel in FDR processes and develop protocols for consistent practice.

37. Evaluate the merits of appointing FRC staff in a client support role.

1.4.4 Conclusion
As this research demonstrates, and the recommendations suggest, there is a great deal that FRCs can do to enhance access by and develop appropriate services for clients from culturally diverse backgrounds. If a methodical, long term and strategic partnership approach is taken, it is likely CALD communities will develop greater understanding about and trust in the work that FRCs do and this may lead to their increased readiness to use FRCs. A reflexive approach by services and practitioners is also likely to lead to the adaptation of processes and development of strategies which are culturally sensitive and which will enhance effective participation by CALD clients in FDR.

Genuine commitment to fostering access and effective participation by CALD communities needs to be supported by sufficient resources and capable staff. FRCs are themselves generally small organisations with limited scope to engage in large scale ongoing community capacity building. However, with a clear purpose and plan, and the support of community based agencies, small strategic steps can be taken which, long term, will make effective differences to the effective use of FRCs by CALD communities.

This small step, long term approach should also be adopted when attempting to foster culturally responsive family dispute resolution. This capacity is not a skill set but an amalgam of abilities, aptitudes and awareness which develops over time. As the respondents indicate and the recommendations suggest, FRCs can put in place a number of strategies to encourage and extend FDRP and FRC capacity to assist CALD parents and children in a way which is respectful of their cultural contexts and which enhances their control over the processes. Hilary Astor and Christine Chinkin have observed that mediation, and by implication, family dispute resolution, has the potential to bridge cultural gulfs and to allow people to understand both their own assumptions and those of others. However, in order to achieve these ends mediation must be supported by resources, skills and by the personal and political will to make it work.1
1.5 List of recommendations

1.5.1 What can FRCs do to enhance access for CALD communities?

Initiate action to understand communities' service needs

Identify local communities

1. Put in place strategies to capture and analyse within FRCs more data about the cultural, linguistic and religious background of FRC clients, and use this data to inform FRC processes and strategic direction.

2. Consider undertaking a file analysis of a representative proportion of Bankstown FRC clients to determine the cultural, linguistic and (if possible) religious background of clients, distinguishing country of birth from country of cultural affiliation. Compare this data with the demographic profile of the LGAs served by this FRC to determine client base and potential gaps in service provision.

3. Include questions to identify a client's religious affiliation during intake and assessment.

4. Target communities who do not appear to be represented by current FRC client data to explore perceptions of need for or barriers to FRC services (e.g., Vietnamese, Korean, and Turkish communities).

5. Review FRC policy and practice of interpreter appointment and use to ensure it is consistent with best practice in effective use of interpreters.

6. Collect and analyse data on interpreter usage, including use of bilingual staff to interpret or translate.

Recognise barriers to service

7. Review the discussion of potential barriers to using FRC services by CALD communities in light of FRC experience to date.

8. Identify strategies to address barriers, particularly service barriers and perceptions of FRC service, that is within FRC capacity to address.

Audit FRC service capacity

9. FRCs consider implementing an organisational cultural self-assessment which results in a cultural action plan that responds to the outcomes of this process.

Enhance FRC understanding of communities

10. As part of FRC cultural self-assessment, identify strengths and gaps in staff knowledge of local cultural communities and strategies to address these gaps.

Implement strategies to develop relationships

Identify and build networks

11. Review the action that FRCs have already taken to identify and speak with community networks and organizations to identify any gaps in this process or need for follow up.

12. Review existing FRC involvement in local networks, particularly with migrant resource centres, and identify benefits and challenges that have resulted from this involvement.

13. Refine FRC involvement in local networks in light of this review of network involvement, gaps in FRC service provision, feedback from MRCs and other agencies, communities presenting at FRCs and FRC strategic direction.
**Engage with leaders**

14. Review existing relationships with community and religious leaders and their understanding of FRC dispute resolution processes. Identify strategies to further develop these relationships and understandings.

15. Review FRC understanding of community dispute resolution processes and identify opportunities for developing this understanding.

16. Initiate discussions with community leaders about if and how FRC processes can supplement existing community dispute resolution processes.

17. Identify strategies to further refine mutual referral pathways between FRCs and community and religious leaders and/or organisations.

18. Identify opportunities for working with early intervention services to support CALD communities.

**Work in partnership**

19. Evaluate the purposes, possibilities, benefits and implications of FRCs engaging in community partnerships, particularly with local migrant resource centres, using best practice models for developing community partnerships.

**Foster community capacity**

20. Review existing FRC documentation, resources and programs made available to clients to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.

21. Review existing FRC communication and information strategies to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.

22. Consult reputable community agencies to provide input into the further development of communication and information strategies, particularly in light of expressed need for information and education about the family law system.

**Create service structures to facilitate access**

**Develop ‘cultural’ structures**

23. Review existing staff structure and roles in light of current resources and staff interests and evaluate the potential for appointing staff in a cultural liaison role.

24. Review existing staff linguistic profile in light of the community languages profiles of local government areas served by FRCs to assess if these are aligned.

25. Identify the benefits that bi-cultural staff have brought to FRCs and the challenges they have confronted. Review role descriptions and guidelines for using bi-lingual staff skills to reflect this experience and contribution.

26. Review existing community consultation mechanisms to ensure mechanisms are consultative, effective and efficient, that the purpose of the consultation is clear and that structures are put in place to feedback to participants and communities.

**Anticipate client needs**

27. Review FRC environments to see if they can be made more culturally familiar.

28. Review opportunities for using existing translated resources relevant to separation.

29. Review FRC signage and common areas to ensure they reflect the cultural and linguistic diversity of the FRC catchment areas.
1.5.2 What can FRCs and FDRPs do to implement culturally responsive FDR?

Understand the value of and limits to accommodating culture in FDR

30. Develop opportunities, structures and protocols to foster FDRP knowledge of and capacity to respond to client’s cultural contexts as part of the response to an FRC cultural self assessment:
   a. Plan ongoing program of local cultural literacy development for FRC personnel, in light of strengths and gaps identified in organisational self assessment.
   b. Facilitate regular critical reflection on the role of culture in professional practice.
   c. Mentor, evaluate, extend the repertoire of professional behaviours, particularly in areas FRC staff and FDRPs identify as challenging in their engagement with CALD communities.
   d. Develop structures and resources to provide culturally customised assistance to CALD parties to understand the law, their roles in FDR, what is likely to occur during FDR and to prepare for FDR process.
   e. Investigate with local migrant resource centres and other community agencies the opportunities for and protocols of accessing cultural advisors and/or facilitators.

Sensitively explore the relevance of cultures with each family

31. Review current screening and assessment processes and roles to determine if existing tools and practices are effectively identifying CALD clients, their cultural contexts, their preferences and needs and are referring them appropriately, particularly where violence might be present.

32. Review staff confidence and capacity to make sensitive inquiries about culture and religion, and client preferences in relation to these, and identify staff development opportunities to address any gaps.

Respond effectively to cultural contexts in FDR processes

33. Review the interpretation and application in FRCs of the best interests principle in the context of working with CALD families, including the Family Law Act principle ‘children have a right to enjoy their culture’.

34. Review available information about the needs and experience of children from culturally diverse backgrounds relevant to a family law context, including child rearing practices and expectations.

35. Review existing practices of including extended family members in FDR processes and develop protocols for consistent practice.

36. Review existing practices of including support personnel in FDR processes and develop protocols for consistent practice.

37. Evaluate the merits of appointing FRC staff in a client support role.
Footnotes

Introduction
2.1 Overview of this study

This research report provides a framework for enhancing access to and delivering culturally responsive family dispute resolution (FDR) services. It seeks to respond to FRC service imperatives to provide accessible and sensitive service delivery as well as to broader social justice and equity goals of providing inclusive and appropriate services to all Australians.

The research sought to answer two questions:

1. What can FRCs do to assist a greater proportion of culturally and linguistically diverse communities approach and use their local FCRs?

2. What is culturally responsive FDR and how can FRCs and FDRPs implement it?

The project was initiated by Anglicare and CatholicCare Sydney which were the lead agencies in a consortium with Interrelate Family Centres and the University of Western Sydney (UWS) which successfully tendered to manage two Family Relationship Centres in south western Sydney at Parramatta and Bankstown. The local government areas served by Parramatta and Bankstown FRCs are two of the most culturally, religiously, linguistically and ethnically diverse and socio-economically disadvantaged in Sydney, and possibly Australia. To support equitable, effective and sensitive services to potential CALD clients, the lead agencies funded research, conducted by UWS, to develop a model of culturally responsive and accessible family dispute resolution. The research was conducted in 2009.

2.2 This Report

This report answers the research questions outlined above.

Chapter 2 (this chapter) introduces the research.

Chapter 3 summarises the research context. It details the service delivery framework for Family Relationship Centres and outlines the legal and practice frameworks for family dispute resolution. It then discusses some of the historical and theoretical background which informs attempts to provide accessible and responsive services to culturally and linguistically diverse (CALD) communities.

Chapter 4 outlines the research framework, including the research questions, methodology and analytical approach.

Chapter 5 presents the findings to the first research question to provide guidance to FRCs to enhance access by CALD communities. It draws on the experience of professionals working with families from culturally diverse backgrounds in western Sydney and existing literature to describe good practice in service delivery to CALD clients and to make recommendations to facilitate access to FRCs for CALD communities.

Chapter 6 presents the findings to the second part of the research concerning culturally responsive family dispute resolution. It draws on the research data and a wide range of sources to identify existing culturally responsive practice in family dispute resolution and to make recommendations about how FRCs and FDRPs can adapt their processes and practice to foster responsiveness to families from CALD communities.

Chapter 7 concludes the research.
Research Context
3.1 FRC service delivery framework

A Commonwealth parliamentary inquiry in 2003 investigated whether a rebuttable presumption of 'equal time with each parent' after separation should be established.² This inquiry recommended wide reaching changes to the existing family law system. The federal Government rejected one of the inquiry recommendations to create a national statute based system of non adversarial family tribunals, but adopted its recommendation for a ‘shop front single entry point into the broader family law system’.³ As a result, a new network of 65 Family Relationship Centres (FRCs) in urban and regional cities was established as the ‘centrepiece of the [family law] reforms’.⁴

3.1.1 Family Relationship Centres

Family Relationship Centres provide information and advice to all parents, refer them where appropriate and assist disputing parents to stay focused on their children when develop parenting agreements.⁵ FRCs assist parents resolve disputes about children using a process of mediation, called family dispute resolution (FDR).

FRCs formed part of the Commonwealth Family Relationship Services Program (FRSP), now called the Family Support Program (FSP). This program provides a range of services to families to promote positive relationships and to ‘minimize the emotional, social and economic costs associated with disruption to family relationships’.⁶ The FSP is jointly funded by the federal Attorney General’s Department (AGs) – responsible for implementing Commonwealth legal policy, including about family separation – and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) – responsible for implementing Commonwealth social policy.

The merging of these two portfolio responsibilities signals overt acknowledgement that family law is entrenched as ‘part of the legal structure of the welfare state’,⁷ even though its delivery is increasingly privatized. It also signals FRCs’ statutory, policy and organizational obligations as a quasi government agency offering a universal service to parents to ensure equity of access and appropriate service provision to its clients, including to clients from culturally and linguistically diverse (CALD) backgrounds.

3.1.2 FRC clients

The framework establishing FRCs recognizes that different clients will have different needs and may follow different pathways into and through the family law system. Operating guidelines require FRCs to ‘ensure sensitivity and accessibility’ for high needs clients and those with ‘significant barriers to access’, including children, indigenous clients and families from CALD backgrounds.⁸ Data on earlier family mediation programs indicates that CALD families were under-represented in these services, and that the CALD families who used the services were not representative of CALD families generally.⁹

Each FRC is required to identify its potential client base and to develop appropriate services for and devise strategies to (among other things) engage and communicate with ethno-specific groups in their area, to overcome language and cultural barriers and to adapt their service to accommodate specific cultural needs.¹⁰ Staff are required to take account of and be sensitive to the cultural backgrounds of clients in screening and assessment. FRCs must also enter into cooperative arrangements with a range of local groups, government and non-government agencies and services to develop a collaborative approach to support family relationships and to provide assistance before, during and after separation.¹¹
3.2 FDR legal and practice frameworks

3.2.1 Legal framework

The wide reaching changes to the existing family law system recommended by the 2003 parliamentary inquiry included amendments to the Family Law Act 1975 (Cth). For the purposes of this discussion, the key legislative changes introduced include:

- A rebuttable presumption of equal shared parental responsibility following separation, although not equal time.\(^ {12}\)
- A requirement that parents must make a ‘genuine effort’ to resolve any disputes using ‘family dispute resolution’ before applying to the Family Law Courts to determine the matter, although exclusions may apply, including ‘where there are reasonable grounds of abuse or violence or risk of either’;\(^ {13}\)
- A name change from ‘primary dispute resolution’ to ‘family dispute resolution’.\(^ {14}\)
- A principle that children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).\(^ {15}\) Further provisions detail this right for Aboriginal and Torres Straight Islander (ATSI) children.\(^ {16}\)

The legislation did not mandate that parents must share equal time with their children, but courts are required to consider whether spending equal time, or substantial and significant time, with both parents is reasonably practicable and in the best interests of the child.\(^ {17}\) The presumption of shared parental responsibility only applies when court orders are made. However, advisors (including family dispute resolution practitioners, counsellors and lawyers) assisting separating parents must advise parents that they ‘could consider’ developing a parenting plan and that parents ‘could consider’ arrangements for equal time or, alternatively, for substantial and significant time, providing such arrangements are reasonably practicable and in their children’s best interests.\(^ {18}\)

3.2.2 Family dispute resolution practitioners

Family dispute resolution is essentially a compulsory gate through which all disputing parents must pass, although party attendance may still be consensual, and parties may be excluded. Disputing parents may be assisted to reach agreement by an independent family dispute resolution practitioner (FDRP).\(^ {19}\) FDRPs 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.\(^ {20}\) FDRPs generally work directly with both parents and sometimes with the children to reach an agreement about parenting. As Rhoades et al observe, their professional obligation ‘is to the whole family’, although many FDRPs perceive that their primary obligation is to promote children’s best interests.\(^ {21}\)

The FDR practice framework provides some scope for considering and addressing the needs of culturally diverse families, but this is largely dependent on the awareness, skill and experience of the practitioner. FDRP accreditation requires that FDRPs hold a relevant tertiary qualification and have completed at least 5 days training in family dispute resolution or mediation and 10 hours supervised family dispute resolution before being registered.\(^ {22}\) Most family dispute resolution practitioners have qualifications in social or behavioural science disciplines such as social work or psychology, and many are legally trained.\(^ {23}\) There is no requirement that family dispute resolution practitioners develop cultural competence, although more effective practitioners will do this. The accreditation training modules developed for FDRP registration requirements make awareness of cultural contexts optional.\(^ {24}\)

FDRPs form a subgroup of alternative dispute resolution practitioners.\(^ {25}\) Whilst there are no mandatory standards governing dispute resolution practitioners, the National Alternative Dispute Resolution Advisory Council has released The Australian National Mediation Standards (Practice Standards), which specify requirements for mediators seeking to obtain approval under the voluntary national accreditation system and define minimum qualifications and training.\(^ {26}\) Some FDRPs will also seek accreditation under this system. The mediation Practice Standards require that mediators develop knowledge of ‘cross-cultural issues in mediation and dispute resolution’.\(^ {27}\) This knowledge may have some bearing on assessing party suitability for mediation, in adapting the mediation process, and in monitoring power imbalance and communication during the mediation. Mediators must also 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’.\(^ {28}\)
3.3 Accommodating culture

This research seeks to respond to the FRC service imperatives to provide accessible and sensitive service delivery to clients from culturally diverse backgrounds as well as to broader social justice and equity goals of providing appropriate and inclusive services to all Australians. It seeks to assist FRCs and FDRPs to accommodate clients’ cultural contexts.

3.3.1 Understanding culture

In policy and professional discourse, culture and ethnicity are often (mis)understood and used interchangeably, although they are not equivalent. Ethnicity refers to the self-perceived shared identity of a group of people based on a common birthplace, language, cultural tradition, history, geography, religion, or minority status. In this definition ethnicity tends to subsume culture. Ethnicity is more concerned with creating and reinforcing cultural boundaries however, particularly in response to inequality. It may be evident in situations of political and/or economic competition or in the struggle of oppressed peoples against the forces which generate that oppression. Culture is preferred as a more expansive and inclusive term.

Eagleton has remarked that ‘culture’ is one of the two or three most complex words in the English language. In his review of the academic and professional literature on the meaning of culture, Bean observes that a dictionary definition of culture is not dissimilar to that derived from these ‘diverse and often divergent’ discourses. He affirms the Macquarie Dictionary definition of culture as ‘the sum total of ways of living built up by a group of human beings, which is transmitted from one generation to another’. Ballard refers to culture as the values and understandings developed over time within specific social relationships to order those relationships and which create ties of reciprocity. He claims it provides ‘the principal basis on which human beings give meaning and purpose to their lives’.

These explanations obscure the dynamic nature of culture, however. Culture is always being negotiated, and is not necessarily transported intact through the experience of migration and relocation, or across generations. Culture is not a thing but an ongoing process, whereby social meanings are created and contested ‘and where our sense of who we are, how we want to be perceived and how others perceive us … are produced.

Of course culture is not the only basis from which meaning is drawn or identity shaped. The experience and significance of culture cannot be understood in isolation from its intersection with other factors including class, ethnicity, religion, language, race, gender, sexuality, ability and age in specific historical, social and political contexts. These factors may also create significant differences among those who share a common cultural context. A framework of ‘intersectionality’ may assist professionals to explore the meaning and importance that an individual attaches to his or her cultural contexts.

Moreover, culture is not just a marker of difference that only ‘others’ have. We are all cultural beings. The dominant culture needs to be recognised as a construct, rather than assumed as natural and normative. As Hall observed in his classic study, ‘culture hides much more than it reveals, and … it hides most effectively from its own participants.’ The dominant culture also needs to be recognised as dominant, and its unequal and oppressive role in relation to subordinate cultures acknowledged.

Whilst religion has been identified as intersecting with culture and cultural identity, culture and religion should be distinguished. Religion is also multifaceted, referring to an organized pattern of beliefs, values and rituals, generally including the worship of a supernatural power. However defined, religion is very significant in the lives of many people, particularly ‘those from minority cultures, living in a culturally alien and often hostile irreligious or sectarian environment.’ The research undertaken in this report affirms this view and highlights the importance of faith for many participants, and for the communities from which they come.

The concept of culture used in this report:

- is broad, multi-dimensional and dynamic;
- is central to an individual’s process of meaning making, identity formation and belonging, but is not the only influence, nor always the most important; and
- is associated with ethnicity, but not exclusively so.
3.3.2 Cultural diversity

Australia has a long history of ethnic, cultural and linguistic diversity. It has one of the most ethnically diverse populations in the world, with around 6.5 million migrants from 200 countries settling here since 1945. Language deficit was initially used to denote the cultural and ethnic mix in the community. The term ‘non-English speaking background’ (NESB) was subsequently rejected as an inappropriate marker of cultural diversity because it oversimplifies cultural disadvantage, masks linguistic and cultural diversity within and between ethnic groups, defines people negatively and implies a lack of English proficiency. This term has been replaced by ‘cultural and linguistic diversity’ (CALD).

Cultural and linguistic diversity is a characteristic of the community in which we live. Data about county of birth, main language spoken at home, and proficiency in spoken English is the recommended minimum standard for acquiring information about cultural background. The 2006 Australian census shows that 22% of the population were not born in Australia, 14% were born in a country where English was not the main language spoken and 15% spoke a language other than English at home, although most also considered themselves proficient in English. A focus on birthplace and language proficiency may mask non-language aspects of culture, including religion, which may be important in influencing access to services and preferences for responsive service delivery. To provide a broader range of indicators of need for and effectiveness of policies, programs and service provision, the Australian Bureau of Statistics (ABS) also recommends that data be collected on other variables including ancestry, mother’s and father’s country of birth, first language spoken and languages spoken at home, religious affiliation and year of arrival in Australia.

3.3.3 Multiculturalism

Since the 1970s Australia has had a formal policy of multiculturalism for managing the consequences of cultural diversity. Australia's multiculturalism aimed to promote social equity and social justice by enabling migrants to participate fully in, and benefit from social, economic and political life, and also to maintain their cultural ties. The policy was reoriented over time from a focus on minority ethnic groups to the ‘broader constituency of all Australians with the mission of promoting harmonious community relations and building social cohesion’ and supporting cultural expression. The declared purpose of the policy was to:

- maintain social harmony,
- promote economic efficiency,
- protect the rights of all Australians, ‘within carefully defined limits’, to express and share their cultural identity, and
- protect the right to equal treatment and opportunity.

As Ayelet Shacher has observed, multiculturalism requires the reconciliation of ‘potentially conflicting goals of respecting difference, protecting rights, facilitating equality, and nurturing our shared citizenship.’

3.3.4 Cultural responsiveness

One of the strategies of implementing Australia’s multiculturalism is for public organisations and services to acknowledge, reflect and respond to the cultural diversity of the Australian community. This requires action in a number of areas: developing culturally inclusive policy, resourcing access and equity strategies, delivering respectful and responsive services. In the mid 1980s the Commonwealth Government inaugurated its Access and Equity Strategy requiring Commonwealth agencies to modify programs and services to remove barriers that would otherwise prevent access to services or result in inequitable treatment of various client groups, and to report on their action. Federal government programs and services have been required since 1993 to incorporate cultural diversity strategies into their service delivery, strategic planning, policy development and budgeting, and to table an annual report on their access and equity performance in both houses of parliament. State government agencies are under similar obligations. The key principles informing the federal Access and Equity Framework are responsiveness, communication, accountability and leadership. The principle of ‘responsiveness’ requires services to be accessible, fair and responsive to the individual needs of clients from culturally diverse backgrounds.

This report prefers the term ‘culturally responsive’ as it places the onus on the professional and the organization to take action in response to all clients’ diversity and each client's specificity, although ‘cultural competence’ is the term commonly used in health and other sectors.
3.3.4.1 Health professions

Some professional disciplines have encouraged their workforce and services to become culturally competent: in business, counselling, social work and child protection, for example. Health and allied sectors have been especially proactive in addressing cultural issues in health care delivery. The Office of Minority Health in the US Department of Health and Human Services was mandated in 1994 by the US Senate to develop standards for culturally and linguistically appropriate services in health care. The introduction of these standards was a response to racial and ethnic disparities in health outcomes and healthcare in an increasingly culturally diverse population. The standards cover a range of issues directed to ensuring health care is ‘provided in a manner compatible with [clients’] cultural health beliefs and practices and preferred language’.

Drawing from their experience in developing culturally competent health and mental health care delivery, the US National Centre for Cultural Competence (NCCC) has identified five key capacities that culturally competent individuals and institutions in all professional fields demonstrate. They:

- value diversity;
- can conduct cultural self-assessment;
- manage the dynamics of difference;
- acquire and institutionalize cultural knowledge; and
- adapt to the diversity and cultural contexts of the individuals and communities served.

In addition, culturally competent organizations

- have a defined set of values and principles, and demonstrate behaviors, attitudes, policies and structures that enable them to work effectively cross-culturally; and
- incorporate the above in all aspects of policy making, administration, practice, service delivery and involve systematically consumers, key stakeholders and communities.

In Australia, the National Health and Medical Research Council (NHMRC) recently developed a guide to raise awareness at all levels of the health system and promote the integration of cultural competence into policy, planning and practice. The NHMRC recommend a four dimensional model of developing cultural competence that requires each element of the health care system – systemic, organisational, professional and individual – to take responsibility for developing and demonstrating cultural competence in their health care. Its model of cultural competence is based on the ‘human right to have access to health care that meets their needs and the reciprocal responsibilities that ensure these rights are upheld’. The principles giving effect to this model are:

- engaging consumers and communities and sustaining reciprocal relationships;
- using leadership and accountability for sustained change;
- building on strengths – know the community, know what works; and
- sharing responsibility – creating partnerships and fostering sustainability.

Evaluations of strategies to enhance the cultural competence of North American health care systems and professionals have not provided much guidance about the effectiveness or impact of such interventions. One review by the Task Force on Community Preventive Services of the US Centres for Disease Control and Prevention concluded that the reliable research base, particularly of comparative studies and randomized trials, is too narrow to determine the effectiveness in relation to client satisfaction with care, improvements in health status, and racial or ethnic differences in use of health services or in received and recommended treatment. Other North American studies have concluded that whilst theory, logic and substantial research evidence suggests that cultural competency should work, there is ‘little evidence about which cultural competency techniques are effective and less evidence on when and how to implement them properly’.
The available evidence does indicate that the provision of professional interpreters can increase use of and satisfaction with services by patients with limited English proficiency, reduce non-adherence, and eliminate disparities in quality of care and outcomes. There is also some evidence to suggest that professionals who receive cultural competence training report intentions to modify and implement actual changes in professional attitude and behaviour. However the transferability of the North American experience of culturally competent health strategies to other countries or areas of service provision may be questionable. The development of culturally responsive practice will vary in each country, depending on the local context, histories and national attitudes, as well as on the different service objectives and frameworks. The absence of robust evidence about the effectiveness of culturally competent health initiatives does not mean this goal should be abandoned, but that it should be broadened to include more systemic ‘science-based research into the relationships among culture, behaviour, and health outcomes. As Hayes-Bautista concludes, ‘more research and effort on cultural competence,’ is required ‘not less’.

3.3.4.2 Legal and family services sector

Whilst the health sector has begun to respond to the challenges of providing culturally responsive services, family services and legal services in Australia are only beginning to recognise the complexity of this task. FRCs sit within the family law system, although as noted earlier, family law is increasingly viewed as part of the welfare sector, and FRCs are now managed by community based family service organisations and administered by the federal Department of FaHCSIA.

Legal discussions about promoting access and equity centre around removing barriers to access to justice. ‘Access to justice’ is a vague term which is presumed to be the solution to many legal problems. Access to justice is part of the broader liberal promise of equality before the law which is articulated in some of Australia’s international law obligations. In the early 1990s a number of government reports recommended that action be taken to make the justice system more accessible. This included action to reduce legal costs, to remove obstacles to women’s equality before the law, to address legal gender bias, to ensure Australian laws accommodated its ethnically diverse population, and to develop clearer laws. More recently an access to justice orientation has been revived by the 2009 Strategic Framework for Access to Justice in the Federal Civil Justice System. Its focus is to facilitate early access to the most appropriate part of the civil justice system through targeted information provision and triaging referrals. Whilst it advocates ‘fair’ outcomes and recognises the special needs of clients from culturally diverse backgrounds, it does not discuss culturally responsive service provision.

The principles informing the 1992 Australian Law Reform Commission (ALRC) inquiry into Multiculturalism and the Law affirmed the equal application of the law to all, rejecting different rules for different people on the ground that they belong to a particular ethnic group. Whilst existing laws may constitute a limit on the capacity for cultural responsiveness of some legal services, the ALRC principles also recognised the right to the expression of cultural and religious values and stated that the law should take account of a person’s individual cultural experience, values and attitudes, where this does not discriminate or jeopardise the rights of others. The principles also required that positive action be taken to overcome the cultural assumptions underlying the law and barriers to equal access to it.

In the legal sector these principles are still largely aspiration rather than reality, at least in the family law sector, although there have been pockets of innovative practice. More recent reports affirm that gaps in legal and family service provision for people from culturally and linguistically diverse backgrounds remain and recommend that creative and responsive approaches be developed to address these. The Family Court’s initiatives working in partnership with new and emerging communities to determine what they wished to understand about the family law system and how this knowledge might best be developed is an inspiring example of innovation and responsiveness.
3.3.4.3 Mediation and culture

The significance of cultural values in all forms of contemporary and traditional dispute resolution, including mediation, has been widely recognised.\(^92\) Indeed, the flexibility of mediation and other forms of informal dispute resolution were initially perceived as offering particular promise to resolve disputes for oppressed peoples and groups, although this enthusiasm has since been tempered.\(^93\) The role of culture in mediation, and the implications of mediation practice with culturally diverse groups, has been debated widely in the Australian\(^94\) and international literature,\(^95\) although less often empirically examined.\(^96\) Mediation is a relatively new profession in Australia and has only recently settled national practice and training standards which, as noted above, include knowledge of cultural dynamics in a dispute.\(^97\) Whilst there has been considerable interest in the role of culture in mediation, a minimalist training requirement and the diverse disciplinary backgrounds that mediators bring to their work suggest that the relevance of culture to mediation may be imperfectly and inconsistently understood by many mediators.

A number of initiatives in 1990s sought to examine and respond to Australian cultural contexts in mediation, but these have not been extensively developed or widely established.\(^98\) The exception seems to be in relation to the mediation of issues concerning indigenous clients.\(^99\) In Australia, the National Native Title dispute settlement processes for indigenous claims to property provided a context and incentive for developing more culturally sensitive processes and professional understandings of the relevance of indigenous culture to mediation.\(^100\) The institutionalisation of mediation as the first, and preferably final, step in the resolution of a wide variety of disputes, including parenting disputes, provides an opportunity to more systematically develop culturally responsive mediation practice and processes.

3.3.4.4 Debates about cultural competence

Debates are still evolving about what constitutes cultural competence and how it is developed. Some commentators reject the concept as racist, suggesting that such programs assume static and ‘constructed categories of race that are reaffirmed and reified by the myriad of health studies that neither question nor explain the racial divisions.’\(^101\) Others are doubtful that it is possible to become culturally competent, but argue that a position of cultural humility is more apt and achievable.\(^102\) There is also criticism that some approaches to cultural competence reduce it to a skill set and knowledge base, disregarding culture as ‘complex, dynamic, and individual’.\(^103\)

In the context of family relationship services, some knowledge about cultural norms, values, beliefs and practices is necessary. Sawrikar and Katz argue that essential knowledge about a cultural group would include languages spoken and religious diversity.\(^104\) They also emphasise the importance of understanding where on a continuum between individualism and collectivism the cultural norms, values, beliefs and practices of the group might be located. This placement might indicate the relative importance of the cultural groups’ attachment to family obligations and individual autonomy, the acceptability of hierarchies based on age and gender, and the role of the family and community providing support, including the likelihood to approach outsiders for assistance.\(^105\) Sawrikar and Katz observe that an awareness of cultural norms and the ability to respond sensitively to each family, knowing how ‘cultural diversity expresses itself among individuals within a cultural group’, will foster the development of culturally competent family service professionals. These professionals ‘are aware of differences without making people feel different’.\(^106\)

However, there may be a tendency to assume that explicit cultural knowledge will be a template for navigating another’s cultural world. Connolly identifies three limitations with reliance on explicit cultural knowledge.\(^107\) Knowledge is often ‘naïve and superficial’\(^108\) and ‘it is not possible for practitioners to understand the nuances of every culture’.\(^109\) Second, it can foster assumptions about cultural continuity and homogeneity and encourage stereotypes. Cultural norms are not necessarily ‘transported intact through the experience of migration and relocation’, and maybe be readjusted or entrenched in the new cultural context.\(^110\) Third, it places the professional in the position of ‘expert’ evaluating the importance of culture, often from a position of cultural naivety.

As Berlin observes, knowledge of cultural groups can create an ‘illusion we are being culturally sensitive when we are … failing to look beyond the easy characterisation for the particular and specific ways that this person is understanding, feeling and acting.’\(^111\) To these may be added a fourth limitation: the focus on cultural ethnicity may be too narrow. It does not address the breadth of cultural complexity and may obscure consideration of how culture intersects with religion, gender and class, for example.
Most commentators agree that the key characteristic of culturally competent professionals is not knowledge, but self-awareness of the relevance of their own cultural contexts and a ‘genuine willingness and desire’ to learn about and be respectful of cultural difference. Tervalon and Murray-Garcia conclude that the literature documenting lack of cultural competence among professionals ‘most reflects not lack of knowledge but rather the need for a change in practitioners’ self-awareness and attitudes.’

Practitioner awareness of his or her personal and professional cultural norms, and capacity to critically reflect on these in a sustained and structured way, is vital to developing appropriate responses to cultural contexts in family dispute resolution. Some commentators have suggested that a model of cultural reflexivity captures this goal. Reflexivity extends the concept of reflective practice and requires ‘thoughtful self-aware analysis’ and ‘critical self-reflection of the ways the [professional’s] social background, assumptions, positioning and behaviour’ influence their professional practice. Culturally reflexive mediation ‘demands awareness and control of one’s own professional, personal and cultural biases in order to understand the standpoint of the other’.

In this report cultural responsiveness in family dispute resolution is understood as the ability to respond effectively ‘to children and families in ways that acknowledge the richness and limitations of families’ and practitioners’ sociocultural contexts’. This approach

- conceives culture broadly, and includes the cultures of the client as well as the cultures of the practitioner and the processes in which they engage clients;
- goes beyond acquiring cultural knowledge and developing sensitivity and requires professionals to participate in an ongoing process of conscious and critical reflection, or reflexivity, about and adjustment to the relevance of cultures to their professional practice;
- aims to foster professional capacity to respond to parties’ wholeness and to their specificity; and
- requires institutional leadership to support, resource and monitor the development of culturally responsive policy and practice in collaboration with the communities whom it is intended to assist.

3.4 Family breakdown in CALD communities

Family dispute resolution aims to assist separated parents and others affected by the separation to reach agreement about future parenting. An understanding of the post separation needs of adults and children from CALD families must be contextualised in the patterns of separation and divorce in Australian CALD communities, the circumstances that influence their relationships, and their subsequent help seeking.

3.4.1 Separation and divorce

The literature indicates that Australians born in English-speaking background countries have higher rates of marriage breakdown than the Australian born population, whilst (some) non–English speaking background migrants have a lower risk of marriage breakdown. Internationally, Australia has the third highest crude divorce rate after the US and UK. The lowest divorce rates tend to be in countries with strong religious attachment including countries with substantial Islamic, Catholic or Orthodox populations, and in developing countries.

The available data is difficult to interpret however because the crude divorce rate is only a rough measure of the level of divorce, and does not take into account age structures of married populations or proportions of married people, which might be younger and larger in some cultural communities. Nor does it consider patterns of divorce in countries of origin, or the effect of migration and adjustment to a new environment. Adjusting for some of these factors, 1996 data indicates that for some NESB communities in Australia (including those from Thailand, China and Vietnam), the divorce rate was higher than the rate for those born in Australia. It was lower for other NESB countries of origin (including Lebanon, Turkey, India, Italy and Greece). The rate of divorce is also higher in cross cultural marriages, often twice the rate for individuals born overseas who marry someone born in the same country. Birthplace also influences the length of marriage, with marriages of couples born in Australia lasting on average 12 years, China 7 years, Greece 19 and Vietnam 6 years.
Table 1 – Divorce by country of birth

<table>
<thead>
<tr>
<th>Country of Birth</th>
<th>UK</th>
<th>NZ</th>
<th>China</th>
<th>Vietnam</th>
<th>India</th>
<th>Lebanon</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of total Australian population</td>
<td>4.4%</td>
<td>1.8%</td>
<td>1.9%</td>
<td>1%</td>
<td>0.9%</td>
<td>0.9%</td>
</tr>
<tr>
<td>% of All Divorces 2007</td>
<td>7.4%</td>
<td>2.8%</td>
<td>2.3%</td>
<td>2.3%</td>
<td>0.8%</td>
<td>0.7%</td>
</tr>
</tbody>
</table>

The reasons for some of these different trends ‘may be cultural in origin’, but may also reflect the pressures that result from migration or the circumstances surrounding their decision to migrate to Australia. Greater isolation, poverty, and difficulty accessing suitable support services may place marriages among particular ethnic groups at greater risk than others. Stoyles observes that it is important to acknowledge the influence of socio-political, economic and structural factors on the migration and settlement experience and its impact on marriage and family relationships. This includes considering the ‘changing dynamics’ of the marriage and family resulting from migration and the ‘acculturative stress resulting from the process of resettlement in a new country.’ A number of factors relevant both to migration and acculturation may create additional stressors on marriages between CALD couples and especially on cross cultural marriages. These include:

- Stresses from having to adjust to a new socio-cultural and economic life in Australia, which may lead to financial insecurity and loss of breadwinner status, and sometimes an increase in gambling, substance abuse or domestic violence.
- Forced changes in family structure and roles, often resulting in stresses on culturally expected gender roles and perceptions that Australian law and social security encourages the rights and independence of women at the expense of men.
- Disempowerment, loss of confidence, isolation and loneliness, particularly for women who may have few extended family or community supports or limited English.
- Clashes between social expectations and migrant family values and practices, including conflicting expectations where a couple is from the same cultural background, but one is recently arrived from the country of origin.
- Cross cultural conflict particularly concerning child rearing, different religious beliefs and providing financial support to extended families; and inter-generational conflict, with extended family members, or with children, as parents struggle to maintain their families’ cultural identity and to adapt to the expectations of Australian mainstream culture.

However, even where these factors are present and culturally diverse families are in crisis, this may not result in separation because of cultural taboo, lack of support structures, financial insecurity, fear of deportation or presence of domestic violence. Attachment to traditional cultural norms and religious affiliation are two factors which are negatively associated with likelihood to separate. In many cultural and faith communities separation and divorce are discouraged and there is significant pressure on estranged couples to reconcile. Whilst these factors and patterns might generally be relevant, of course they will be different in each cultural and faith community, and for the individuals and families belonging to them.
3.4.2 Violence and complex family profiles

The incidence of domestic violence is significantly among the separated and separating population than in the broader community. Research on litigated family law children’s disputes has indicated a high incidence of multiple forms of serious violence. Some studies also indicate disproportionate representation of clients from non-English speaking backgrounds in litigated children’s disputes, although the relationship between these two factors has not been investigated. The families in these studies often presented complex and compromised socio-health profiles in addition to the presence of multiple forms of violence. Parents were identified as having high rates of psychiatric disability or health problems, addictions, reliance on social security and criminal convictions. Children, many of whom were also subject to sexual and other abuse, were assessed with high rates of emotional, psychiatric and learning problems.

The 2005 ABS Personal Safety Survey found that of all women who had experienced violence from their current partner since they were 15, 15.1% were born in a country where English is not the main language spoken, a figure proportionate to their presence in the community (15.9%). Whilst these figures indicate that the rate of violence may be no higher in CALD communities, immigrant and refugee women may be particularly vulnerable to the effects of violence. Cultural, religious and familial factors may discourage recognition and disclosure of violence, reporting to police or seeking other assistance in relation to it. As observed earlier, an understanding of these dynamics is best approached from an ‘intersectionality’ perspective, so that the complex interaction of culture, religion and socio-economic and political factors may be considered.

3.4.3 Help seeking

Most people turn first to family and friends and non-legal professionals to resolve problems. Attachment to traditional cultural norms and to religion is also negatively associated with mainstream help seeking behaviour. Vulnerability to disadvantage, including cultural background, is correlated with reduced access to, and use of, legal services.

3.4.3.1 Legal help seeking

Whilst studies have not related ethnicity to a higher incidence of legal events, this could be the effect of ignorance of legal rights and avenues for resolution, unavailability of suitable interpreters, and the ‘perception that there is cultural insensitivity in the operation and administration of the law’. Research has consistently shown that migrant and refugee women in particular lack knowledge about the legal system, their legal rights and who to approach for assistance. The reasons for this include an absence of accessible information, lack of effective referral processes between community agencies and legal fora, and poor translating and interpreter services.

3.4.3.2 Family law systems

Two thirds of all separating parents sort out parenting arrangements largely by discussions between themselves, although about half of these also use some other services as well, mostly counselling or mediation. Family conflict and separation may not necessarily result in legal help seeking by people from a CALD background as they may not identify a family issue as a legal problem, and may rely on family or community networks to address family issues.

The extent to which CALD families use, or become drawn into, family law systems and fora to resolve difficulties following separation is unclear. The Family Court and Federal Magistrates Court do not collect data on the cultural background and languages of litigants, although about 40% of divorces are granted to couples where either one or both partners were born in an overseas county. Hunter’s 1999 survey of family law litigation, mostly concerning children, indicated a disproportion of overseas born clients from NES countries. In her study NES clients comprised 26% of all publicly funded clients (which also indicates financial disadvantage), with their median time in Australia 11 years and with 11% of all clients requiring an interpreter. The NES parties may not have chosen to litigate, but may have been drawn into the litigation by the other party or by child protection concerns as the matters generally concerned complex, multi issue disputes about children which also featured violence.
3.4.3.3 Family mediation

CALD families are generally under-represented in family relationship, mediation and dispute resolution services. FDR services provided by the federal Family Support Program (FSP) classified 8% of their clients as CALD in 2009, where the proportion in the Australian community is 15%. Recent reviews of FSP services indicated that there were significant gaps in service provision to clients from culturally and linguistically diverse backgrounds, barriers limiting their access to the services and lack of confidence by staff to engage with CALD clients. A review of family dispute resolution in Legal Aid Commissions reached similar conclusions. Half of FRC staff surveyed for the evaluation of the 2006 family law reforms believe there are language barriers to using their services, and nearly two thirds think that cultural barriers might limit the use of the FRC. Previous research has indicated that people from non-English speaking backgrounds, especially women, have limited awareness of, and are less likely to use mainstream family mediation. Research in the United Kingdom revealed similar under-utilisation of family mediation services by minority ethnic communities.

A number of possible reasons have been suggested why migrant communities may be under-represented in family mediation. These include

- **Lack of knowledge about services**: People who speak a language other than English at home are less likely to know about family mediation services. Research in the mid 1990s with services for Arabic Muslim communities in Victoria indicated that these communities had little knowledge about mainstream mediation as either a service or concept. Community consultations Canberra found a similar lack of awareness among migrant communities. This lack of knowledge extended to agencies working with cultural communities, and mutual ignorance by mediation services of community agencies, resulting in poor referral and support networks (especially for refugee women).

- **Uncertainty that services would be culturally sensitive**: Where there was understanding of mediation, the limited availability of bilingual and bicultural mediators was a constraint discouraging use of mediation services. Some were uncertain that mediators would be experienced enough to understand their problems, or be aware of their cultural background, their religion, the differences between new, emerging and established communities, or their experience of displacement, migration or resettlement. Where CALD communities are small there may be a lack of trust in interpreters and concerns about confidentiality. Ethnic minority men in Scotland perceived mediation services as being dominated by women and more supportive and sympathetic towards women as compared to men. Workers with Arabic Muslim communities referred to perceptions that mainstream service personnel held racist and stereotypical views of Arabic Muslims, did not appreciate the significance of Islam for Muslim people or that there were different versions of Shari’a. They also expressed concern about the Anglo-centric views held by mainstream mediators about ‘who is family’, and worried about their awareness of cultural communication patterns.

- **Uncertainty that services would be culturally appropriate**: The ‘appropriateness and efficacy of a “bureaucratic” mediator of a non-shared background was questioned’ by some workers. They also challenged the appropriateness of the ‘neutrality of the mediator’ where cultural assumptions led to expectations that a mediator would act as an arbitrator or final decision maker.

- **Preference to deal with family breakdown within family or community processes**: Separation or divorce may lead to shame and ostracism in some cultural or faith based communities, and this may discourage making public this fact or seeking assistance for it. Some prefer or feel obliged to use family, community or religious forms of dispute resolution to encourage reconciliation or to resolve difficulties following separation, although the nature and extent of this is largely undocumented.

Consultations with African, Middle Eastern and Asian communities about family law by the South Australian Legal Services Commission indicated mediation was regarded with suspicion but might be acceptable if the problem could not be resolved by family and community and if communities were educated about this concept. Scottish ethnic minority communities appreciated the child centred nature of family mediation services and saw them as suitable alternatives to the legal process, so long as they were professionally competent and culturally sensitive.

To understand whether these broad patterns are reflected in the use of FRCs by CALD communities in greater Western Sydney, it is important to understand the cultural profile and service needs of local CALD communities following family separation, as well as use of FRCs by people in these communities. These factors, and strategies to enhance access, are considered in detail in Chapter 5.
3 Research Context

Footnotes


3 Every Picture Tells a Story, ibid, 11.


6 Family Relationship Services Program (FRSP), <http://www.fahcsia.gov.au/sa/families/progserv/FRSP/Pages/default.aspx> at 16 March 2010. This program was expanded in 2004 after a joint review with the Attorney General’s Department.


8 Operational Framework, above n 5, 9; Family Relationship Services Program, above n 6, 9.

9 Sophy Bordow and Janne Gibson, Evaluation of the Family Court Mediation Service (ASCCEG), (Cat No 1249.0) (2005), 4.


11 NADRAC, ibid, 10.

12 National Alternative Dispute Resolution Advisory Council (NADRAC), In Domestic Violence (2005) Immigrant Women’s Domestic Violence (ASCCEG), (Cat No 1249.0) (2005), 4.


15 NADRAC, ibid, 10.

16 Australian Bureau of Statistics (ABS), Australian Standard Classification of Cultural and Ethnic Groups, (ASCCEG), (Cat No 1249.0) (2005), 4.


20 Bean, ibid.

21 Ballard, above n 30, 12.

22 Ballard, above n 30, 12.

23 Ballard, above n 30, 12.

24 Sharon Chalmers and Fiona Allon, ‘We All Come from Somewhere’ Cultural Diversity at Sydney Children’s Hospital (2002) Centre for Cultural Research, University of Western Sydney, Parramatta, 5.


28 O’Hagan, above n 30, 134.

29 O’Hagan, ibid, 135.

30 More than 500 language groups existed prior to European settlement in the late 1700s. National Health and Medical Research Council (NHMRC), Cultural Competency in Health: A guide for policy, partnerships and participation (2005) Commonwealth of Australia, Canberra, 3.

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48 Ethnic Disability Advocacy Centre, Supporting CALD Carers: The service needs of culturally and linguistically diverse carers of people with disabilities (2003), Ethnic Disability Advocacy Centre, Subiaco, Western Australia.

49 CICMA, above n 45, 3.


53 National Agenda, above n 51.


66 NCCC, ibid.

67 NHMRC, above n 42.

68 NHMRC, ibid, 27, 30.

69 NHMRC, ibid, 27, 30.

70 Anderson et al., above n 63, 76. Of the 984 relevant research studies identified by this review, only 6 satisfied criteria for valid comparative research measuring impact and sustainability. National Alternative Dispute Resolution Council, Indigenous Dispute Resolution and Conflict Management (2006) Commonwealth of Australia, Canberra, 4.


72 Brach, ibid, 193.


74 Bhui, ibid, 23.


76 Hayes-Bautista, ibid, 9.


78 The Australian Law Reform Commission (ALRC) Multiculturalism report was framed in part as a response to Australia’s obligations under international law, namely, International Covenant on Civil and Political Rights Articles 14 (equality before the courts), 26 (prohibiting discrimination, including on the grounds of race and national origin) and 27 (protecting the rights of religious, linguistic and ethnic minorities). Australian Law Reform Commission, Multiculturalism and the Law (1992) Commonwealth of Australia, Canberra, xxi.


82 ALRC, Multiculturalism, n 78 above.


AJ, ibid, 62, 153.

ALRC, Multiculturalism, n 78 above, 13.


ALRC, ibid, 14.


FCA, above n 89.


Astor and Chinkin, above n 1, 168.


NADRAC above n 26.


Sawikar and Katz, ibid, 6, ibid, 13

Connolly, above n 61, 27


Brui, above n 73, 19.

Tervalon, above n 102, 119.


de Vaus, ibid, 212.


Kho, ibid, 76.

Kho, above n 121, 76.
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124 de Vaus, above n 119, 217.
125 de Vaus, ibid.
127 Australian Bureau of Statistics (ABS), Migrants, Divorces, Australia (2007) (Cat No 34150DS0027), Table 2.
128 de Vaus, above n 119, 217.
129 Mark Stoyles, Partners in any language, Managing diversity: Meeting the Access and Equity needs of consumers from non-English speaking background in Commonwealth funded marriage and relationship counselling services (1995) Office of Multicultural Affairs, Department of Prime Minister and Cabinet, Commonwealth of Australia, Canberra, 17.
130 Stoyles, ibid.
135 Stoyles, above n 129, 58, 68, 83; Legal Services Commission of South Australia, Report on the Middle Eastern Communities Consultation for the Family Law and Sims, 4, Culturally and Linguistically Diverse (CALD) Communities Project (2004) Adelaide, 3; Sims, ibid, 4.
136 ALRC, Multiculturalism, above n 78, 86.
137 Hewitt, above n 118, 8, de Vaus, above n 119, 219. The Greek Orthodox, Islamic and Pentecostal Christian religions had the fewest members who were divorced.
141 Brown (1999) ibid, 43-49; Brown (2002) 32-34; Hunter, ibid, 179, 186. Moloney et al reported that the Family Court and Federal Magistrate files examined for their research on violence contained a ‘relatively small number’ of people from culturally and linguistically diverse backgrounds, ibid, 63.
144 Australian Bureau of Statistics, Personal Safety Survey (2006) (Cat No 4906.0). This may underestimate the rate of partner violence, as there may be complex reasons for reluctance to disclose violence.
146 Rees, above n 38, 2-4, 16-18.
147 A2J, above n 84, 24.
150 Courmore, ibid, 171-2.
152 WLS, ibid 20-30.
153 Kasprzew, above n 140, 66. This study did not distinguish the help seeking patterns of parents born overseas.
154 Courmore, above n 149, 179.
156 Hunter, above n 140, 5. Data is drawn from cases in the 1997-98 financial year. Of all publicly and privately funded family law clients, 23% were born in NES countries, a proportion higher than their then presence in the Australian community (then 13%).
157 Publicly funded clients are those assisted by Legal Aid Commissions (LAC) and Community Legal Services (CLC). There were significant local variations, with 53% of Melbourne LAC clients born in NES countries, and 32% of clients of a women specific CLC in Sydney requiring interpreters. Hunter, ibid, 19. Family Court cases in this study showed 19% of litigants were born in NES countries, although only 3% required interpreters. Hunter, ibid, 141.
158 Hunter, ibid, 186.
3 Research Context

161 KPMG, above n 90, 96.
162 Kaspiew, above n 140, 52.
163 ACNielsen, Family and Child Mediation Survey (1998) Commonwealth Attorney General’s Department, Legal Aid and Family Services, Canberra, v; Love, (1996), above n 9 above, 61-62; Love, (1995) above n 9, 29-30. In the Melbourne study 7% of clients were non English speaking females, less than 2% of participants did not speak English at home and only one person required an interpreter for the mediation session, ibid, 34.
164 Pankaj, above n 134.
165 ACNielsen, above n 163, 11, 13.
166 Dimopoulos, above n 110, 377; Sally Hughson, Primary Dispute Resolution: Embracing Diversity, Department of Prime Minister and Cabinet, Canberra, (2004) 3.
167 Hughson, ibid.
168 Hughson, ibid; Dimopoulos, above n 110, 378.
169 Dimopoulos, ibid, 379; Hughson, ibid, 3; Pankaj, above n 134, 10.
170 Hughson, ibid, 5; Pankaj, ibid, 9.
171 Hughson, ibid, 4.
172 Pankaj, above n 134, 10.
173 Dimopoulos, above n 110, 378.
174 Dimopoulos, ibid, 379.
175 Dimopoulos, ibid, 378.
176 Dimopoulos, ibid, 378.
177 Hughson, above n 166, 5.
178 Frederico, above n 98; Dimopoulos, above n 110, 378; LSCSA, Community Consultations, above n 138; Ghena Krayem, ‘FDR procedures for the Muslim Community’ 2009 NSW Legal Aid Family Law Conference, Sydney, October 2009; and National Legal Aid Dispute Resolution Forum of Legal Aid, Sydney, November 2009.
180 Pankaj, above n 134, 8.
The Research
The areas in south western Sydney which are served by the Bankstown and Parramatta FRCs are characterised by enormous cultural, linguistic, religious and socio-economic diversity. To support appropriate and sensitive service delivery to families in these areas, the lead agencies approached UWS to provide research to develop a culturally responsive family dispute resolution (FDR) service delivery framework and to enhance access to their services for CALD communities.

4.1 Research Questions
The aim of this project is to develop a model of culturally responsive family dispute resolution within a broader service delivery framework that seeks to engage culturally and linguistically diverse communities and facilitate their access to services provided by the FRCs.

This study seeks to answer the following questions:

1. What can FRCs do to assist a greater proportion of culturally and linguistically diverse communities approach and use their local FCRs?

2. What is culturally responsive FDR and how can FRCs and FDRPs implement it?

4.2 Research Methods
This research aimed to gather data about the optimum nature of engagement with and service provision to members of culturally diverse communities, particularly following separation. It used a variety of qualitative methods, or triangulation, to acquire an in-depth and multi-perspectived understanding of possible answers to the research questions. The main data gathering method used was an open ended interview. Open-ended responses reveal experiences from the point of view of participants and assist researchers to understand participants’ perceptions, feelings and knowledge.181

There is no agreed model of culturally responsive FDR, and there is limited literature discussing culturally responsive mediation, especially in an Australian context. To discern elements of good practice assisting clients from culturally diverse backgrounds in FDR, the researcher discussed with a range of FDR service providers their current practice of conducting FDR or mediation. Interviews with practitioners and services assisted to tease out the complexity, detail and rationale of this practice.

This approach was also adopted to understand how mainstream mediation services might encourage use of their services by CALD families. For this reason interviews were conducted with a range of service providers to CALD and faith communities who were assisting families from culturally diverse communities in western Sydney.

The research methods also included focus group interviews (where participants preferred to be interviewed together) and observation of family dispute resolution practice and parent information sessions in Family Relationship Centres. A wide range of secondary sources were consulted to supplement and complement the interviews and confirm and organize the themes identified in the data analysis. This combination of multiple methodological practices in a single study is a ‘strategy that adds rigour, breadth, complexity, richness and depth to any inquiry.’182

4.2.1 Sampling
The interview sampling strategy was purposeful, aimed at selecting information-rich cases for detailed study.183 It used a form of intensity sampling where participants were authorities on a particular issue of interest to the researchers.184 The research subjects were professionals working in family dispute resolution or who were providing a variety of services to families from diverse cultural backgrounds. The range of professional experience also provided a heterogeneous sample and allowed the researcher to identify commonalities in the participants’ experiences and their understanding of issues. The size of the sample was determined by the number of individuals and agencies who responded to invitations to participate in the research within a specified time frame.
To answer the questions posed above, two groups were invited to participate in the research:

1. Agencies which provided family services in Greater Western Sydney to families from culturally and linguistically diverse backgrounds and who might understand the needs of CALD families who are separating or separated. This included ethno-specific services, multicultural and faith based services.

2. Agencies and individuals which offered family dispute resolution, including Family Relationship Services.

The names and addresses of these organisations are available publicly. In early 2009 more than 200 invitations were mailed to prospective participants inviting participation in the research, with subsequent email and telephone follow up. The research was also advertised in different community fora, including attendance by the researcher at several local interagency meetings (for domestic violence, children and family, and migrant services) in the local government areas served by the FRCs and in dispute resolution media and fora.

This research involved human participants and was approved by the University of Western Sydney Human Research Ethics Committee.

4.2.2 Interviews

Interviews were generally conducted in a private area at the participant’s place of work, or on the telephone where participants were not located in Sydney. Data collection was conducted between April and August 2009. A total of 44 professionals were interviewed.

The sample included 22 FDR practitioners and two FRC personnel from 16 FRCs and organisations providing FDR. 13 participants were women and 9 were male. Half were born in Australia from Anglo Celtic cultural backgrounds, the other half were migrants, and half of these were born in a country where English was not the dominant language. The organisations were located in four states in major and regional cities. The average time of participants working as a family mediator was 5 years, with more than 100 years of collective experience. Most participants had worked for more than 10 years in varied professional contexts prior to becoming mediators. The past professional roles of FDRPs included lawyers, social workers, youth workers, counsellors, mediators, managers, refuge workers, psychologists and psychotherapists.

In addition, 20 professionals from 11 organisations assisting families from culturally diverse backgrounds in western Sydney agreed to participate in an interview. 7 were men and 13 were women. All were migrants or second generation migrants, mostly from countries where English was not the dominant language spoken. Most of these services offered assistance to families from all cultural backgrounds, including migrant resource centres in western Sydney, and two were ethno specific agencies. One organisation specifically assisted women, another was directed at children and families and two were faith based agencies. Several organisations had programs which were funded through humanitarian programs, so their focus was on more recent arrivals in CALD communities. All agencies had been working with ethnically diverse communities for a long period of time, so they had good understanding of the needs and concerns of longer established CALD communities as well. Participants had been working in varied roles supporting CALD communities for an average of 12 years. Their professional backgrounds were largely from the social sciences, and they were working as managers, counsellors, social workers and family support workers.

The professionals with whom I spoke were born in Australia as well as countries including: Afghanistan, China, Ethiopia, Greece, India, Iran, Iraq, Lebanon, Malaysia, Romania, Russia, South Africa, Uganda, United Arab Emirates, Vietnam, Zimbabwe, Syria and Serbia. Cultural backgrounds of those born in Australia were also varied and included: Chinese, Czech, English, German, Greek, Irish, Italian, Lebanese, Polish and Russian. Languages other than English spoken by participants included Afrikaans, Ararabic, Croatian, Dari, French, Hebrew, Hindi, Mandarin, Russian, Serbian, Swahili, Polish and Vietnamese. Participants were affiliated with the Christian, Islamic, Druze, Jewish, Buddhist and Hindu religions.
4.2.3 Observations

In addition to interviewing, I observed a parenting education seminar at each location: Kids in Focus at Parramatta Family Relationship Centre, Building Connections at Bankstown FRC. I also observed an FDR process at Parramatta. I have had several informal discussions with staff at FRCs and MRCs about aspects of this research.

4.3 Analytic approach

Qualitative research offers an approach to generating data that is flexible and sensitive to the social context in which the data is produced, so enhancing its validity. Qualitative inquiry is particularly powerful for understanding and evaluating the how and why of process. This is because ‘depicting process requires detailed description; the experience of process typically varies for different people; process is fluid and dynamic; and participants’ perceptions are a key process consideration.’ Qualitative inquiry was especially suited to this project which was concerned to uncover the largely undocumented and lived local knowledge of experienced professionals immersed in the day to day practice of working with and responding to individuals from culturally diverse communities.

Qualitative research does not provide definitive answers but generates a range of data from which themes and trends may be identified, conclusions drawn and strategies developed. It produces explanations based on rich, contextualised data that allows for the full diversity of participants’ perspectives to be identified and understood. Qualitative data are not used to draw inferences about a particular population but ‘provide in depth information about context, diversity and process.’ For this reason the findings make no claims to representativeness and cannot necessarily be extended to wider populations, although they are largely consistent with the literature on mainstream engagement with culturally diverse communities, particularly in the context of mediation.

To assist analysis of the data the researcher used the NVivo7 data management software program for analysis of text-based data. This program allows interview data to be sorted and coded into thematic ‘nodes’ for each professional grouping and for each question posed, and facilitates the identification of commonalities and disparities among the responses of participants. The software assists the user to manage, shape and make sense of a large number of unstructured data-rich files. From the analysis of the data, common characteristics and narrative themes were identified and grouped. These themes were confirmed by consulting a wide range of secondary literature including other empirical studies, policy documents and academic commentary. The themes formed the basis of the research findings, and these are discussed in the following two chapters.
Footnotes


183 Patton, above n 181, 169.


185 Patton, above n 181, 95.

What Can FRCs Do to Enhance Access for CALD Clients?
FRC service guidelines emphasise FRC responsibility to ensure sensitivity and accessibility, including to clients from culturally diverse backgrounds. They encourage FRCs to work in partnership with local community based agencies to achieve this goal and to understand how best to ‘adapt their service to accommodate specific cultural needs’.187

The clear message coming from this research affirms this policy framework. To enhance FRC access for CALD families, it is essential to engage with communities, and particularly their service provider gatekeepers and community leaders, in a meaningful way. This engagement is likely to be a time consuming, challenging and slow process. It is essential for building trust between service providers and communities, for encouraging mutual learning and for developing reciprocal referral pathways, and is likely to reap returns in the long term.

Whilst the research report was initiated by the agencies managing Bankstown and Parramatta FRCs, and some of the demographic data considered below applies exclusively to these FRCs, the research findings are not directed solely at their practice, nor solely at FRCs. The research reflects good FDR practice across the country, and good practice of working with CALD families, and is substantiated by existing literature and research.

The research findings discussed in this chapter synthesise key themes identified by interview participants about how FRCs might encourage CALD clients to approach and use FRC services. They also provide specific suggestions for appropriately adapting FRC services. In their first two years of operation Parramatta and Bankstown FRCs have already initiated many of the report recommendations to facilitate access by CALD families. The report addresses a wide spectrum of issues identified in the research data, and also in the literature, both to document some of the approaches already adopted by FRCs and to provide a framework for a more systematic approach to addressing the needs of families from culturally diverse backgrounds in family dispute resolution.

The research themes also illustrate broader access to justice principles and guidelines for providing culturally competent services, discussed earlier. The central elements of these frameworks refer to an organisation’s capacity to put in place strategies to reach and respond fairly and effectively to potential clients from culturally diverse backgrounds. This part of the report deals with the perceived needs of CALD families and identifies service responses which may facilitate their access to FRCs.

The research findings suggest that culturally responsive Family Relationship Centres:

- Understand local communities’ service needs. To do this FRCs:
  - Identify local communities;
  - Recognise barriers to access;
  - Audit FRC service capacity; and
  - Enhance FRC understanding of communities.

- Implement strategies to develop relationships to better understand communities and to develop referral pathways. To do this FRCs:
  - Identify and build local networks;
  - Engage with community and religious leaders;
  - Work in partnership with community agencies; and
  - Foster community capacity.

- Create service structures to facilitate access. To this FRCs:
  - Develop ‘cultural’ structures; and
  - Anticipate client needs.
5.1 Understand communities’ service needs

The starting point for providing accessible and appropriate family relationship services to CALD communities is to understand the specific communities served by the FRC and their need for and readiness to use mainstream family relationship services, especially in the context of separation and divorce. This is a complex and demanding task requiring a sound appreciation of the diversity of local communities and the nature and relevance of cultural practices for these communities, as well as their likely need for post separation relationship services. Developing this understanding will be an ongoing and long term process. To begin this process an organization should:

• investigate the cultural profile of communities served by the FRCs;
• consult key organizations and individuals about community needs in relation to separation and perceptions of barriers to accessing FRCs;
• enhance FRC understanding of local communities; and
• review the capacity of the service to respond to identified needs.

5.1.1 Identify local communities

As most FRCs are located in regional or suburban areas, they will tend to draw clients from local communities. A cultural profile of the local community served by the FRCs may provide some guidance about which communities may be more or less likely to approach FRCs. It will also be a standard against which to measure the representation of CALD communities in the FRC client base. One research participant who assisted a multicultural faith community remarked that for their service ‘to be aware of our client’s needs, we need to understand the demography of our clients and we need to understand the reality of their perception of themselves.’ FRCs similarly need to have a good grasp of just who is in their local community and what their needs are.

Parramatta FRC provides services to the Sydney metropolitan local government areas of Parramatta, Auburn and Holroyd. Bankstown FRC serves the local government areas of Canterbury and Bankstown. The areas served by the Parramatta and Bankstown FRCs are some of the most culturally, linguistically and religiously diverse in Sydney and in Australia. These areas are also some of the most socio-economically disadvantaged and this disadvantage may have a significant bearing on need for service support and capacity to access services. Table 2 below summarises the community profiles of these local government areas, drawing on data about country of birth, religious affiliation, language spoken at home, English proficiency and socio-economic well-being.

Table 2 – Community Profile of Local Government Areas in Western Sydney

<table>
<thead>
<tr>
<th>BANKSTOWN</th>
<th>CANTERBURY</th>
<th>AUBURN</th>
<th>PARRAMATTA</th>
<th>HOLROYD</th>
</tr>
</thead>
<tbody>
<tr>
<td>OVERSEAS BORN – NON ENGLISH SPEAKING COUNTRIES189</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32%</td>
<td>44%</td>
<td>50%</td>
<td>35%</td>
<td>35%</td>
</tr>
<tr>
<td>MAIN OVERSEAS COUNTRIES OF BIRTH190</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lebanon (7.1%)</td>
<td>China (6.7%)</td>
<td>China (9.3%)</td>
<td>China (5.5%)</td>
<td>Lebanon (4.7%)</td>
</tr>
<tr>
<td>Vietnam (6.3%)</td>
<td>Lebanon (5.6%)</td>
<td>Vietnam (5%)</td>
<td>Vietnam (5%)</td>
<td>India (4.7%)</td>
</tr>
<tr>
<td>China (2.5%)</td>
<td>Greece (4.4%)</td>
<td>Turkey (3.9%)</td>
<td>Lebanon (4.7%)</td>
<td>New Zealand (3.9%)</td>
</tr>
<tr>
<td>Korea Sth (1.7%)</td>
<td>Vietnam (3%)</td>
<td>Korea Sth (2.7%)</td>
<td>Korea Sth (1.7%)</td>
<td>China (2.6%)</td>
</tr>
<tr>
<td>Philippines (1.5%)</td>
<td>Italy (2%)</td>
<td>Afghanistan (2.6%)</td>
<td>Philippines (1.5%)</td>
<td>New Zealand (2.1%)</td>
</tr>
<tr>
<td>Greece (1.4%)</td>
<td>Korea Sth (1.9%)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy (1.2%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>India (0.7%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RELIGION191</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catholic (29%)</td>
<td>Catholic (28%)</td>
<td>Catholic (25%)</td>
<td>Catholic (29%)</td>
<td>Catholic (38%)</td>
</tr>
<tr>
<td>Islam (16%)</td>
<td>Orthodox (14%)</td>
<td>Orthodox (14%)</td>
<td>Anglican (13%)</td>
<td>Anglican (12%)</td>
</tr>
<tr>
<td>Anglican (12%)</td>
<td>Islam (14%)</td>
<td>Islam (8%)</td>
<td>Islam (8%)</td>
<td>Hindu (6%)</td>
</tr>
<tr>
<td>Orthodox (9%)</td>
<td>Anglican (6%)</td>
<td>Buddhism (9%)</td>
<td>Hindu (5%)</td>
<td></td>
</tr>
</tbody>
</table>
Whilst presenting a rich and varied cultural profile, it is likely that this data under-represents the extent of diversity in and recent changes to these communities. The figures do not indicate parents’ country of birth which may influence children’s self perceived cultural identity. Nor does the data show year of arrival, which will influence the level of acculturation – the ongoing process of adjustment, adaptation and integration experienced by new immigrants. The data does reveal that a significant proportion of residents are not proficient English speakers, which is the most effective guide to heightened need for service provision.\textsuperscript{196}

New and emerging communities in the Parramatta and Bankstown FRC catchment areas are largely comprised of refugee and humanitarian entrants from the Sudan, Iraq and Afghanistan. Anecdotal and FRC interpreter use data suggests that these populations are not accessing these services at rates proportional to their presence in the local community or possible rate of family breakdown.

### 5.1.1.1 Demographic data for Parramatta and Bankstown FRCs

The demographic service data for the first 12 months of operation of Parramatta and Bankstown FRCs (July 2008-2009) reflects some of these community patterns but indicates that there is still more potential for CALD clients to use FRC services, and for better understanding of the current trends. Just over a quarter (27\%) of Parramatta FRC clients and one third (34\%) of Bankstown clients are categorized ‘CALD’, according to Family Support Program (FSP) Online National Data Collection system.

These figures are drawn from the FSP system which collects, among other things, a range of data on cultural background including information on country of birth, year of arrival, main language spoken at home, level of English proficiency and ancestry.\textsuperscript{197} However ‘CALD’ queries of the FSP data base are only generated from country of birth data where the country of birth is not in the English Proficiency Group One (EP1).\textsuperscript{198} These figures are summarized in the Table 3 below.
Table 3 – Cultural background of FRC clients July 2008 – July 2009

<table>
<thead>
<tr>
<th>Clients</th>
<th>National</th>
<th>PARRAMATTA FRC</th>
<th>BANKSTOWN FRC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FSP</td>
<td>%</td>
<td>FRC: FSP</td>
</tr>
<tr>
<td>Unreg’d</td>
<td>14,859</td>
<td>25%</td>
<td>197</td>
</tr>
<tr>
<td>Reg’d</td>
<td>46,131</td>
<td>75%</td>
<td>641</td>
</tr>
<tr>
<td>Total</td>
<td>60,990</td>
<td>100%</td>
<td>838</td>
</tr>
<tr>
<td>CALD</td>
<td>3,654</td>
<td>8%</td>
<td>172</td>
</tr>
<tr>
<td>Non CALD</td>
<td>42,477</td>
<td>92%</td>
<td>469</td>
</tr>
<tr>
<td>ATSI</td>
<td>1,322</td>
<td>3%</td>
<td>9</td>
</tr>
</tbody>
</table>

The FSP data base is not able to generate, for each FRC, responses to queries about client year of arrival, main language spoken at home, level of English proficiency or ancestry and cannot give a breakdown of clients’ countries of birth. It does not collect or record data on religious affiliation. It is possible the Parramatta FRC figures under-represent the proportion of CALD clients who have used their services, as the data only refers to registered clients. Clients may elect not to be registered, and their data is not entered onto the FSP system. Parramatta FRC indicates that those who choose not to be registered include a significant number of clients from culturally diverse backgrounds.

An analysis conducted by the FRC of 241 of all 838 files (29%) of Parramatta clients in the first year of operation 2008-09 indicates a much higher proportion of clients from culturally diverse backgrounds than do FSP statistics, as well as considerable cultural complexity among the parties. A close reading of the files revealed that almost half (47%) of the clients self-identified, or raised issues which indicated they were born overseas, or whose parents were born overseas. Whilst the basis for this assessment differs from the FSP criteria, it does suggest greater cultural diversity than is captured solely by country of birth data. The analysis identified a range of client countries of origin or affiliation, with the three main countries being Lebanon (12%), India (11%), China (9%): see Table 4 below.

Table 4 – Reported Country of Birth or Affiliation of Parramatta FRC Clients 2008-09

<table>
<thead>
<tr>
<th>Reported country of birth or affiliation (top 6)</th>
<th>Number Identifying (241 files)</th>
<th>% identifying in FRC files</th>
<th>% in LGA birth country</th>
<th>% of all Australian divorces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lebanon</td>
<td>14</td>
<td>6%</td>
<td>4.2%</td>
<td>0.7%</td>
</tr>
<tr>
<td>India</td>
<td>13</td>
<td>5%</td>
<td>4.7%</td>
<td>0.8%</td>
</tr>
<tr>
<td>China</td>
<td>10</td>
<td>4%</td>
<td>5.5%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Croatia</td>
<td>6</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiji</td>
<td>6</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>6</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total born overseas or whose parents born overseas</strong></td>
<td><strong>114</strong></td>
<td><strong>47%</strong></td>
<td>**</td>
<td>**</td>
</tr>
</tbody>
</table>

These figures are double the proportions in the local government area born in those countries, although they also include people who identify with the country of origin, and thus may include those born to migrant parents. The figures also differ from the rates of divorce for different countries of birth reported in Table 1, Chapter 3. Because this data also reports country of affiliation, it might suggest that Australian born children of migrants are less averse to using mainstream organizations following separation. Remaining clients’ countries of origin do not mirror the community cultural profile in Table 2 (for example, none in this sample are from Korea or Vietnam and few are from Turkey), but come from a diverse range of countries in Africa, the Middle East, South America, Europe and the
Pacific. This diversity may also reflect the cultural profile of those who work in Parramatta, which is second only to the Sydney CBD in size. There is no available data on the religious affiliation of FRC clients, so it is not possible to determine if different religious communities are using FRCs at a rate representative of their presence locally. As noted earlier, the ABS recommends collecting data about religious affiliation, among other variables. The identification of religious and cultural background will be an important starting point for exploring with clients if and how cultural contexts or supports may be accommodated in the FDR process.

This review of FRC files also indicated complex and multiple problems occurring among the families presenting at Parramatta FRC, reflecting patterns of previous studies of family law cases. These included:

- Very high rates of violence (73% of cases), the most common being coercive or controlling violence (64%);
- Significant numbers where the environment suggested risk of harm to children (60%);
- High levels of parental mental health issues (45%).

Further research would be needed to establish any correlation between these factors, and of the incidence of other socio-demographic factors. It may be useful to conduct a similar review of Bankstown files to determine if comparable patterns are occurring.

### 5.1.1.2 Interpreter usage by clients

The data for interpreter usage in these two FRCs does not reflect the proportion in the LGAs who are not proficient in spoken English. The number of interpreters used by these FRCs is relatively low, and records may be incomplete, so it is difficult to draw firm conclusions about this data. It might suggest that clients from CALD backgrounds who are using FRCs are second generation migrants, or schooled in Australia, and thus more acculturated and English proficient and with less need for interpreters. Two FDRPs at Bankstown FRC speak Arabic, explaining less demand for Arabic interpreters at this FRC, despite the dominance of this language in the LGAs. There was no request for interpreters for the languages of new and emerging communities from the Sudan, Iraq and Afghanistan, although five clients from these countries were present in the Parramatta FRC file analysis.

<table>
<thead>
<tr>
<th>Table 5 – Interpreter usage by clients at Parramatta and Bankstown FRCs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PARRAMATTA</strong></td>
</tr>
<tr>
<td><strong>FRC</strong></td>
</tr>
<tr>
<td>Unregistered clients</td>
</tr>
<tr>
<td>Registered clients</td>
</tr>
<tr>
<td>Total clients</td>
</tr>
<tr>
<td>Languages interpreted</td>
</tr>
<tr>
<td>Arabic</td>
</tr>
<tr>
<td>Bosnian</td>
</tr>
<tr>
<td>Cantonese</td>
</tr>
<tr>
<td>Filipino</td>
</tr>
<tr>
<td>Indonesian</td>
</tr>
<tr>
<td>Korean</td>
</tr>
<tr>
<td>Mandarin</td>
</tr>
<tr>
<td>Spanish</td>
</tr>
<tr>
<td>Turkish</td>
</tr>
<tr>
<td>Unstated</td>
</tr>
<tr>
<td>Urdu</td>
</tr>
<tr>
<td>Vietnamese</td>
</tr>
<tr>
<td>Interpreters total</td>
</tr>
<tr>
<td>% not English proficient in LGAs</td>
</tr>
</tbody>
</table>
The languages interpreted at the FRCs are not closely aligned with the dominant community languages spoken at home in these LGAs, and with the country of origin profile of the Parramatta files. This data suggests that there may be unmet need, especially in hard to reach and new communities and those with limited English proficiency. More could be done to understand why this is, and to understand the role of language assistance in facilitating access for under-represented communities.

A good starting place would be to review FRC policy and practice of interpreter appointment and use to ensure it is consistent with best practice in effective use of interpreters. Part of this best practice will involve methodically collecting and analyzing data on FRC demographics and interpreter usage, including use of bi-lingual staff to interpret or translate. It would also include ensuring staff are aware of circumstances when an interpreter ought to be called. For example, clients may be able to conduct an everyday conversation in English but not be proficient enough to discuss emotional content or to make significant decisions, and their second language competence may be compromised due to stress.

In summary, the demographic data of the local government areas served by Parramatta and Bankstown FRC demonstrate that these areas

- are some of the most culturally, religiously, linguistically and ethnically diverse in Australia;
- are some of the most socio-economically disadvantaged in the Sydney metropolitan area;
- include a significant proportion of people who are not English proficient.

The client profile and interpreter data of the Parramatta and Bankstown FRCs roughly aligns with the LGA profile, but

- over-represents some communities and under-represents others;
- does not reflect the lack of English proficiency reported in local communities;
- cannot reveal whether it reflects the religious diversity of the LGAs.

The statistical data cited above indicates that more could be done to understand the factors that affect FRC usage by different cultural communities. This information suggests that there may be areas of unmet need for some culturally and linguistically diverse communities served by the FRCs, although it is difficult to be conclusive.

**RECOMMENDATIONS**

1. Put in place strategies to capture and analyse within FRCs more data about the cultural, linguistic and religious background of FRC clients, and use this data to inform FRC processes and strategic direction.

2. Consider undertaking a file analysis of a representative proportion of Bankstown FRC clients to determine the cultural, linguistic and (if possible) religious background of clients, distinguishing country of birth from country of cultural affiliation. Compare this data with the demographic profile of the LGAs served by this FRC to determine client base and potential gaps in service provision.

3. Include questions to identify a client’s religious affiliation during intake and assessment.

4. Target communities who do not appear to be represented by current FRC client data to explore perceptions of need for or barriers to FRC services (eg Vietnamese, Korean and Turkish communities).

5. Review FRC policy and practice of interpreter appointment and use to ensure it is consistent with best practice in effective use of interpreters.

6. Collect and analyse data on interpreter usage, including use of bi-lingual staff to interpret or translate.
5.1.2 Recognise barriers to access

The factors that may be affecting FRC usage by these communities are often classified as ‘barriers to access’. Sawrikar and Katz’s review of international literature about the provision of family services to families from culturally diverse backgrounds identifies three categories of barriers that CALD families might perceive or experience:

- structural barriers (to do with physical access and knowledge of the service),
- cultural barriers (including language and cultural norms), and
- service barriers (perceptions of the service being culturally inappropriate or insensitive).\textsuperscript{204}

These categories are not mutually exclusive as perceptions of service sensitivity are often based on cultural norms. Caution must also be taken in attributing barriers solely to cultural factors, as reluctance to access mainstream services is just as likely to result from other demographic dimensions such as educational or socio-economic status.\textsuperscript{205} Age, recency of arrival, English language competence, religiosity and level of acculturation are also likely to influence need for and willingness to engage with mainstream services, particularly concerning separation. Much of the available literature concerns parents’ readiness to access mainstream parenting services, and there may be further cultural and religious prohibitions discouraging help seeking in relation to separation and divorce. However, these categories do provide a useful framework to consider some of the barriers to access identified by respondents in this research which may inhibit CALD families from approaching or using FRCs.

5.1.2.1 Structural barriers

Most respondents in this research who worked with service providers to cultural communities had limited understanding of what FRCs did. Some thought FRCs provided counselling services, or reconciliation services. They rarely understood how the family law system currently operates, or the role that FRCs played in mediating parenting disputes and assisting parents to focus on their children.

This limited understanding about FRCs was also common in the communities they assisted. A number of respondents cited lack of awareness of FRCs and of the value of mainstream mediation as a significant reason people would not attend an FRC. As one said, ‘a lot of people won’t go to an FRC because, number one, they’re not aware of it; number two, they may have already pre-determined what they want anyway, so what is the point of mediation?’ (Manager, culturally specific service). Earlier references were made to the limited knowledge among CALD communities of legal rights and opportunities for legal assistance. One family support worker referred to this lack of understanding by women, explaining that

\textit{most of the women get scared to divorce or separate from their husband because they were scared that the husband would take their kids. So they have no idea what’s their rights here, what’s the law here and how they will deal with it.} (Family support worker, culturally specific service).

5.1.2.2 Cultural barriers

A further illustration of misunderstandings about FRCs was the perception that FRCs might encourage divorce or destabilise the family or community. One respondent referred to a common view among her male clients from a cultural community with traditional views about marriage and gender roles that FRCs encouraged divorce and privileged women:

\textit{they think that the Family Relationship Centre is a place to give the woman more than her rights and they will be something unfair to [the men]. … Because divorce happens easier here, so they are scared that their wife might get divorced so easy, so fast.} (Family support worker, culturally specific service).

The sociocultural norms in some collectivist cultures which emphasise family privacy may discourage some in ethnic minority families from seeking help outside the family or from mainstream family services.\textsuperscript{206} Some research respondents suggested that strong cultural expectations for couples to stay together may create shame if they separated, and that this may contribute to reluctance to approach an FRC. As one explained

\textit{Your family does not expect you to separate. If there is a problem, you talk about it with elders, and they see ways of fixing it, within the families. The elders are involved, and separation is the last thing they will think about. Because, if someone is divorced in your family, it gives a bad image to your family.} (Family support worker, multicultural service).
Cultural factors may inhibit some women from leaving a relationship and from seeking outside help, even where there may be significant violence. One family support worker explained that

if we’re talking about the Arabic culture, it’s the last item on the agenda for a mum with four children to make this decision to move out of the family home. Due to her cultural background – she’s getting financial support from him, she’s going to be embarrassed in front of her relatives, embarrassed in front of everyone. It’s not acceptable in my culture, it’s against my religion, how could I do this sort of thing? So they do try to put up with a lot, these domestic violence cases. But sometimes when it gets to the point where it comes to DV, mental health issues, they’re ready to move on. (Family support worker, multicultural service).

For some cultural communities, it is important to understand the influence of the political context of their country of origin, particularly for ‘recently arrived cultural groups, … that have come from countries where the government has been corrupt and authoritarian.’ (Manager, FRC). FRCs may be considered ‘authority figures’, often associated ‘with the Police and with DOCS’. (FDRP, FRC). This may also give rise to concerns about confidentiality and questions about ‘how do I trust this person not to talk to another agent about me?’ (Family support worker, multicultural service). Some within FRCs felt that FRCs were intimidating and ‘just not friendly for most people’. (FDRP, FRC). One commented ‘for a lot of African and other community groups, it’s just not a centre in which they feel comfortable.’ (FDRP, FRC).

A number of respondents referred to community preferences for existing family, community, cultural or faith based processes to assist with difficulties. These informal processes may be more like counselling or arbitration than dispute resolution, with pressure placed on the couple to reunite.207 As one FDRP commented, ‘I don’t really know if it’s a reluctance to use the FRC or if they just don’t need it.’

According to one participant, reliance on religious dispute resolution practices among Muslim faith communities when parties were contemplating divorce made it unlikely that they would attend an FRC ‘because that’s duplicating already what is happening’. (Manager, faith based service). One FRC Manager observed that ‘when it comes to areas around marriage, divorce breakdown and separation and so forth, it is generally done in-house within a community.’ These processes may be stronger in more recently arrived communities like ‘Sudanese cultural groups, they seem to be managing themselves through elders and family members rather than using something like an FRC.’ (Manager, FRC). For this reason, a number of FRCs were working with newly arrived communities to better understand traditional community dispute resolution methods and discern if and how FRCs might be able to support or supplement these.

One of the key distinctions between FDR and community processes was that the latter were understood to not be neutral and were ‘not impartial’, and this was exactly why they were valuable to some CALD community members. (Manager, service for children). This worker elaborated that

being directive for some particular cultures is useful because that person has a presence. So if you go to see somebody and they don’t give advice and they don’t give examples of what to do, they have no value to that family. And so those particular communities will not access somebody that’s neutral and has no opinion. … So the very fact of neutrality and being objective is seen as pointless if you think in a different way to the western dominant idea. It comes from a very British idea that there’s any partiality. Other cultures don’t have impartiality.

This partiality, and knowledge of the parties or their community, was more culturally appropriate for some in CALD communities, and may explain why they may never use FRC services. This worker continued that, for some cultural communities, it was more important to seek assistance from

people who have a knowledge and a history and a core of what he’s like and what she’s like, so when they give advice, it means something. Whereas if you’re new, and you’re not interested in history and I’m impartial and I don’t care about what happened before, let’s talk about the future’ … they won’t go [to an FRC] because ‘You don’t know me and my life, so I’m not going to listen to you.’

For those who share this view, the fundamental premise of mediation as an independent, impartial third party process assisting the parties to formulate their own options and outcome is not culturally congruent.
5.1.2.3 Service barriers

According to research participants, uncertainty that the service would understand their experience reinforced the preference for their own cultural decision making processes, or avoidance of mainstream services. One participant explained that people from his community might question:

‘What does this person know about where I’ve come from?’ It’s the perception with things like counselling services. Services are available, but clients don’t want to go to mainstream counselling services. They get counselling services from the elders and community leaders. It’s all about ‘Does this person really understand where I’ve come from?’ (Family support worker, multicultural service provider).

Others’ experience of discrimination and concerns about being judged, heightened their reluctance to approach an FRC, or any mainstream organization which did not have an established reputation for culturally or religiously responsive practice. One respondent remarked that

religion and culture are so central to how a family operates. So I would imagine that many people in the community would feel that ‘Why would a mainstream service know how sensitive these issues are at this point in my life? So why would I go [when] … I’m pretty vulnerable? Why would I walk into a centre or a service that might judge me on how I live my life? …. It’s like the last thing I’m going to really want to expose myself yet again to somebody else.’ (Lawyer, faith based service).

Others affirmed that this reluctance to attend a mainstream service may be founded in a view that FRCs ‘don’t understand my culture. … I want someone who speaks my language, and who is from my community.’ (Family support worker, multicultural service). Another respondent linked this preference to cultural prohibitions against divorce, explaining that

people from Arabic speaking or any cultural background … always have a preference of speaking to someone who understands their values, their culture, children, what we believe in. Divorce and separation are not good things in our culture so we always prefer for it not to happen. We always try and the last resort is divorce. So we want someone to understand this, that divorce is not the first option for us. (Family support worker, ethno specific service).

Another service provider explained that whilst it was important to have a reputation for offering quality and effective services, the key to members of her faith community using FRCs was a reputation for understanding the cultural and religious frameworks of her faith community. She observed that for more in her community to approach an FRC, FRCs needed to establish a good

reputation for sensitive service delivery and for actually resolving disputes … but I think the primary one is actually having a reputation for understanding the needs of the community. (Lawyer, faith based service).

One manager of a faith based service commented that that even if the men in her community attended FRCs, lasting outcomes might not be achieved as FRCs lacked the ‘authority’ that someone like a religious leader may have. This person explained ‘the men in our community will not come to Relationship Centres, even if they do come they’ll come in body but not in mind, their soul is not in it.’ (Manager, faith based service). It was the view of this worker that if FRCs had the support of religious leaders, this would enhance their credibility in the community.

FRCs needed to link with

someone that [the men] have respect for in the community. Unless we do that then it’s just about ticking the boxes for them. … I think it’s important that [both of them] … can see that there is communication between the religious leaders and this particular centre.

Despite these reservations, the general view was that FRCs could provide valuable and needed assistance to CALD communities. As one explained,

I think there’s an honest potential for partnerships, particularly in disputes involving children. This process can be made better so that we’re not going to the court system which we know is detrimental to the women that we service. We know that they don’t like it and it’s costly. So it’s terrible that this [FRC] service can exist in a community … and for whatever reason isn’t being utilised to its fullest capacity. (Worker, service for women).
Respondents provided a range of suggestions about how to foster this potential so that FRCs are used to their fullest capacity by diverse cultural communities, and these will be discussed in the following sections.

### RECOMMENDATIONS

7. Review the discussion of potential barriers to accessing and using FRC services by CALD communities in light of FRC experience to date.

8. Identify strategies to address barriers to access, particularly service barriers and perceptions of FRCs, that is within FRC capacity to address.

#### 5.1.3 Audit FRC service capacity

One of the key themes in the research responses was the need for FRCs to establish a reputation for culturally sensitive service delivery. One way to begin to do this is to assess the existing cultural competence of the FRC. The US National Centre for Cultural Competence identifies an organization’s capacity to conduct a ‘cultural self-assessment’ as one of the five key components of institutional cultural competence. This parallels with one of the primary characteristics of culturally competent professionals – that they be aware of their own cultural norms, and the cultural norms of their professional practice. Self awareness is identified by some as the ‘most important component in the knowledge base of culturally competent practice.’

An organisational cultural self-assessment will enhance awareness of the organisation’s own cultures and communities, assumptions, and biases and identify actions to reduce such barriers. Whilst a self-assessment will be an ongoing process rather than a single event, a cultural self-assessment allows an organisation to:

- identify the extent to which it is effectively addressing the needs of diverse and underserved communities;
- determine individual and collective strengths and areas for development; and
- plan for and develop culturally and linguistically competent policy, structures and practices.

A self-assessment is a structured process of evaluation, investigation and consultation through which an organization and its staff identify and evaluate their own practices and strengths, and any gaps in their understanding, and collectively develop a response to extend and address these. This process requires leadership to establish a rationale for and to promote self-assessment in the broader context of enhancing access and equity for diverse communities, and to ensure structured support for and resources to engage in it.

A cultural self-assessment by FRCs might include the following:

- analysing existing data about CALD usage of and satisfaction with FRCs;
- discussing with staff the influence of cultural contexts in their personal lives and professional experience;
- discussing with staff their knowledge of, interest in, commitment to and ideas about extending FRC services to CALD communities;
- identifying gaps in staff knowledge of local cultural communities and strategies to address these gaps;
- reviewing the physical space of the FRC to identify features which might discourage or facilitate access (e.g., signage in community languages) and any potential barriers to access;
- collectively auditing and evaluating the strengths and weaknesses of current policies and practices in dealing with clients from CALD communities, including reviewing:
  - files to map who is using FRCs, features of their families and the nature of their issues;
  - existing FRC and other relevant resources available in translated community languages or as visual resources, and map community demand for resources against community language profile;
  - simplicity and accessibility of printed materials provided to clients;
- policies and practices in relation to interpreters, and use of bi-lingual staff in oral and written translation and interpretation, and the implications of this;
- policies and practices in relation to permitting support personnel in FDR processes;
- understandings about cultural communities and identify areas for further understanding;
- developing a plan for meaningful involvement of consumers, community stakeholders and key constituency groups about the particular needs of families from diverse cultural contexts following separation;215
- developing a strategic plan with goals and objectives to sustain organisational strengths and address growth areas to respond to some of the needs and issues identified by the cultural self assessment;216
- identifying resources, financial, personal and physical, including community resources, to facilitate the implementation of the plan.

An integral component of any cultural self-assessment process is to determine how to meaningfully connect with cultural communities to better understand their needs and concerns and how to provide appropriate services to them. Most respondents agreed that to begin to develop this understanding it was essential to learn more about communities, to talk with community service providers and community leaders, and to work in partnership with both to facilitate greater community understanding of and, where appropriate, access to FRCs.

**RECOMMENDATIONS**

9. FRCs consider implementing an organisational cultural self-assessment which results in a Cultural Action Plan that responds to the outcomes of this process.

### 5.1.4 Enhance FRC understanding of communities

Cultural knowledge, sometimes called cultural literacy or cultural awareness, is a necessary starting point for better understanding clients’ cultural frameworks and orientations to help seeking. It is also important for avoiding cultural transgressions and for suggesting what questions to ask or issues to explore in a professional setting. In the context of family relationships, cultural knowledge might include awareness about values and practices concerning marriage and family formation, understandings of who is family, gendered and age related roles and responsibilities (including of extended family), parenting beliefs and behaviours, behavioural standards for children, and expectations about separation, divorce and post separating parenting. For example, in consultations about family law, Middle Eastern communities thought it important for governmental and community services that manage matters of family law, domestic violence and children’s issues … to be aware of Shari’a law and Islamic practices when dealing with the Muslim community.”217 Where researchers have consulted cultural communities, there is general agreement that mediators should have an understanding of the issues and cultural and religious norms related to marriage, family and children in their community.

Cultural knowledge may be acquired informally through reading and experience, by seeking advice from cultural community leaders, by working in partnership with service providers to cultural communities, by hosting community consultations or more formally through cultural awareness training. One FRC provides cultural awareness training to … enhance the knowledge of practitioners around specific cultural issues. For example, we have a large Iraqi community here, so we developed a community profile to talk about the Iraqi community, their needs, their cultural practices, their family relationships. (Cultural liaison officer, FRC).

Service providers to cultural communities may offer cultural awareness training, and they highlight the importance of acquiring relevant cultural knowledge. One observed,

*Recently, we delivered a few sessions about engaging with Arabic speaking families. … [FRC workers] should at least have basic understanding of the culture, the background. (Family support worker, culturally specific organisation).*
It is also critical for service providers to appreciate their own cultural contexts and how these influence their professional work. One service provider to families from diverse backgrounds inverts a common approach to culture as something that ‘others’ have, observing that it was more important for their organisation to understand and explain the dominant culture, and the influence of professionals’ own cultural frameworks. She elaborated that rather than looking at how that client sees their world, and what that cultural awareness is, we look at what this world is in Australia and explain it. … Because if I sent the staff to culturally and linguistically diverse training for every culture and religion that came through this door, all we would be doing is going to training! So if we’re aware of our own biases and we’re aware of where we start and where we position ourselves, we then find we can work with anyone, and they engage with us. (Manager, children’s service).

Service providers need to be aware of the limitations of relying on cultural knowledge, as discussed earlier, but also need to appreciate that existing community service providers to diverse communities will need to learn about their clients’ cultures. One service provider to a faith community remarked on the importance for their organisation of developing further understanding of their clients’ cultural backgrounds. She remarked ‘we find that we need to educate ourselves about various cultures as they come … into Australia. … We’ve had to educate ourselves about the Somali group, … now the African communities, we were not aware of their cultural backgrounds.’ (Manager, faith based service).

The service did this by engaging ‘with religious leaders’ or ‘with the elderly women in that group’ to inquire about the difference between cultural practices and religious practices. … Understanding cultural practices and influences has given us such a great positive empowering tool to access and to engage in dialogue and educate people [about] … the difference between their religious practices and their cultural practices. (Manager, faith based service).

These remarks highlight a number of important points. Firstly, they demonstrate the perspective of ‘cultural humility’ which all service providers to culturally diverse groups ought to adopt in relation to understanding their clients. Secondly, they identify community leaders as primary sources of understanding about communities, further discussed below. Thirdly, they emphasise the importance of speaking with women to get ‘a balanced picture of what’s going on in a community.’ (FDRP, FRC). Finally they recognise the blurring between but distinctness of culture and religion, and the need for service providers to become familiar with both. This issue is also further considered below.

**RECOMMENDATIONS**

10. As part of FRC cultural self assessment, identify strengths and gaps in staff knowledge of local cultural communities and strategies to address these gaps.

5.2 Implement strategies to develop relationships

A common theme in respondent’s views about factors which might inhibit members of culturally diverse communities from approaching FRCs was their limited understanding of FRCs and uncertainty about FRCs’ capacity for cultural responsiveness. To foster better understanding, and also enhance FRCs understanding of local communities and cross cultural skills of working with them, it was recommended that FRCs strengthen relationships with culturally diverse communities. A key ‘benefit of developing community linkages is the potential for early identification of likely barriers and obstacles to accessing mediation.’ It may take a long time to build the trust foundational to mutually beneficial relationships, so it may be a ‘slowly, slowly process.’ (FDRP, FRC). Developing relationships requires

- genuine commitment to mutuality and working in partnership;
- resources and capacity to sustain the relationships;
- structures to facilitate this; and
- a clear sense of the purpose, boundaries and challenges of such engagement.
Culturally Responsive Family Dispute Resolution in Family Relationship Centres: Access and Practice

The most immediate and accessible source of guidance about how to better understand and to assist local CALD communities may be found by seeking advice from organisations which provide direct services to these communities. Ethno-specific, multicultural and faith based organisations play an important role in linking their communities into the service system and supporting them to gain access to a range of needed services.220 These organisations are able to synthesise their experience of working with a range of cultural communities and their perception of different communities' family relationship needs, and patterns of and barriers to service usage. Developing relationships and understandings begins by speaking with community organisations.

5.2.1 Identify and build local networks

Most participants agreed that to begin to understand local cultural communities and their relationship needs, ‘talking is the most important thing’ (Manager, women’s service). Such discussions foster FRC understanding of communities and their issues, whilst also building the FRC’s service reputation. A pervasive theme identified by respondents was the importance of developing trust in FRC capacity to work sensitively and effectively with CALD families in crisis. One way of building trust was for FRCs to develop personal relationships with individuals and leaders in other community services and to be visible in community networks.

These conversations should not occur ad hoc, but through existing structures and accepted pathways and networks. One respondent remarked that FRCs ‘need to seek advice about how the networks within a particular community work.’ (Manager, culturally specific service). These networks can be identified by approaching ethno-specific and generalist services targeted to immigrant communities such as migrant resource centres (MRCs). ‘It has to be a group that is working with the community.’ (Manager, women’s service). MRCs often have a program focus on recently arrived refugee and humanitarian entrant communities but will also have a great deal of wisdom about and contacts with more established migrant communities. The relationship needs, knowledge and capacity to negotiate systems will differ for new and for established communities.

One participant remarked on the importance of FRCs ‘getting out there’ explaining that

if you want members of this community to access your service, well firstly that community needs to know about you. … Go to the main organisations and the main people, you then form relationships, working relationships.’

(Lawyer, faith based service).

Participants commented on the importance of speaking with a broad spectrum of community organizations and services, observing that to ‘actually hear the voices from that community and the diversity of voices … you don’t go to one organisation’ (Lawyer, women’s service). A manager of a culturally specific service remarked on the importance of connecting with people at their point of reference and not necessarily expecting people to come to the FRC. This person explained

you can’t just think that if you connect with [our agency], you’re connected with the rest of the community, particularly the immediate community, or you can’t say that if you go to the MRC. … That’s not enough. … You’re going to have to go where the people are going, to the mosque and churches, to resolve family disputes.

(Manager, culturally specific service).

One participant suggested that the purpose of speaking with a wide range of organizations was to ‘find out what the issues are and don’t assume anything about that community. … You’ve got to find out … who the community is and focus … on getting to know the community.’ (Lawyer, women’s service). She remarked that seeking to understand cultural communities was a slow process, but it was likely to deliver longer term results. As she noted ‘it won’t reap the benefits immediately but it’s the foundation you have to lay in order to get the benefits a little bit later on.’

A number of respondents remarked on the importance of being present at and participating in local activities, especially ‘your local inter-agency’. Inter-agencies are comprised of the main services to particular sectors such as services for migrants, children, families, and targets of domestic violence. Attending meetings may sometimes seem a poor use of resources for a small organization like an FRC, and the outcomes may be difficult to substantiate or quantify. The investment in time is necessary to develop trust with potential referring agencies, foster professional relationships and to provide access to local knowledge and opportunities, especially across different sectors. Visibility is also likely to enhance FRC ‘credibility’ about their commitment to working with diverse communities and with the community of professionals who already do this. One participant commented that
things are happening at that level where if you’re sitting in your office you won’t be able to see them. … What better way to provide a culturally or religiously appropriate service, than understanding what is actually happening there and being there? … When you attend a particular inter-agency meeting, you’ll find there’ll be a Sudanese worker, there’ll be an Arabic worker and there’ll be one specialist Muslim worker. (Manager, faith based service).

The value of attending meetings was not simply to develop contacts, but also that to allow other agencies to assess the integrity and capacity of the FRC and its staff. One FRC manager explained the importance of attending local meetings. She said that

it’s a networking thing for me. So I go and get my face known and it’s about building trust. … If they don’t know us and they don’t like us, they won’t use us. (Manager, FRC).

Another FRC manager affirmed the links between service usage and personal relationships, commenting ‘this personal link stuff’ is very important in developing trust and confidence in the quality of the service so that community members would be referred to the FRC by gatekeeper workers and agencies. Community based agencies might speculate:

do we have some sort of understanding as to what sort of individual they are? Do we know that if one of our community members goes over there that the services that they provide will be what they’re looking for, they will be helpful? (Manager, FRC).

This remark highlights the importance of ensuring that the FRC workers deputising for the FRC have the ability, authority and commitment to effectively represent FRC interests.

**RECOMMENDATIONS**

11. Review the action that FRCs have already taken to identify and speak with community networks and organizations to identify any gaps in this process or need for follow up.
12. Review existing FRC involvement in local networks, particularly with migrant resource centres, and the benefits and challenges that have resulted from this involvement.
13. Refine FRC involvement in local networks in light of this review of network involvement, gaps in FRC service provision, feedback from MRCs and other agencies, communities presenting at FRCs and FRC strategic direction.

**5.2.2 Engage with leaders**

Many research participants remarked on the importance for FRCs to meet with community and religious leaders and elders. These leaders play an influential role and will often be consulted when family resources cannot resolve problems. As one professional working with Muslim faith communities observed, FRCs

need to also have a link with our religious leaders. There’s no doubt about that. … Religious leaders play such an important role at times of family disputes even for people who have a very low level of religiosity. They may have never gone to the mosque before. They don’t pray, they don’t adhere to any of the practices. But when it comes to issues to do with marriage and divorce, they’ll turn up at the Imam’s door. (Lawyer, faith based service).

The issue of identifying and meeting with community and religious leaders may be complex and FRCs may require assistance to reach leaders from agencies working with CALD families. As one FDRP involved in extensive consultations with leaders explained,

community notions of leadership are very hard to unpack. … What’s the difference between an elder and a leader? It’s quite difficult to tease that out. The best you manage to get is: ’They’re an elder because they’ve got the respect of the community; and they’re a leader because they hold a position of respect within the community.’ (FRDP, FRC).
Many respondents agreed that it was important to seek a diversity of views within CALD communities, including among community leaders. As one respondent observed, ‘elders [may] present themselves as having a monopoly on all knowledge. … It may be more challenging to access women.’ (FRDP, FRC). A worker in a children’s service cautioned that, in their experience, religious leaders had

a very strong bias towards men and not breaking up families. That’s what we tend to find. So, women are then supported to stay in relationships that they may not [otherwise] stay in. (Manager, children’s service).

A number of barriers to accessing FRC services concerned misunderstandings about FRCs. Engaging with leaders provides the opportunity to dispel some of these and to initiate community education. A number of respondents affirmed the value of FRCs going

into the churches, … into the mosque [to] meet with the religious leaders to connect them to the Family Relationship Centre. … They can promote their role, but they also have to educate the rest of the churches and the mosques as well, in terms of what’s going on with family law, they don’t have a clue.’ (Manager, culturally specific service.)

One respondent thought that if Imams better understood the role of FRCs, then for matters that Imams could not resolve, ‘it would make a huge difference to actually getting people to walk in that [FRC] front door.’ (Lawyer, faith based service). Consultations with Middle Eastern communities about family law in South Australia affirmed this view, concluding that ‘the outcome of the religious mediation may assist the mainstream mediator to narrow down the issues of dispute. … This may require the religious and the mainstream mediator to have a working relationship.’ Other research has identified that religious leaders and elders are the most likely of all ‘services’ to refer parents to other family relationship services.

Establishing good relationships with religious and community leaders could facilitate the development of mutual referral pathways. As one FDRP explained

for a lot of the CALD clients we see it’s a double issue. It’s not just their ethnicity it’s their ethnicity plus their religious affiliation. … It’s very handy to utilise the supports that are there within their faith and in their community. … We’re moving them to their religious leaders where we can. … That’s where we have the most success. … We can move them that way and hold them in our process while they seek that support. (FDRP, FRC).

Respondents indicated that many communities were more interested in intervention prior to separation to support families to stay together, than they were in seeking dispute resolution. Working more closely with leaders may encourage greater ‘early intervention’ to provide appropriate early supports, referrals and access to existing resources, where this is desired by the family, is safe and appropriate.

**RECOMMENDATIONS**

14. Review existing relationships with community and religious leaders and their understanding of FRC dispute resolution processes. Identify strategies to further develop these relationships and understandings.

15. Review FRC understanding of community dispute resolution processes and identify opportunities for developing this understanding.

16. Initiate discussions with community leaders about if and how FRC processes can supplement existing community dispute resolution processes.

17. Identify strategies to further refine mutual referral pathways between FRCs and community and religious leaders and/or organisations.

18. Identify opportunities for working with early intervention services to support CALD communities.
5.2.3 Work in partnership

A key theme identified by respondents, and affirmed by the literature on engaging with CALD communities and providing appropriate family services, was the value of working in partnership with communities, and with the services that work closely with them. A fundamental principle of culturally responsive service delivery is to foster participatory, collaborative and mutually beneficial partnerships with local communities and with established and reputable community agencies. This requires genuine commitment to the goal of facilitating CALD access, to equality and the mutuality of partnerships, and the resources and capacity to sustain these relationships. One worker explained the importance to FRCs and to the community of such partnerships:

*If FRC’s were serious about expanding their services to the whole community, the only way that they can do that is in collaboration with organizations that work specifically with those communities. I'm not saying that [we] should take over. Not at all. But we are here like consultants, and we can work with you, we can share the resources to get the maximum benefit out of the dollar. … If they work in collaboration with ethno-specific organizations, or organizations that know the community really well, then … I think you’ll get much better service delivery to the community.*

(Counsellor, ethno-specific service).

5.2.3.1 Appreciate the implications of community partnerships

It is also important to explore the potential benefit, and cost, to CALD services of working with FRCs to facilitate access for their communities, especially when these services have limited resources. One participant thought there were inequalities in the current environment, and this presented challenges to working in partnership. She observed

*The government's encouraging organizations to partner up and work collectively and share resources. But all the funding is going to mainstream organizations, and these mainstream organizations, although they do an exceptionally good job, don’t really know how to approach organizations like us. … We know the community. We know how to work with the community. And they should be approaching us saying … 'We really want to set up a system where we can co-work with you, but we also want to share the funding. What are your fees? What can we do? What are the things that we can do?'* (Counsellor, ethno-specific service).

The issue of resources was a sensitive one, particularly as some community agencies were disenchanted with commitments they believed were made during the FRC tender phase which they thought were later unfulfilled. One FDRP in a faith based service elaborated,

*We were just a kind of community partner, which means they wanted us to go to their centres and to give their staff some information, or … background. … Unfortunately we’re now operating very tightly where we need financially to survive ourselves. For us to go and train others is not really a viable option. That commitment to being culturally responsive has to be financially viable, because those [community] agencies are usually very small agencies.* (FDRP, faith based service).

5.2.3.2 Support community services

Some respondents suggested that one way to foster partnerships and develop mutually beneficial relationships was to ‘think how [FRCs] can support these services as well.’ This might involve FRCs considering

*how can the FRC, for example, support the work that our organisation does? In what way can they integrate the services that they provide? … Can they operate outreach programmes? Can they offer their services from different premises?* (Manager, faith based service).

One FRC offers its premises for different gatherings involving culturally diverse communities, and this has facilitated access to the FRC for some CALD community members. One respondent suggested that FRCs might consider how they could ‘support the work of how Imans deal with these cases’. (Lawyer, faith based service). This would require that FRCs become familiar with faith based dispute resolution and how it is distinctive from FDR. It would also require that any support was consistent with the spirit and letter of the Australian *Family Law Act*. For example, existing community dispute resolution services might be able to adapt FRC administrative processes to refine their own processes.
As one respondent observed earlier, ‘there’s an honest potential for partnerships … particularly in disputes involving children.’ (Lawyer, service for women). To realise this potential, FRCs need to work with community agencies in a mutually cost effective and creative way. According to one participant, ‘there needs to be a bit more creativity … you’ve got to do it differently.’ (Manager, culturally specific agency). Some examples of creative responses are discussed below.

5.2.3.3 Supplement community based dispute resolution

Some FRCs have responded to this challenge by working with local CALD communities to determine how FRCs might supplement existing community based dispute resolution processes and how to support their community members to engage in FRC processes. In partnership with a local migrant information centre, one FRC has appointed a community development worker to engage recently arrived communities to investigate their dispute resolution process and ultimately, to ‘trial different ways of doing dispute resolution with these different communities’. (FDRP, FRC). Interest in this project has been shown by local Somali and Sudanese communities, who wish to know more about the family law system, and who are also interested in acquiring legitimacy for their existing practices. One FDRP explained that, in his view,

‘best practice would be that an elder would be trained and would be registered as a family dispute resolution practitioner. They would be employed by a Family Relationship Centre, and they would work within their community wearing two hats.’

This mediator would then explain to parties from his community,

‘I’m an elder, I also happen to be registered as an FDRP. I will slightly modify my existing practice based on my learning about the Australian [family law] system. … I will run the process, and if I get a good outcome I can draw it up as a parenting plan. … If it’s not agreed upon, then I can assist the parties to enter the legal system.’ (FRDP, FRC).

An FDRP who had previous experience adapting processes for indigenous communities commented that it might assist some CALD communities if FRCs could develop ‘something like restorative practices in the family law situation’. He was uncertain ‘how that can work in terms of the FDR framework’, and was ‘not sure that it would be that readily accepted by the legal fraternity’. But he believed

that getting the best from the clients and the clients being able to get the most from mediation, I think a restorative approach, a family circle sort of approach, would be a much more friendly sort of entity than just ordinary mediation. (FDRP, FRC).

Any organization working to supplement existing informal conflict resolution processes would need to be very mindful of the power dynamics of such processes, and how their intervention might support these dynamics. As Frederico et al observed in their research on culturally sensitive mediation models, they would need to recognize that these processes ‘are structured within the dominant sub-culture of a community and they bring with them the issues of gender, power, honour and social status.’ Consequently, ‘for those not part of the dominant sub-culture, these informal conflict resolution processes may not always be appropriate.’ Organizations working to supplement existing community dispute resolution processes would also need to ensure that their activities were not inconsistent with Australian law generally, and with the Australian Family Law Act in particular.

As community dispute processes are likely to be stronger in emerging communities, it is important for FRCs to understand the ‘settlement and acculturation process’, and how ‘phases of adjustment might affect the settlement experience – particularly on family wellbeing.’ Engaging with communities is a very slow process, and one FRC explained,

we need to build trust before we start jumping in. That requires time, and it requires a management that’s not going to pressure that kind of worker to move too quickly. It’s evolving, and it spreads in a network way. It’s not about what you know, it’s about who you know. (FRDP, FRC).
Others who have engaged in similar projects have found the challenges significant. Some were surprised by the diversity of those communities and even how many different forms of traditional African mediation there are. It’s different in every country and it’s quite often different in every tribe.’ (FDRP, FRC). One respondent who had previously tried to provide mediation training for community and religious leaders ‘couldn’t get the numbers. Then we ended up engaging professionals who are working in the field.’ (Cultural advisor, FRC). Where there is interest expressed by community leaders or members, accreditation requirements may pose a barrier. As one explained, they will have to do their diploma. Now a lot of them don’t have the time and money. It’s not that they lack desire. … The legalse required for some of that is pretty intimidating because they’re struggling with English anyway. (FDRP, FRC).

The challenges are significant, and FRCs can only achieve what they are capable of doing within existing funding structures and existing legal frameworks. (FDRP, FRC). However these examples illustrate the sort of creative and innovative models of practice that, if successful, and consistent with Australian law, would be truly responsive to cultural context and processes.

The benefits of partnerships with culturally diverse communities include:

- mutual learnings about communities, structures and processes;
- enhanced support for existing community processes;
- increased community capacity to navigate mainstream processes and, ultimately, more make more informed choices; and
- insight into the potential for and limits to culturally responsive dispute resolution models.

Such partnerships are resource intensive. Previous successful partnerships have been based on a multi-agency model where government and legal agencies and migrant resource centres collaborate to consult communities and to share resources in developing partnerships. FRCs should follow best practice to guide the development of partnerships with culturally diverse communities.

**RECOMMENDATIONS**

19. Evaluate the purposes, possibilities, benefits and implications of FRCs engaging in community partnerships, particularly in collaboration with local migrant resource centres and other agencies, using best practice models for developing community partnerships.

5.2.4 Foster community capacity

One of the identified barriers to CALD access to FRCs was the limited community understanding about FRCs and their place in the broader service system. FRCs can play a role in enhancing this understanding, as well as building community knowledge and enhancing capacity to make effective choices and seek appropriate services. Community capacity building ‘bridges gaps in society and ultimately strengthens society itself’.

5.2.4.1 Develop community education

One area of need identified by a number of respondents was ‘education for their communities’ about the law and legal system, and about FRCs and family law in particular. One FDRP working in a capacity building role explained that they were being asked by CALD communities to provide ‘information about the family law system, about family relationships in Australia, and about how our specific service can work with these communities in an appropriate way.’ (FDRP, FRC). Others thought it would be important to provide information about the effect of divorce ‘on young children.’ (Manager, culturally specific service). An FDRP reflected that many clients who come to the FRC don’t understand the Family Law Act. They don’t understand how to access the court, whether they should access the court. They don’t understand why they have to come here and try to mediate [and] they don’t understand that legal framework in which they have to function. (FDRP, FRC).

The importance of providing such information was explained by one FDRP who observed that communities ‘are very responsive to clear information about what is required under law.’
To ensure that efforts were appropriately targeted, the first step was to ask ‘what might be the community education needs around this issue that we could assist you with?’ (Lawyer, faith based service). When consulted, indigenous communities wanted programs to support their parenting. So one FRC adapted an existing mainstream parenting program for this clientele

in a way that worked for them. So for instance we didn’t just invite parents, we invited grandmas, aunties and aunts who don’t have children. So we included the whole family. … We made it fun, they did lots of hands on, and … it was culturally specific. (Manager, FRC).

This manager explained that indigenous communities ‘didn’t want information about family law systems … the real key thing for them was the stuff … that will support [their] parenting.’ (Manager, FRC).

The Family Court partnerships with new and emerging communities demonstrated the significance of ‘cultural facilitator’ roles as a strategy both to educate communities and a vehicle for community capacity building.229 These facilitators were usually respected community members who lived in and worked with their communities. They were trained by the Court, and in turn acted as bilingual educators to inform their communities about laws affecting families. They were cultural facilitators, not interpreters who may only be able to provide ‘objective’ translation with little reference to cultural factors.

In contrast cultural facilitators were able to discuss how dimensions of culture affect family and interpersonal relationships. … The facilitators were able to introduce service providers to important tools for bridging cultural differences with communities to ensure integration of cultural considerations into service provision. The bilingual facilitator educator’s model played a crucial role in reaching communities where either literacy was a major barrier accessing legal information or where there was no written form of language.230

This project offers a ‘best practice’ model of engaging with culturally diverse communities. Such strategies demand significant commitment, resources and time, however.

5.2.4.2 Ensure relevant information strategies

The Family Court strategy is a good illustration of the need to ensure that community development and information strategies should be ‘flexible and multifaceted’ and customised to the cultural, linguistic and educational needs and backgrounds of the participants.231 Respondents in this research generally recognized that ‘framing the message the right way is important.’ (Manager, culturally specific service). For example, in some communities there might be taboos about or reluctance to attend a session on divorce, or about domestic violence. To address this, one multicultural agency calls its sessions on domestic violence ‘Healthy Living.’ As the community would not go out of its way to learn something unless they are at a crisis point, then one respondent thought it might be useful for FRCs to link up with other activities. (Manager, culturally specific service). She suggested that because people are ‘turning up like crazy’ to parenting sessions, ‘maybe it is an idea to connect [with] something like that.’

The forum in which information was offered is also important. FRC initiatives were likely to attract more interest if some FRC services was also available in the premises of a community agency. A service for women suggested

maybe run a seminar here … so at least women will feel comfortable in coming here, and sometimes men do feel comfortable coming here as well. (Manager, women’s service).

It was also important that FRCs inquire about how to offer community education in a culturally sensitive manner. This respondent thought that it would be important to provide ‘gender specific workshops’. She explained that

women are not going to go in, even if their husbands are not going to be there, but someone else from the community’s going to be there, another man who [the husband] may somehow have access to. (Manager, service to women).
The mode of communication also needs to be considered. This is particularly the case for migrant and refugee women who may have a low level of literacy in their first language. Information campaigns needed to be aware of the problems with translated print materials, especially where various language dialects existed, and that some concepts may be difficult to translate. African and other emerging communities may have oral traditions and ‘printed material may not have much impact at all.’ For these reasons visual communication by pictures or dramatisation can be effective. Story, narrative, performance and case studies may convey ‘culture, experience and values, as well as [be] a means of transmitting knowledge, wisdom, feelings and attitudes.’ The use of ethnic radio as a medium was strongly recommended because ‘some of the families, they are illiterate in their own language’. (Family support worker, multicultural service). Another suggested that

you can have an entire information session delivered that way through an interview, [in] a segment on family … and [giving] people giving advice over the telephone. (Manager, culturally specific service).

Community gatherings also provide opportunities for disseminating and discussing information. One respondent explained that when he wanted to run an information session for members of the Sudanese community,

we do it on a Sunday afternoon, after the church service. And everyone will be there, because they have the church service, then they have lunch together. (Family support worker, multicultural service).

The effectiveness of strategies would vary for different communities, and FRCs ‘need to seek advice from community organisations who know how the networks within particular communities work.’ (Manager, culturally specific service). Another observed

it’s not about community development … it’s really about engaging with the community that you’re providing the services for. … Listening and seeking advice: ‘Well you know, we’re thinking of doing this, what should we do?’ (Manager, faith based service).

Such community development activities might also provide an opportunity to facilitate later access to FRCs. As one service provider explained, if FRCs offered

gender specific seminars … that’s one way of getting these women in to access [FRCs]. If I don’t feel comfortable attending a session just as simple as a seminar, how am I going to feel comfortable walking into … that Centre? (Manager, women’s service).

5.2.4.3 Skill workers

One of the most effective ways to build community capacity is to ‘skill up the workers’ who assist CALD families in a range of capacities, and who are often the gatekeepers of referral pathways. (Family support worker, culturally specific organization). For example, some FRCs have organized

community forums to address the needs of people from CALD backgrounds about family relationship matters. The feedback we received, people are really interested to learn more about cultural practices, about family relationships in diverse communities. (FDRP, FRC)

This successful venture, attended by more than 100 service providers, was a joint exercise between two FRCs and several other community service providers. The Family Law emerging communities project is a good example of a ‘multi-sectoral/multi-tiered collaborative approach’ both to spread the cost and draw on wide expertise, but also to ‘avoid consultation fatigue’ by communities and by agencies. The strategies which involved training of ‘cultural facilitators’ as community educators were considered to be particularly effective.

RECOMMENDATIONS

20. Review existing FRC documentation, resources and programs made available to clients to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.

21. Review existing FRC communication and information strategies to ensure they are customised to the cultural, linguistic and educational needs and backgrounds of the culturally diverse communities served by the FRCs.
22. Consult reputable community agencies to provide input into the further development of communication and information strategies, particularly in light of expressed need for information and education about the family law system.

5.3 Create service structures that facilitate access

If FRCs wish more families from culturally diverse backgrounds to use their services, they need to establish structures to facilitate and support greater access. There are clearly resource implications and challenges attached to working more closely with local cultural communities. Appropriate structures, and funding to support these, are a necessary first step.

5.3.1 Develop structures to support clients

5.3.1.1 Create cultural liaison roles

A number of respondents referred to the value of developing particular ‘cultural’ roles to facilitate communication with and promote access by culturally diverse communities. Relationships work best if individuals are responsible for developing them. One participant explained that if a ‘particular worker’ has responsibility for developing community relationships, then community members are

more likely to come back. People need to build connections with each other as human beings. So if there is a community development person or community liaison person, somebody who can do the leg work, maybe attending meetings. … People relate to that person, and they will come back. (Manager, culturally specific service).

Such positions might also provide support to clients when they attend the FRC, and to FRC staff when they require cultural assistance. One FRC has developed roles for male and female ‘indigenous service advisors’ who come from local communities and are ‘well respected’. (Manager, FRC). These advisors provide important links to local indigenous communities, visit local communities regularly and often ‘just talk. … He makes connections and that’s how he does it. And through that we have had clients.’ At intake at this FRC, parties who identify as indigenous are asked if they would like the advisors to contact them to offer support before and during the FRC process. The advisors also support FDRPs as a cultural resource and source of cultural knowledge, and alert FDRPs if they do ‘something that is culturally inappropriate’. (Manager, FRC).

5.3.1.2 Employ bi-cultural staff

A number of respondents remarked on the value of employing bi-cultural staff who may be representative of the cultural community profile, but there were divergent views about this.

Some said it sent positive messages that the organization valued cultural diversity. Some clients might ‘prefer to find someone from the same culture, [because] that’s easy to build rapport and trust’: (Family support worker, multicultural service). Employing bi-lingual staff also makes use of the range of skills in the community. They also ‘bring an enormous amount of knowledge and experience’ about communities. (Cultural liaison officer, FRC).

However, other respondents thought the cultural background of the staff less important because ‘if you’re good, you get good results and families are happy with you, then they will come.’ (Family support worker, multicultural service). The presence of staff from the same cultural backgrounds, particularly small communities, might also heighten anxiety and raise concerns about confidentiality. Clients may ‘feel ashamed to talk about their issues in front of someone from the same culture, so they prefer someone else.’ (Family support worker, culturally specific service). Employing bi-cultural staff can also lead to a perception that the organisation is culturally competent when this may not be the case. As one respondent explained, it may be risky if

bicultural workers buy into their cultural belief system, and haven’t explored and dissected that for themselves. … So, the lack of analysis in your own cultural stuff and reflection

may lead to inappropriate, and sometimes unsafe, advice. (Manager, children’s service). This respondent agreed that it was preferable to employ staff who were culturally competent in the sense that they’re aware of their own cultural context, they had thought about and evaluated both the dominant culture and their own cultural practice.
5.3.1.3 Develop consultation structures

Some FRCs have formalised structures to facilitate their understanding of, and service provision to, different cultural communities. For example, one FRC seeks advice from a cultural consultative committee of professionals and community leaders ‘who are very well linked to their respective communities. … This is an advisory group to work with us on how we can address the needs of their respective communities around the family relationship matters.’ (Cultural advisor, FRC). Some participants cautioned that the time invested by community groups in formal consultative structures was considerable and that such a committee should

be very clear about what it needed from … the members they’ve invited around the room … We don’t need to hear the full story, just basically what is the advice that you need, what is it that you’re asking us to come in for? … Be clear about your parameters, before you ask people to come in. (Manager, culturally specific service).

One participant noted how important it was to follow up any consultation mechanism with feedback to those who had been consulted. She remarked, ‘if you want to consult, you’ve got to be serious that you’re going to follow through with these clients. It would be a waste of my time, a waste of their time, … what for or why come in the first place to ask if you’re not going to follow through with what we’ve given, what we’ve offered?’ (Manager, culturally specific service). The considerable commitment, capacity and resources necessary to sustain engagement with culturally diverse communities has been identified by some FSP services as an obstacle to providing culturally appropriate services for CALD communities.237

RECOMMENDATIONS

23. Review existing staff structure and roles in light of current resources and staff interests and evaluate the potential for appointing staff in a cultural liaison role.

24. Review existing staff linguistic profile in light of LGA community languages profiles to assess if these are aligned.

25. Identify the benefits that bi-cultural staff have brought to the service and the challenges they have confronted. Review role descriptions and guidelines for using bi-lingual staff skills to reflect this experience and contribution.

26. Review existing community consultation mechanisms to ensure mechanisms are consultative, effective and efficient, that the purpose of consultation is clear and that structures are put in place to feedback to communities.

5.3.2 Anticipate client needs

With an understanding of the demographics of local CALD communities, it is possible for FRCs to anticipate needs that might arise for these communities, and put in place structures and services to facilitate access and ensure appropriate assistance is provided.

5.3.2.1 Create a welcoming environment

It was observed that the FRC environment was ‘just not friendly for most people, … it’s just not a centre in which they feel comfortable.’ (FDRP, FRC). Reports on indigenous access to dispute resolution have observed that ‘enclosed rooms, high rise buildings and lifts may create fear and anxiety. Such venues may well discourage use of the service in the first place.’238 These factors may also influence the use of FRCs by CALD communities. Whilst all FRCs have made significant efforts to humanise their environments, more could be done to make them culturally familiar. For example, some FRCs have introduced signage in different languages, others have pictures of families from culturally diverse backgrounds, or children’s artwork depicting their families. One FRC manager noted that it was important to have something ‘identifiably Koori out in the front reception,’ other services have included the Aboriginal flag. Whilst these gestures can sometimes seem tokenistic, they can create messages of welcome to families from culturally diverse backgrounds.
An FRC manager further illustrated this point with an account of an ‘aboriginal woman who was really, really reluctant to come here, she was party B and she said, “this is not blackfella’s way’.” The FRC discussed with her what might be helpful in assisting her to participate in FDR,

and for her it was to come and visit the centre and to wander through and to actually physically check out the environment. She then participated in FDR a couple of weeks later. So it was just letting her be familiar with the surroundings, trying to do some normalising and just go at her pace.

These environmental factors may also play a role in discouraging some CALD communities to approach FRCs, especially those from new and emerging communities. Similar strategies of ‘normalising’ the environment, or of the FRC going out to communities or inviting them in, might assist some to feel more confident about using FRCs.

### 5.3.2.2 Consider needs of religiously observant clients

It was recommended earlier that FRCs should capture information about religious background, data which is not currently gathered in any of the official FRC data collection strategies. Knowledge of religious affiliation would allow FRC intake and assessment staff to explore with each client whether the FRC can make adjustments which would be respectful of their faith. Information about client religious affiliation would alert staff to the potential for liaising with religious supports or the need to make further inquiries. It may be desirable to refer clients to faith based services, or to arrange or facilitate the presence of support personnel.

Although not all people who identify themselves as Muslim are religiously observant, it may be appropriate to inquire about the preferred gender of staff to assist Muslim clients. Generally members of the opposite sex, who are not immediate family members, should not be alone together. It may be possible to schedule an FDRP who is knowledgeable about the faith if this is requested. For example, it may assist in discussions with orthodox Jewish parents if the FDRP has a good grasp of the significance of Jewish holidays and events to facilitate developing time arrangements with children that reflect parents’ desire to participate in these occasions.

### 5.3.2.3 Provide appropriate language assistance

The low level of interpreter use in Parramatta and Bankstown FRCs relative to the English proficiency profile of local communities may be the result of a number of possible factors. Either there is lack of need because those attending the FRC are English proficient and FRCs are not attracting non-English proficient clients, or there may be reliance on bi-lingual staff, parties not wishing to use interpreters, or a failure to identify situations where clients may benefit from interpreter provision. Given the complexity of some of the concepts and language used in the FDR process, and the tendency for second language competence to be compromised at stressful times, there could be potential unmet need for interpreter services. Evaluating existing FRC interpreter practice may provide greater clarity about the need for interpreters and staff training in the appointment and use of interpreters.

The FRC practice in providing language assistance is varied. One FRC ‘translates some of the letters that we send to clients who identify themselves to us with limited English.’ (Cultural advisor, FRC). Some FRCs reported that it was difficult to engage some CALD parents in the parenting education session because interpreters were not usually made available for the session, even though ‘we have a lot of information to get through in two and a half hours’. (FRCP, FRC). As this session is interactive and may require group work as well as English proficiency, clients with limited English proficiency may not derive benefit from it. FRC personnel conceded that some clients struggled to understand concepts, especially legal concepts. Some FRCs allow family members or friends to interpret for clients in FDR sessions, a practice discouraged by the National Accreditation Authority for Translators and Interpreters (NAATI). One participant commented on the value of offering FRC programs or sessions in community based languages, and questioned whether it was possible for example, ‘to deliver those [parenting] sessions in Arabic?’ (Manager, culturally specific service). Others stated that because of the sensitivity of issues around separation, it was important to have staff who spoke common community languages. As one observed,

we are dealing with sensitive issues and we need the right person there to understand what these people are saying. Because it's difficult if we send or refer somebody [to the FRC] and he doesn't, or she doesn't understand. … This is very important to find somebody there who speaks the language. (Family support worker, ethno specific service).
Several reports have identified the quality and availability of interpreter services as an issue. Women’s Legal Service NSW report that ‘serious and systemic difficulties persist in relation to the cost and availability of interpreters, as well as the quality of interpreter services’. Emerging communities may find it difficult to find an appropriate language interpreter at all, or the interpreter may be known to the client, creating fears about confidentiality. The Commonwealth Ombudsman has recently recommended improving access to interpreters to improve the availability of government information and services for culturally and linguistically diverse (CALD) communities. The Ombudsman made a number of recommendations which may be relevant to FRCs including,

- supplying an interpreter when requested (and recording reasons for inability to do so);
- specifying who can be used as an interpreter (for example, interpreters must be over 18);
- training staff to work with interpreters;
- promoting and rewarding qualified staff interpreters;
- developing accessible complaint handling mechanisms to allow feedback about access to, use, or quality of interpreters.

FRC bilingual staff used as interpreters should be NAATI accredited, and policy on interpreters should state the circumstances in which these staff can and cannot interpret. FRCs could consider whether there are more opportunities for the appropriate use of interpreters, bilingual FRC staff, or cultural facilitators, for all parts of the FDR process from intake to conclusion. This might enhance access as well as facilitate more equitable participation.

Similarly, written materials, including signage and documents given to clients needs to be evaluated on the same basis, as well as ensuring they are appropriate for the cultural, linguistic and literacy needs and backgrounds of the culturally communities served by the FRCs. A range of existing materials relevant to separation and family dispute resolution are translated into community languages on several websites.

All of these matters should be addressed as part of developing a languages services policy to provide FRCs with a ‘guide to ensure the implementation of consistent and appropriate approaches, procedures and practices in communicating with people from culturally and linguistically diverse backgrounds and people whose first language is Auslan.’

**RECOMMENDATIONS**

Recommendations have already been made in relation to collecting data on FRC client religious background and reviewing existing FRC interpreting and translating practices.

27. Review FRC environments to ensure they are culturally familiar.
28. Review opportunities for using existing translated resources relevant to separation.
29. Review FRC signage and common areas to ensure they reflect the cultural and linguistic diversity of the FRC catchment areas.

**5.4 Conclusion**

As the advice given by community agencies in this research suggests, there is a great deal that FRCs can do to enhance access to their services for clients from culturally diverse backgrounds. Culturally responsive FRCs will seek to reach out to the cultural communities they serve to inquire what they need and adapt their services appropriately. Whilst some suggestions may seem to be a diversion from FRC core business of dispute resolution, and may require significant resources, FRCs have a responsibility to ensure that their services are accessible for and sensitive to all clients who require them. If a methodical, long term and strategic partnership approach is taken, it is likely CALD communities will develop greater understanding about and trust in the work that FRCs do and this may lead to increased readiness to use FRCs. It will take time for this trust to develop however, and this process cannot be rushed.
Footnotes


189 Nationally, 14% are born in a country where the main language is not English, Australian Bureau of Statistics, Migrants, 2006 Census of Population and Housing, (Cat No 34150D00018) (2007).

190 For the whole of Australia the proportions born in the following countries are: UK (4.4%), China (1.9%), New Zealand (1.8%), Vietnam (1%), India (0.9%), Lebanon (0.9%), ABS above n 29.

191 National religious affiliations are: Catholic (26%), Buddhist (2%), Islam (2%). Australian Bureau of Statistics, Perspectives on Migrants, (Cat No 3416.0) (2007).


193 Nationally, the main languages other than English spoken at home are Italian (2%), Greek (1.5%), Cantonese (1%), Arabic (1%), Australian Bureau of Statistics, Year Book Australia, (Cat No 1301.0) (2006).

194 3% of Australians speak a language and English not well at all, ABS, ibid.

195 Socio-Economic Indexes for Areas (SEIFA) uses census information to rank the social and economic well-being and disadvantage in each region. Fairfield is the lowest ranking Sydney Metropolitan LGA, followed by Auburn, Canterbury and Bankstown. Holroyd is 9th, Parramatta 11th and Kuringai 43rd, is the highest. Australian Bureau of Statistics, Socio-Economic Indexes for Areas (Cat No 2033.0.55.001) (2006) <http://www.abs.gov.au/ausstats/abs@.nsf/AllContent/3310114.1.05.001main+table> at 16 March 2010.


197 Family Relationship Centre, Consensus for the FRSP Online National Data Collection (July, 2008).


200 CICMA, above n 45, 3.

201 Bruce, above n 199.


203 Militec, ibid, 14.

204 Sawikar and Katz, above n 104, 7.


208 Sawikar and Katz, above n 104, 10; LSCSA, Report on the Asian Community Consultation, ibid, 6; LSCSA, Report on the Middle Eastern Community Consultation, ibid, 7; LSCSA, Report on the African Community Consultation, ibid, 8.

209 NCCC, above n 65.

210 Sawikar and Katz, above n 104, 14.

211 O’Hagan, above n 30, 235; Sawikar and Katz, ibid.

212 ECOV, above n 58, 2; Marcella Olevania, Julie Beauleac, et al., Organizational cultural competence: Self assessment tools for community health and social service organizations (2005) Centre for Research in Community Services, University of Ottawa.


215 Goode, ibid, 2.

216 Goode, ibid, 2.

217 LSCSA, Report on the Middle Eastern Community Consultation, above n 138, 8.

218 Tervalon, above n 102.


221 LSCSA, Report on the Middle Eastern Community Consultation, above n 138, 8.

222 Kaspiow, above n 140, 75.

223 Frederico, above n 98, 28.

224 Frederico, ibid, 28.

225 FCA, above n 89, 52.

226 FCA, ibid, 45.

227 LSCSA, Legal Education Kit, above n 89, 12; FCA, ibid, 50.
5 What Can FRCs Do to Enhance Access for CALD Clients?

228 FCA, above n 89, 48.
229 FCA, ibid, 12-17.
230 FCA, ibid, 12-13.
231 LSCSA, Legal Education Kit, above n 89, 12; Dimopoulos, above n 110, 380.
232 WLS, above n 151, 21.
234 FCA, above n 89, 46. Playback theatre was the basis for one Family Court engagement strategy with the Eritrean and South Sudanese communities, an approach decided after consultations with these communities, 29.
235 FCA, ibid, 44.
236 FCA, ibid, 45.
237 Urbis, above n 90, 59.
238 NADRAC, Indigenous, above n 58, 12.
239 CIOMA, above n 45, 4.
242 NAATI, note 202 above, 18.
243 WLS, above n 151, 31.
244 WLS, ibid.
What Can FRCs and FDRPs Do to Implement Culturally Responsive FDR?
This part of the report draws on the responses of the 44 professionals interviewed for this research. Whilst the themes generated from the data come from those practising in the family dispute resolution field, some are also drawn from the experience of culturally specific and generalist services working with families from culturally diverse backgrounds. The data was used to identify key features or capacities in the existing practice of FDRPs and FRCs which characterise good professional and service practice in providing FDR to clients from culturally diverse backgrounds.

The research findings suggest that culturally responsive family dispute resolution practitioners and service providers:

- Understand the value of and limits to accommodating culture in FDR. In doing this FDRPs:
  - Recognise the importance of cultural contexts;
  - Appreciate the cultural contexts of the communities they serve;
  - Understand the limits of cultural accommodation; and
  - Reflect on the influence of their own cultural contexts.
- Sensitive explore the relevance of cultures with each family. In doing this FDRPs:
  - Perceive each person and family as unique;
  - Are respectfully curious; and
  - Affirm common cultural ground.
- Respond effectively to cultural contexts in the family dispute resolution process. In doing this FDRPs:
  - Consider the relevance of culture to FDR processes;
  - Recognise that ‘best interests’ will be culturally constructed; and
  - Facilitate structural supports to assist clients.

I discuss and illustrate each element of culturally responsive FDR practice below.

### 6.1 Understand the value of and limits to accommodating culture in FDR

Culture is the ‘elephant sitting in the room’ in family dispute resolution practice, according to one FRDP participating in this research. Michelle LeBaron has argued that there are ‘no culture-neutral ways to think of or respond to conflict. Cultural fluency is thus integral to bridging conflict.’ All FDR practitioners respond to a client’s cultural contexts and work within their own personal and professional cultural frameworks, but they may not always do this with awareness. There may be a shared cultural context between practitioner and client, or unconscious assumptions about this, and culture may not necessarily be overt in the FDR processes. However, culture is always present, although not always visible, including in the

- patterns of communication;
- nature and structure of the mediation process and parties’ and practitioners’ respective roles in it;
- behaviour, values and expectations of all involved; and
- cultural norms about responsible separated parenting that are expressed in law.

Culturally responsive FDR professionals recognise the relevance of cultural contexts to mediating family disputes and the potential importance of these contexts to the families in dispute.

They also recognise that cultural responsiveness in FDR will be limited by the law, FRC processes and resources, and the preferences and capacities of the parties. As Brigge argues, ‘mediation itself is a normalizing process that promotes a particular selfhood and embodies the values and approaches to conflict of dominant Western society.’ FDR as it occurs in FRCs is a highly structured process within a highly regulated and resource limited framework, and there may only be limited scope for flexible adjustment to cultural contexts. The FRC projects to support community mediation processes discussed earlier offer more hope of the sort of culturally appropriate models that have been suggested for indigenous mediation. The challenge in the FRC context is to develop effective and practical ways of valuing and sensitively responding to cultural difference in FDR processes within existing resources and imperatives.
6.1.1 Recognise the importance of cultural contexts

Culturally responsive practitioners recognise the centrality of cultural contexts to disputes about parenting. They understand that culture shapes personal and social identity, values, the meaning of family, parenting practices, expectations following separation and dispute resolution processes. As one research participant observed,

> well culture is what we are. … All our values are tied up in our culture. … [It is] who you are, how you parent, how you play, how you love, how you live. So if we strip that from people and ask them to take on another identity then you strip them of all their resources. (Manager, FRC)

This practitioner and others noted that FDRP awareness of the relevance of culture was critical to many clients’ capacity to effectively participate in FDR. This cultural awareness also informed a practitioner’s ability to identify and explore the issues between parties and assist them to resolve their dispute. One FRC manager noted,

> we can only understand what our clients are going through and what the children are going through if we can have an increased sensitivity to the cultural parameters within which they create meaning out of their family and their society and everything else.

Practitioners observed that it was important to understand, value and work with a client’s cultural contexts. One FDRP commented

> Well I think for me [culture is] critical because … that’s who they are, and that’s how they’re bringing their children up. And I think that if you don’t [understand] that, you’re not going to get anywhere, you’re really not. That’s the crux of it. By acknowledging it, respecting it, working with it. (FDRP, FRC)

This is consistent with other research with families from culturally diverse backgrounds who said they wanted to be treated with respect, and wanted their cultural experience and values understood and respected. Culture is sometimes perceived to be barrier or problem to be overcome by service providers. Early multiculturalism policies conceived culture negatively as an obstacle to participation, and language deficit denoted the cultural and ethnic mix in the community. It is equally important to understand culture as a strength, and to ‘mobilise the families’ cultural strengths towards positive change’, particularly in supporting ongoing care arrangements for children. One practitioner explained how working from the cultural strengths of the family might facilitate participation by reluctant parties. She referred to one case where

> Dad was a big scary character, huge, intimidating … but as soon as the practitioner started talking about the Fijian love of family and [showed he] knew a bit about how Fijian families operate, as soon as he did that, he had dad on board. Dad completely settled, swung around and they got quite a good outcome at the end. (Manager, FRC).

She continued that it was important for practitioners to understand

> the strength in this culture, like the strength in aboriginal culture, of aunties parenting or many parents parenting and this shared responsibility. We need to understand that. … We need to then be able to work with that, bring in the aunties. … But we need to know and understand a little more. (Manager, FRC).

The issue of what knowledge and how much is necessary to be culturally effective is a vexed one, and is explored in the next section.
6.1.2 Appreciate communities' cultural contexts

6.1.2.1 Foster cultural awareness

As noted in earlier discussion, enough cultural knowledge is important for avoiding cultural transgressions and as a starting point for exploring the relevance of cultural issues with each client. Knowledge of cross-cultural issues relevant to mediation is also required for continuing mediation accreditation.\textsuperscript{253} The limitations of relying on cultural knowledge were also considered earlier. In particular such reliance can reinforce a static concept of culture and create an illusion of cultural sensitivity that endows the professional with the power to evaluate the relevance of culture. One FDRP acknowledged the challenges of trying to understand a client's cultural world, saying

\textit{there are enormous cultural gaps. I … don’t want to keep making it sound harder than it is. … It’s very important … to be educated and to find out more, but some of these matters are so diverse and complex, it’s almost impossible.} (FDRP, FRC).

As Crockett has argued ‘cultural understanding is an ongoing process that evades clear rules and simple answers’.\textsuperscript{254} She posits an alternative model of a mediator who

\textit{is not defined by a sum of knowledge of different cultures, but by a worldview that is flexible and involves an ‘abiding commitment to the essential similarities between people everywhere, while paradoxically maintaining an equally strong commitment to differences.’}\textsuperscript{255}

This mediator is aware of the complexities of the clients’ experience and seeks to understand this by immersing ‘themselves in the reality of the disputants.’\textsuperscript{256} One service provider explained that this sort of competence does not develop ‘just by reading text books … or attending one cross-cultural seminar’. She elaborated,

\textit{it’s really a change in that mind set of understanding that there are differences. I may not adhere to them or understand them fully, but if that person practices them, then how am I going to work with that person to provide a service?} (Manager, faith based service).

6.1.2.2 Practise cultural humility

As culturally responsive practitioners are ‘at once an expert and a novice’, they also acknowledge the limits of their cultural understanding.\textsuperscript{257} She or he is ‘humble enough to say that they do not know when they truly do not know’ and to seek assistance to overcome this.\textsuperscript{258} Practitioners may ask the client or seek clarity through other cultural resources. One experienced FDRP who had worked in a range of family service roles explained that when confronted with uncertainty, it was helpful

\textit{to access a cultural advisor, but even then you’re really only able to consult with them between sessions, and only in relation to points that you’ve identified as being … relevant, but you don’t understand. … [I ask] ‘Is this something to do with culture, or is it everything individual?’ And the cultural advisor could sort of come up with an idea. Or … [ill] somebody else was sitting in the room with you, from that culture, they might be able to provide some insight.} (FDRP, FRC).

Most of the literature confirms that it is not the quantum of cultural knowledge that distinguishes the responsive mediator, but an appreciation of cultural complexity, an awareness of their own cultural frameworks, an attitude of humility, and a disposition for sensitive inquiry.

6.1.2.3 Acknowledge cultural complexity

One of the consistent themes drawn from the participants’ commentary and from the literature is the importance of recognising that a range of cultural contexts might be relevant to FDR processes. For some clients, ethnic cultures may not necessarily be of primary importance. One respondent explained the primacy of religion in her life, and not of culture, when she observed

\textit{the religion is something I hold most dear and close to my heart … the cultural stuff I can tend to ignore and not adhere to … but the religious side of things … influences almost everything I do.} (Lawyer, faith based service).
Others, including professionals, may find it difficult to distinguish culture from religion. As one remarked:

> it’s very hard for people to separate [culture and religion] and to distinguish the two. There are sometimes overlaps. … I find it difficult myself sometimes. What has, in my own upbringing, really come from religious values and beliefs and what is more cultural? It feels very connected. (FDRP, FRC).

Conversely, a service provider to a faith community felt that it was important to distinguish between religious principles and cultural practices. She explained:

> Cultural practices are things that I would expect were done in Lebanon and my parents have brought with them to Australia … whereas the religious principles are something for all places at all times. … It’s not connected to any kind of country or nationality or race. (Lawyer, faith based service).

Whilst this professional acknowledged the separation of religion and culture, she also recognized that the distinctions were blurred, especially

> when you’re dealing with issues to do with family, it’s probably the most important point at which religion and culture intersect. … I think one of the reasons why Muslims find that mainstream court system so difficult, it’s not just for all the reasons that other people find it difficult … but it’s also because it’s not really sensitive to their religious or cultural needs. So if we’re thinking of a better process, then the process has to be sensitive to and respectful of how these families operate. (Lawyer, faith based service).

The participants in Hughson’s research suggested that mediators should ‘prioritise ethnicity second to needs.’259 Kleinman and Benson have argued in a medical context that it is important for practitioners to inquire ‘about ethnic identity and determine whether it matters for the patient – whether it is an important part of the patient’s sense of self.’260 It is equally important to explore the relevance of culture in the FRC context. As one FRC manager explained:

> culture may not be important for some people and they will tell you that. It’s quite ironic when we start doing the intake and we ask people about their ancestry, you know, the standard FRSP online questions, so many people just draw a blank look. … So it’s about what’s important for you, and if that’s the culture and it’s shown in this way, then we need to take that into consideration when you’re trying to negotiate the parenting matters. (Manager, FRC).

Practitioners also need to be aware that this inquiry may need to be made with delicacy. Some clients may feel ambivalent about their cultural context, or have experienced discrimination because of it, and may find it difficult to discuss this with unfamiliar professionals from a mainstream cultural background. One professional working with cross-cultural communities referred to the need to be aware of the effect of cultural displacement and racism on people raised in Australia who also retain a very strong sense of their cultural contexts. She explained that

> just because you’re born in Australia, you’re still raised with the cultures, the customs, the ideas, the values, the beliefs of the mother country. … So there is that cross-cultural confusion, and feeling like you’re in two different worlds. A lot of parents will relay that if they have come from another country, or even if they were born here, that’s their experience of growing up in Australia. [There is] still a sense of racism and discrimination. (Manager, children’s service).

Ethnicity may be only one source of influence on individuals or families. One service provider to children illustrated the influence of multiple cultures by remarking:

> there’s a culture around why she stays with her man, and let’s look at what that culture is, not the culture of [for example,] Iraq. I think we have a real problem with making it [just] the linguistic, ethnic culture. (Manager, children’s service).

These examples illustrate that if professionals ‘are to provide helpful interventions’, they need to understand the complexity, and intersectionality, of ‘the cultural landscape of a family’.261
6.1.3 Understand the limits of cultural accommodation

Cultural accommodation has its limits. Cultural universalism and relativism usually centre around the question ‘at what point on the spectrum of human behavior can a person of one culture judge/intervene with the behavior of a person of another culture?’ She proposes that mediators should attempt to ‘transcend culture’ and see the ‘dispute as primarily one between individuals with their own particular needs and interests.’ Whilst good mediators will always respond to each party’s uniqueness, Crockett’s suggestion implies that the individual can be separated from his or her cultural contexts. The challenge for FDRPs is to effectively explore with clients whether and how elements of an individual’s culture ought to be accommodated in the FDR process. This will be circumscribed by the practical, professional, legal and resource parameters within which FDR in FRCs occurs.

6.1.3.1 Respond to the cultural dynamics of violence

One respondent, a social worker working in a service for children, emphasized the need for practitioners to be clear about what was cultural and what was not, particularly in relation to violence. She remarked

*I don’t know if it’s politically incorrect to say, but the culture’s irrelevant to the violence and abuse. We try and talk about it on a universal level. I don’t care if you’re African, … if you’re Iraqi or whatever – you married a man, you had hope, you had children with him. … There are just universal things that cut across humanity. That’s where we try and step in for women and children. When we find excuses for violence, … when they’re like, ‘In my culture…’ … we don’t disregard it, but we put it to the side, and say, ‘It’s actually the fact that you’re a woman, or a human being, why this is difficult. Not your culture and your religion.’*

(Manager, children’s service).

She referred to the dangers of practitioners slipping into cultural relativism and feeling paralysed by their perceived obligations to

*acknowledge culture and be culturally aware all the time, because it means … clients can get away with murder just by saying ‘it’s cultural.’ People then go, ‘Ooh, I can’t talk to you about that, because I don’t have the cultural knowledge.’ And I go, ‘Bugger that! I want to talk about why you think it’s OK that he can hit you. … It’s not about your culture.’*

Whether or not violence can be considered ‘cultural’, this approach highlights mediator responsibilities to be vigilant about the ‘broader structural issues of power, justice and human rights when assisting people to resolve their disputes.’ These matters will be present when assessing parties’ capacity to engage in the mediation, determining their suitability for FDR and in the ongoing monitoring of the resolution of the dispute. Ultimately the suitability for mediation of matters where violence and culture intersect will be determined by a complex interaction of factors, including the nature and recency of the violence, the capacity and preference of the victim, and the practitioner assessment about safety and suitability for FDR in the context of the statutory factors and exceptions to FDR.

One FDRP referred to her experience of using law to challenge what may perceived as cultural. She explained that she gives

*a very clear understanding of what’s acceptable here, that within our Family Law Act, what’s OK and what’s not, and in fact what he sees as OK is for us violence. My risk is that he loses faith or trust in me being impartial. (FDRP, FRC).*

Perhaps her concerns were misplaced as it was the view of others that the law was generally recognised among CALD communities as ‘trumping’ culture. Another FDRP explained,

*there seems to be a general understanding and consensus that you can have all the culture and tradition in the world, but local law will always trump it … and that’s OK. (FDRP, FRC).*
A family support worker echoed this view, stating that, in his view, being culturally respectful was about allowing individuals to voice their views and giving the

   person an opportunity to express. But at the same time you have to explain to people what’s the system here, what’s the process, ... because we cannot change the law due to culture and issues of background. (Family support worker, culturally specific service provider).

This responsibility to make clear the boundaries of law and process has been affirmed in other contexts. In the Family Court's project with new and emerging communities, 'explaining the social or cultural context of the law in Australia' was found to be a useful technique to bridge cultural and legal divides. As observed earlier, the framework of intersectionality may assist practitioners in responding to violence in CALD families. Adopting this perspective Susan Rees has observed that

   in acknowledging cultural variations in men’s violence against women, however, we have to be careful not to blame the culture of the immigrant or refugee family. The focus is to understand how male domination manifests itself within each culture to explore the connections with men’s violence in those cultures.

6.1.3.2 Respond to the cultural dynamics of gender

Another experienced FDRP commented on the complexity of navigating cultural terrains, particularly where they appeared inconsistent with dominant cultural beliefs regarding gender. In the context of gendered power relations with parties from diverse backgrounds, this FDRP explained the challenge of maintaining respect whilst trying to redress imbalances. He admitted that it was

   a very difficult process, because you have to navigate many areas. You have to understand the idea of the power relations, whether right or wrong, in the family, where there’s some kind of respect or acceptance of ethnic and cultural norms, and at the same time to promote some change. ... ‘Yes, you are the head of the family, and it’s important in terms of providing, but at the same time, what about the rights of your wife in the relationship?’ (FDRP, faith based service).

Another FDRP who had worked in many different capacities referred to the 'complexities of managing the gender stuff’, which he explained was difficult because of

   just being ignorant, and just finding it extremely difficult to know what’s appropriate and what’s not in terms of reasonable expectations of one another’s behaviour. ... Even in our model of staying out of it, you don’t know whether you’re bringing in your own cultural assumptions about what men and women should and shouldn’t do, particularly around who obeys who and who performs what function. (FDRP, FRC).

Ultimately the professional’s responsibility will be to achieve a delicate balance between maintaining respect for a client’s cultures whilst trying to monitor and address power imbalances, appreciating that these goals need not necessarily be mutually exclusive. Using the strengths of the culture, maintaining a focus on the common goal of promoting children's wellbeing, whilst also being mindful of the legal and human rights limits in this process, may assist in reaching a point of convergence. In this way 'the richness of culture is not ignored, but neither does it blind the mediator and prevent him or her from moving past the implicit judgment involved in the universalism/relativism debate.'
6.1.4 Reflect on the influence of their own cultural contexts

6.1.4.1 Cultivate professional self awareness

It was stated earlier in this report that a professional’s awareness of their own cultural norms and the cultural norms of their professional practice is considered the ‘most important component in the knowledge base of culturally competent practice.’

Self awareness is important for two reasons. First, it makes visible and subject to scrutiny the dominant cultural context within which the FDR process takes place, and highlights the power relationship between FRC personnel, the process and the parties. Secondly, it creates the basis for the professional to engage with clients in an empathetic and respectful manner, and helps to ‘avoid judging the family’s problems as deviations from the professional’s norms.’

Brigg suggests that it is particularly important for professionals of Western background to be critically aware of their professional cultural context. He explains that the dominance of Western cultural norms in the operation of most mediation programs ‘means that culturally specific traits are often perceived as normal or universal and thereby rendered invisible.’ If cultural perspectives remain unrecognized, the cultural values of the professional and the professional context may determine the process. As Connolly et al observe, ‘the professional self, inscribed by institutional power and authority, has the potential to frame assumptions and biases.’

The professional also has to be aware of the influence of their personal cultural contexts so that they are mindful of ‘imposing value laden judgments upon practice.’ This is particularly important in family dispute resolution as the practitioner’s legitimacy may rest on their perceived impartiality. But as Astor has made clear, a mediator’s consciousness of her own and the parties’ contexts, including the influence of culture, makes visible the role of these factors in the dispute and the dispute resolution process, and can assist to maximise party control over the process and outcome.

One FDRP acknowledged her personal cultural contexts, observing:

“I’m middle class, Anglo, part of the dominant culture … although I have a subculture as well because I am an evangelical Christian. … I carry a set of world views around that isn’t held by mainstream culture.” (FDRP, FRC)

Bicultural professionals can find the experience of working within the dominant cultural context, whilst also questioning this, ‘an enormous struggle.’ (Manager, children’s service). This professional acknowledged that:

“it’s very hard to sit with a foot in both worlds and constantly challenge that. … You don’t pay out the Australian dominant way of life, because that’s where we live, but you don’t disown your own cultural beliefs. You’ve got to find somewhere in between.”

The reference to the ‘dominant culture’ highlights the power dynamic between the practitioner and client, something which may also be consciously used to good effect. Because of their understanding of it, some respondents positioned themselves as translators of the dominant culture for clients who were outside this culture to assist them to better navigate it. The manager of a children’s service explained that the role of their organization was to be a resource for families by:

“explaining the dominant culture, and identifying the dominant culture, and knowing it’s the dominant culture that is sitting there in the room. That’s the bridge, and then we can work with everybody.” (Manager, children’s service).

She illustrated this by referring to the concept of foster care. She elaborated that:

“there’s not a concept in some nations or cultures that your children could be taken from you. It just doesn’t exist. So I need to explain why it exists, and then why we work the way that we do in Australia to do that. And it’s very difficult at times to do that, when you come from a culture that does not believe the State is a good parent.” (Manager, children’s service).
As Crockett has observed, this awareness of self and of the dominant cultural contexts that frame the FDR process ‘potentially allows [a mediator] to help others negotiate the cultural realities of a different system.’276 For example, if the mediation process or broader family law system is culturally unfamiliar, then FDRPs can assist parties to understand the law, their roles in the FDR process, what is likely to occur during FDR. Structures can be put in place to assist the parties to prepare for the process and to maximise their participation in and control over it by, for example, rehearsing their opening statement or developing active listening skills.277 As a way to begin to negotiate a different system, there may be value in discussing with clients ‘their perceptions and experiences of families and law in Australia and how it differed from their homeland.’278 It may be helpful to contrast FDR with community methods of dispute resolution if this is in the client’s range of experience.

These examples also illustrate how professional self awareness might create a platform to engage with clients in an empathetic and culturally respectful manner. A professional begins to be culturally competent when ‘awareness and sensitivity and genuine acceptance towards culturally different others is internalized.’279 Some of the most common advice from community services in this research was to ‘avoid assumptions’ and not to be judgmental. O’Hagan’s respondents said ‘it was the small things that count … gestures, small words, with the right attitude and approach … [like] making an effort to get spelling and pronunciation of our names right.’280 To illustrate, one counsellor in this research explained that being respectful to her clients might involve asking

*if they have a problem talking to women ... if they want to have somebody from their own background. Giving them options, ... giving them that choice. ... I'm very happy that they would express their real opinion. Depending on the person with their background, their physical behaviour, I would know whether to put my hand up and say hello or not when I talk to them, to look them in the eyes or not. ... And even the way I would be dressing is out of respect to the clients. (Counsellor, multicultural service)*

She also explained that it would be important to make clear the boundaries of their relationship, because culturally there may be an 'extra hierarchy' between professionals and clients who may 'feel they're obliged if they see us somewhere to say hello.'

6.1.4.2 Foster reflexivity

Self awareness requires a practitioner to develop a practice of self critique and ongoing critical reflection about the impact of their own personal and professional cultures on their practice. A number of commentators emphasise the importance of identifying personal and professional cultural thinking, of critically reflecting on it and challenging the values and attitudes informing it. Kleinman and Benson affirm the importance of ‘critical self-reflection that comes from the unsettling but enlightening experience of being between social worlds.’281 Tervalon and Murray-Garcia argue for an ongoing process of realistic self appraisal together with a commitment to lifelong learning.282 Bagshaw has suggested that to ‘make visible the personal biases and the cultural, political and social influences which impact on their neutrality’, mediators need to foster reflexivity.283 Reflexivity extends the concept of reflective practice, in which practitioners personally reflect upon and receive feedback about their practice from their peers and other experienced professionals. Reflexivity requires critical reflection about the impact of their personal and professional cultures on their FDR practice. It recognises that mediation is ‘culturally specific, not neutral’, and involves the mediator ‘being explicit about the operation of power’ and ‘mindful of their power position in the mediation process.’284

As ‘reflexivity demands awareness and control of one’s own professional, personal and cultural biases in order to understand the standpoint of the “other”’,285 it also requires structured opportunities to debrief and to critically reflect on and modify their practice. Most FRCs will already have in place processes for regular debriefing and professional development, and reflection on the cultural dynamics of FDR practice could be developed in this context. Frederico et al’s research concluded that such reflective learning should also include a feedback loop to communities to foster good practice and to ‘build trust and to enhance the credibility and reputation of mediation as a culturally appropriate intervention.’286
Reflexivity also requires critical practice. A reflexive mediator is non-hierarchical, collaborative, and engages clients in conversations which privilege the client's knowledge and meaning. This approach may also be evident in client questioning. Elicitive reflective questions can ‘assist parties to surface some of their culturally embedded ideas around social constructs’. One research participant explained that being ‘culturally reflexive’ required the professional to be child focussed and attentive to the specific parenting cultures in that family to determine if the parenting status quo should be sustained to support children at a time of family disruption. She elaborated that

the cultural part is not the base. It’s the expression of how that mediation is done [and mediators should inquire] what parenting looks like for that particular family. … Culturally, you need to try and re-evaluate how it’s expressed for that family, and how you can maintain or not maintain something in that way for that child. (Manager, children’s service).

She believed that the child protection environment might give more authority to support existing care arrangements or direct changes to these than a family law context which presumed that shared care was the most appropriate care arrangement were for children. However Rhoades et al’s research demonstrates that FDRPs’ strong attachment to neutrality and sound understanding of behavioural science evidence about children’s best interests actively promotes agreements that protect children’s welfare.

RECOMMENDATIONS

30. Develop opportunities, structures and protocols to foster the knowledge of and capacity of FRC staff and FDRPs to respond to client’s cultural contexts as part of the response to an FRC cultural self assessment:

a. Plan ongoing program of local cultural literacy development for FRC personnel, in light of strengths and gaps identified in organisational self assessment.

b. Facilitate regular critical reflection on the role of culture in professional practice.

c. Mentor, evaluate, extend the repertoire of professional behaviours, particularly in areas FRC staff and FDRPs identify as challenging in their engagement with CALD communities.

d. Develop structures and resources to provide culturally customised assistance to CALD parties to understand the law, their roles in the FDR, what is likely to occur during FDR and to prepare for FDR process.

e. Investigate with local migrant resource centres and other community agencies the opportunities for and protocols of accessing cultural advisors and/or facilitators.

6.2 Sensitively explore the relevance of cultures with each family

A further feature of culturally responsive FDR practice is the capacity to apply these understandings in exploring with each family the meaning of their cultures in the context of the disputes they wish to resolve. Cultural knowledge and self awareness need to be translated into professional behaviours that can facilitate this inquiry. These behaviours include the

• personal skills to empathise with and demonstrate respect for the client,

• analytical skills to identify the issues and subtexts, to make accurate assessments and assist parties to resolve disputes, and

• micro process and communication skills to engage with clients and to manage, monitor and facilitate the dispute resolution process.
Katz and Sawrikar note that a culturally sensitive practitioner will 'let the family be the expert and the educator' in deciding what is problematic in the family. This practitioner will be 'aware of how cultural diversity expresses itself among individuals within a cultural group' and 'how individuals and families within a CALD group differ from the norms, beliefs, values and practices typical of that culture'. Cultural competence builds on this appreciation, and the professional's self awareness and critical reflection, to develop an understanding of differences between and within cultural groups 'without making members of that group feel different'. Some of these particular skills and capacities in family dispute resolution are discussed and illustrated below.

6.2.1 Perceive each person as unique

The view that a culturally sensitive practitioner will 'let the family be the expert' in deciding the issues for that family was echoed by one FDRP when she observed,

… look my view is, and this is how I've worked, it's the family, they're the experts of their culture and they're the expert of their stories and their experience. If an issue is raised and it is cultural, then it's okay to talk about it to get an understanding of it and see what needs to happen that fits for that family. (FDRP, FRC).

Where the family is the authority of their own experience, the role of the FRC personnel and the FDRP is to carefully tease out the meaning and importance of culture to this experience and the issues that are present. During assessment and pre FDR stages, this might include exploring who is family for the client, assessing parties' capacity for and expectations of the process and evaluating the relevance of cultural matters. Inquiries might also be made about the impact of migration, familial roles including the role of the extended family, how decisions are made or disputes resolved and the importance of religion.

The responsive practitioner will seek to ‘explore the specific ways that this person is understanding, feeling and acting’. To do this they should avoid making assumptions from the perspective of cultural dominance and naivety about the parties’ cultural context. One practitioner explained that

the most important thing is for me is to walk with the client, and not to make any judgment calls on where they are coming from, and that can be morally as well as culturally. (FDRP, FRC).

A professional assisting a faith community reaffirmed the need to be non-judgmental when she advised

if you want to be a successful service provider to families then you have to understand and appreciate and respect the differences that arise due to culture and religion. … The most important advice is to approach each family with an open mind. So don’t have assumptions about how they might operate. Rather, be informed by what they tell you, how they are operating, what’s important to them because often it’s about how they interpret their culture and religion. (Lawyer, faith based service. Emphasis in original)

Another explained the importance of maintaining a non-judgmental approach with women who may be experiencing domestic violence. She explained that it was her practice to

go with the client. They might be from a Sudanese background, but they might not be following that culture. I wouldn’t presume that. … So I say to them, “How would you feel? What are you expecting out of this?” Because for me it could look like it’s [domestic violence] and obviously she can’t cope because culturally, it won’t look good for her to leave the family. But maybe deep down she doesn’t care what the culture thinks! Maybe deep down she wants someone to say, ‘Get out!’ So you say, ‘What are you expecting? What sort of help do you want me to give you?’ (Family support worker, multicultural service).

These comments also highlight the individual nature of cultural experience and relevance, and reaffirm the value of the approach suggested by Kleinman and Benson. They remarked that ‘rather than assuming knowledge of the patient, which can lead to stereotyping, simply asking the patient about ethnicity and its salience is the best way to start’. The difficulty with this advice however, is that the client may not always be able to evaluate or articulate how important their ethnicity or culture is to themselves or to their particular dispute. As will be discussed, there are helpful and unhelpful ways to investigate the relevance of cultural contexts. The approaches described here do, however, highlight the primacy of the client’s experience and the importance of understanding what is at stake for the client ‘as an individual, not as a representative of a group.'
6.2.2 Is respectfully curious

6.2.2.1 Listen closely at intake and assessment

A responsive practitioner will appreciate how to frame questions, will listen closely and know when to probe further to elicit potential cultural dimensions of an issue or when it is necessary to gather further information. This is particularly important during the intake and assessment phase. Consistent with the need to treat each client as unique, one service provider to women at risk from violence observed that her service respected ‘that there is this diversity by not assuming that everybody is at the same point religiously or culturally.’ This was best done

by listening to what the women are telling you. I mean there are some fundamental issues of safety of women and children. … Once you’ve established that … they are away from the danger, then it’s about listening to what the women want. If there are staff members of that cultural background, then they are used to get an idea of servicing or how they can relate to the particular woman in question. But if that’s not the case, it’s not disastrous. … It’s about listening to the women. (Lawyer, women’s service).

She further explained the fundamental role of screening processes in being able make sensitive inquiries to enable effective response. She elaborated that the

first point of contact in understanding what the issues actually are for the particular woman are really crucial. … It all generally comes down to that screening process but also making the woman feel comfortable. [Even] if she is not escaping domestic violence but is in a very vulnerable situation, you have to reassure her that she’s somewhere safe and that we respect her choices, what she wants to do. (Lawyer, women’s service).

The importance of the FRC screening process and knowing how to frame the inquiry is illustrated in the following example. One FRC staff member responsible for intake explained

I usually ask, ‘Do you have any cultural or disability issues that we should be aware of?’ And if they say, ‘Yes,’ we then sort of expand on that. And there are also questions at the start of registration around cultural background, so those sorts of questions are asked too. But I mean, I would probably probe a little bit to see what’s going on …

Q: So what sort of responses do you get to that, ‘Are there any cultural issues that you would like us to be aware of?’

Usually it’s ‘No.’ (Cultural liaison officer, FRC)

Whilst the negative response may occur because not many clients attending the FRC are from CALD backgrounds, this questioning approach is problematic for a number of reasons.

• It conflates culture with disability.

• The reference to the term ‘issues’ suggests that culture is a deficit to be overcome or compensated. It also suggests that ‘cultural issues’ are additional and separate complications to resolving parenting disputes rather than being integral to understanding clients and the nature and possible resolution of any disagreement.

• Whilst the speaker acknowledges that they ‘probe a little’, this needs to be done with great sensitivity. It may be difficult for client’s to talk about their cultural contexts if these are natural and therefore invisible to the client. It may be challenging for those who have experienced racism and discrimination to discuss their cultural identity with a professional from the dominant culture. Alternatively cultural differences in communication norms ‘concerning verbal, emotional and behavioural expressiveness, insights and expectations about self disclosure’ may inhibit immediate disclosure.297

• It places the inquirer and the agency (the ‘we’) in a position of authority as gatekeeper of this knowledge, if acquired, and responsible for what to do with it.
There are several threshold questions on the FSP online data collection form that could flag issues relevant to cultural context: country of birth, year of arrival, ancestry, language spoken at home which provide the opportunity to investigate these issues further. For example, Kelly illustrates how it may be important for intake officers in Community Justice Centres to further explore the responses of indigenous clients. She explains that aboriginal clients sometimes ask for a white mediator because of perceptions that confidentiality might be compromised by having an aboriginal mediator who may know the parties or people in their communities. She suggests that intake officers should inquire further, explaining:

> On the intake, one question asks, ‘Are you Aboriginal?’ and the very next question is, ‘Do you want an Aboriginal mediator?’ And they might go, ‘Oh no, I don’t want it out on the grapevine. No I don’t want an Aboriginal mediator.’ Instead the intake officer needs to say, ‘There are benefits of having an Aboriginal mediator and you don’t have to have one from your own community if you don’t want to. We can get you an Aboriginal mediator from somewhere else in the State.’

She explains that ‘trying to (sensitively) tease out the reasons for this preference’ and then discussing options and the confidentiality requirement in mediation, usually results in clients making a request for an aboriginal mediator. This example illustrates the proactive role that intake officers might taken by asking appropriate questions, listening closely and probing further.

One FRC manager acknowledged that their organisation was ‘currently in the process of re-developing our intake and assessment form based on many domains, but certainly culture is one of those.’ She noted that the form ‘doesn’t fit with grandparents for instance.’ She explained:

> we’ve never asked enough at the intake point about … who is in the child’s network, who are they having regular contact with, so that those meaningful connections can be maintained. But we’re not actually taking it to the next level about why those connections are important, is it from a cultural perspective? Is it from a religious perspective?

These examples further illustrates that a ‘tick a box’ approach to intake and assessment may be inadequate to uncover the complexities and subtleties of the cultural contexts of a dispute, and of other matters vital to an effective and accurate intake and assessment. It suggests that experienced FRC staff ought to be responsible for intake and assessment where possible. It also highlights the systemic responsibility that FRCs have in ensuring appropriate intake procedures occur. FRCs should ensure that forms guide staff adequately, that staff are properly skilled to undertake sensitive inquiries, and that they have adequate time to do so. The National Association of Dispute Resolution Council has suggested that, ‘given the complexity of many disputes involving Indigenous people and the need to establish trust and understanding in the process’, the intake and assessment stage may need to be carried out by the practitioners selected to conduct the dispute resolution. Given similar potential for complexity and need for trust, this approach may also be appropriate for FRCs dealing with clients from culturally diverse backgrounds.

6.2.2.2 Recognise the complexities of identifying violence

Complex family disputes often predict the presence of violence and risk to parties and children. Particular skill and sensitivity may be required to explore the presence and implications of violence if one or both of the parties are from culturally diverse backgrounds. A range of personal, cultural, religious, language and structural factors may influence perceptions by women from culturally diverse backgrounds about what is considered to be violent behaviour and their willingness to discuss such sensitive information. Immigrant women's groups explain that many CALD women may

> not disclose abuse for various reasons, including shame, fear of not being believed, or negative past experiences with services and agencies. Some migrant and refugee women are not aware that domestic violence is a crime and have no information on support services or legal remedies available. Some women may fear that they will shame their family or community by raising this issue.
The research conducted on Parramatta FRC files, discussed earlier, indicates a very high rate of controlling and coercive violence, as well as significant indicators of potential harm for children. The skill required in eliciting this information from CALD clients and interpreting its significance for FDR is sophisticated, suggesting again the need for culturally competent and highly skilled staff present early in the process, and adequate time to explore these issues. It may be that triaging matters to identify those with potential complexity, and diverting these to more experienced FDRPs, might provide more effective service to CALD clients, as well as to clients with complex profiles.

6.2.2.3 Develop a cultural radar

If inquiries are to be conducted sensitively, it can be helpful for practitioners to develop a cultural ‘radar’ which signals that cultural (or other) dimensions of an issue may need to be further explored. One experienced practitioner explained that cultural issues may not always be apparent, and that a client who says

‘My children don’t want to go to their father,’ [when] really what she’s saying is, ‘In my culture it’s completely inappropriate for them to go at this time.’ (FDRP, FRC).

He explained that it was often difficult to recognise, and to know how best to respond, when a client is ‘coming at a particular issue from that particular angle, but never actually voices it. You’re kind of in this weird limbo.’

Another FDRP observed that her ‘radar’ was triggered

particularly when I have a sense of thinking that things don’t make sense, … So that’s when I need to be a little bit more curious, and respectfully curious, with clients in terms of working out just where they were coming from. (FDRP, FRC).

She went on to illustrate this need for respectful curiosity when a client’s story was incongruous with her own cultural expectations. She explained that one client

could not tell me when the relationship had ended because, as far as he thought, he never had a relationship with this woman despite the fact that they had two children. So I am sitting there thinking ‘I don’t know whether it’s culturally appropriate to ask “so when did you stop having a sexual relationship?” … It was one of those mysteries where I tried to dig, but from my cultural expectations of saying ‘what are the facts here?’ … I was unsure how far I could go without causing a level of cultural inappropriateness.

She admits here her respect for the client’s cultural proprieties, or uncertainty about them, limited her capacity to be curious. She noted that generally her approach was

to say to clients that I might be having trouble understanding what they are saying, could they tell me some more … about their background, or what they mean by something. For me there is that sense that if it doesn’t make sense … it’s because there is some difference here and I am just not getting it.

Whilst the sort of reflective questions that Bagshaw has identified as assisting to uncover ‘culturally embedded ideas’ might be useful in this context, these questions are linguistically and conceptually quite sophisticated. Further work would need to be done to adapt these questions to frame them more clearly and simply for staff and for clients.

6.2.2.4 Respond to being lost in translation

Connolly et al remark that those ‘who work with families across cultures will be familiar with that sinking feeling of being lost in translation with barriers to meaning making the cultural signposts just too difficult to read.’ One FDRP with significant experience in a range of professional contexts and who had studied several languages and cultures echoed this sentiment when she admitted

how difficult it is to understand people from other cultures in terms of how language constructs ideology and world views and very different ways of seeing and interpreting the world.
Where professionals simply do not know, this should be acknowledged and remediated, if possible. One experienced mediator who had also worked in child protection with indigenous communities said that working alongside Aboriginal workers … was extremely helpful because you could then be really clear about what you might have said or done that might have been of benefit to somebody, or what not to do, what not to say. Because if you put somebody off side and they’re not going to open up, they’re not going to talk to you, they’re not going to trust you, and you might have done something completely banal in a cultural context.

This comment again illustrates the potential value of ‘cultural advisors’ or ‘facilitators’, which is addressed further below. The respondents in O’Hagan’s research indicated when workers were unsure about some aspect of a client’s culture, then an appropriate response might include

- a simple admission of ignorance (not an apology); a commitment to take the learning on board and not make the same mistake again; and perhaps the most appropriate response of all, particularly when shared with the client, laughing at oneself.306

Caution should be adopted, as humour can be very culturally specific. This approach illustrates well the sort of ‘cultural humility’ Tervalon and Murray-Garcia say is preferable to the more aspirational goal of cultural competence.

6.2.3 Affirm common cultural ground

Whilst it is important for practitioners to appreciate and respect the differences that arise due to culture and religion, respondents in this research also identified the importance of the common ground among all parents seeking to resolve disputes. As Crockett has observed, culturally able professionals understand the ‘essential similarities between people everywhere, while paradoxically maintaining an equally strong commitment to differences.’307 Given the specific nature of FDR, and the likelihood that parties will have been referred to an FRC, such commonality is inevitable. One FDRP remarked that the issues presented by clients from culturally diverse backgrounds are very much the same issues all clients seem to address in mediation … arrangements around children, spending time with children, decisions around children, sometimes probably the communication issues, the sort of stuff that we commonly address. (FDRP, FRC).

She further explained that CALD parents do experience challenges but I’m wondering how different they are to other peoples’. Things like … being daunted by the legal system, having fears or concerns about what the certificate means and what it means if they don’t participate in the process … are the sorts of concerns that other families also experience.

Another professional working in a children’s service emphasised the universality of the primary importance of the family, although acknowledging that the family is culturally inscribed. She observed universally, across the whole world, family as a unit is encouraged. It’s not ‘my culture says’ – it’s like every culture of every nationality of every language says ‘you stick it together, mother, father, children, in a unit.’ … (Just) because it’s been enshrined culturally or religiously, fine, but the actual core … came way before all of that. So it’s talking about that point, and not getting blocked as we go. (Manager, children’s service).

A family support worker echoed this sentiment when he stated ‘family is always important, in all cultures family comes first’. (Family support worker, culturally specific service). According to one respondent there would be no value in developing culturally responsive practices if it implied that there was ‘something wrong in those cultures that we need to do differently’ and if it decentred the universality of family in all cultural contexts. (Manager, children’s service).

RECOMMENDATIONS

31. Review current screening and assessment processes and roles to determine if existing tools and practices are effectively identifying CALD clients, their cultural contexts, their preferences and needs and are referring them appropriately, particularly where violence might be present.

32. Review staff confidence and capacity to make sensitive inquiries about culture and associated issues, and identify staff development opportunities to address any gaps.
6.3 Respond effectively to cultural contexts in FDR process

A culturally reflexive practitioner applies their personal and professional understandings to develop a repertoire of culturally responsive options in their FDR practice. These options are respectful of cultural difference, but also affirm common cultural ground. Such responses may be constrained by the legal and practice frameworks in which FDR occurs, particularly the objective of promoting children's best interests. Appropriate responses are not culturally relativistic, but require that practitioners monitor the ‘cultural’ information or signals they are receiving, and challenge or explore these if they are inconsistent with legal and practice frameworks. Practitioners need to be mindful that these professional contexts and legal rules are themselves culturally constructed and to make careful judgments about the flexibility of these parameters. Ultimately, the nature of responses to culture in family dispute resolution will need to be worked out on each occasion in collaboration with each family and its individual members.

6.3.1 Recognise that children’s best interests are culturally constructed

Consistent with a critical appreciation of the influence of professional cultures on the FDR process, is an awareness that concepts of what is in children’s best interests are also culturally constructed. Parenting practice is highly culturally determined. There is also a wide acknowledgement that the best interests principle is ‘indeterminate’ in that it cannot provide a uniquely correct answer and that ‘in the absence of legal rules or a hierarchy of values, the best interests approach depends on the value system of the decision maker.’ In the current iteration of the Family Law Act there are legal rules which suggest that best interests of children are primarily served by developing meaningful relationships with parents, in most cases by maximizing time with both parents.

As explained earlier, FDRPs are not required to ensure decisions are made in children’s best interests, but that most FDRPs feel that their primary role is to promote children’s best interests. In developing parenting plans, which are the core business of FRCs, FDRPs are required to inform parents that decisions should be made in the best interests of the child, and that this will be the yardstick against which any court will measure a parenting order.

6.3.1.1 Appreciate there may be different concepts of best interests

There was a significant range in practitioners’ experience of parenting post separation. One FDRP working in an FRC commented that most parents expected to share the care of their children, stating that the families I work with from different cultural backgrounds, or any background, have an expectation and a desire that the care will be shared but how it will be shared is always the sticky point. Most of the families that I see from different cultural backgrounds, particularly Arabic, there’s always a wish for involvement from the other parent. … How that role is defined, there’s little variation to mainstream culture, so a lot of the times women have an expectation that they will be the primary carer and that men will sort of fit in around that.

Another FDRP who worked with a specific faith community discussed how cultural or religious expectations could shape a parent’s view of what was best for their child. He observed that in many of the more established communities, … there is much emphasis … placed on the child’s role, what is in the best interests of the children. The parents [here] usually don’t see it that way. They do have interests, but when they negotiate they don’t think, ‘Well, what is in the best interest of the child?’ So they say, ‘Well, I want the child because this is how according to our tradition, the child should be with the father’ or ‘the child should be with the mother’ or ‘the child should be with the parents of the mother’ or something like that. And then what we try to do is explain what would be in the best interests of the children.

He added that this was done by asking parents to try to understand the separation from the child’s point of view, sometimes ‘meeting with the children and trying to explain to parents what the children really feel. That is a very new perspective to them.’

The Family Court’s consultations with new and emerging communities found that the ‘best interests’ concept was challenging to some participants. Some found it culturally alien to ‘place the children’s rights as being more important than the parents’. Exploring different approaches to this concept became a key for communities’ understanding of the role of the court and the law. The common desire for ‘a better future for all children became a point of convergence’ in developing partnerships with these communities.
Another practitioner working with children at risk, not an FDRP, argued that the current provisions of the Family Law Act promoting shared time were themselves culturally constructed and may be inconsistent with the parenting cultures of many families. She remarked that the message of the legislation says to separated fathers,

‘Take care of the girls for a week and then your wife would do it,’ ... [was] putting a dominant, white belief system on how he should be caring for his children. Does it fit for him? ... He believes that working to provide for the family is what he does ... forcing him to then take care of his kids doesn't work for the culture of that family. It changes the pattern and the position for those children, and it confuses everyone. It stresses Dad. The level of stress that you can see some fathers go through when they have to do something that they traditionally never had to do. I don’t see how that helps children. (Manager, children’s service).

Some FDR practitioners acknowledged that the principle in the Family Law Act ‘that children have a right to enjoy their culture’ informed their practice. One FDRP explained that this principle was increasingly important because

a lot of the conflict is about the extended family ... [and] people will attempt to prevent the children being able to see the extended family of the ex. We just have to impress upon them that the children have a right to see them as well. If there are any other problems that those uncles or grandparents should be encouraged to instigate FDR in their own right. (FDRP, FRC)

Another FDRP explained that parents are ‘not getting the idea about children’s rights ... So there’s a fair bit of educative stuff around explaining how the Family Law Act works.’ However, one FDRP observed that even when using child inclusive practice, it can be difficult for children themselves to voice their cultural interests. He explained that he asked children

‘to what extent [are these cultural traditions] ... important to you?’ ... They themselves don’t often – can’t think of it.

This should not be surprising when academics and theoreticians conclude that the ‘meaning of a child’s right to cultural identity is by no means clear for children growing up in complex multicultural settings’. There is little data available on the needs and experience of children from culturally diverse backgrounds in a family law context. Some of the available research indicates that family breakdown may exacerbate the ‘sense of cultural disconnection’ many children of CALD parents experience, in addition to the enormous pressures some of these children face. These pressures include economic stress on the family, separation or divorce, gambling addiction, substance abuse, or parents that have been unable to cope with traumatic experiences such as war, persecution, death and forced migration. Further research is necessary to inform FDR practice with CALD children.

This divergence in experience suggests that more time might be needed to explore differing perceptions of what is best for children to ensure that it is consistent with a family’s cultures of caring, and also promotes children’s welfare in a culturally appropriate and child specific way. Practitioners noted that there were resource and ‘time limitations’ to achieving what was optimal however. (FDRP, FRC). One FDRP commented that

we are here to work fairly quickly in terms of getting some decisions for the sake of the children in place. ... To what extent I would explore ... those social cultural interpersonal – intrapersonal issues [that are impacting on their capacity to make decisions for their children [is uncertain] ... in a time limited practice. ... [I need to be] respectful in terms of saying ‘This is what I’m doing, I’m not working as a counsellor at the moment’, so I need to be clear about those boundaries – as smudgy as they are.

6.3.1.2 Challenge cultural constructions if inconsistent with best interests

Practitioners sometimes reported a tension between respecting culturally influenced parenting practices and what they considered might be in a child’s best interests. One FDRP referred to the need to set aside her personal perceptions of appropriate child care where they were inconsistent with a client’s, as long as the child’s interests were not compromised. She explained that one father’s discipline of his child was inconsistent with her views, noting

... whether I thought that some of those things that he wanted a little 4 year old to do, tuck in a shirt, sit, I might not have felt personally, ... well it didn't matter if his son's shirt was out. But for him it was really important ... I'll pick up on that it is a strong cultural influence ... and I'll work with that.
She went on to explain that she might ‘try and get him to understand [how this might affect the child] and shift a little bit.’ This FDRP echoed the sentiment many expressed relating to the difficulties of knowing when to challenge cultural expectations about parenting observing that

there’s a fine line between working within their culture but then also acknowledging that you are in Australia, acknowledging that the best interests of the children can be perceived differently in different cultures. … But then if it actually comes to the crux of … a juxtaposition between what would be accepted in their country and what’s accepted in our country, we almost have to ask, well is it all in the best interests of the children, in Australia?

Another FDRP who worked with a faith community explained that he would often have to assist parents to readjust their expectations about care of the children. He noted that

there is some assumption that the mother is responsible for the younger children, and as soon as they become older, then it is the father’s responsibility, really. So what they say – ‘OK, that’s fine, you know when the child is two I don’t mind seeing the children once a month, and then when they are five I want to see them almost every day.’ Then it becomes a therapy, because you have to explain to them that if you have contact with a child who’s two once a month, you’re not going to have any bonding so that the child will want to come and spend time with you. So it’s explanation, it’s giving them some understanding that probably they didn’t have from their countries of origin.

Practitioners frequently commented that their role with parents was an educative one to assist them to understand their child’s perspective and what might be in their best interests, and that this was shaped by the expectations created by the legislation.

6.3.2 Facilitate structural supports to assist clients in FDR processes

A culturally competent practitioner will be flexible and creative in developing strategies to respond to clients’ cultural contexts, and be supported by their service to do this. Practitioners involved in this research identified a number of practical ways they had recognised and responded to client’s cultural contexts to support their participation in FDR. In each case these were responses developed specifically for each family’s circumstances and their expressed or identified need.

6.3.2.1 Explore the role of extended family

A number of respondents commented on the significant role that the extended family, particularly grandparents, played in CALD families. A family support worker with ethno specific communities commented that she had observed that

there is a growing trend for grandparents to do child-minding. It’s a good bonding between the grandchild and the grandparent; the grandparent feels valued. I see that as a good thing – as long as it’s not abused. …

In some cases, the grandparents are living with the children.

She also remarked that the separation affected the grandparents noting

It becomes an issue for the grandparents as well, not just for the couple. It’s also for both families. … Stigma, social isolation, because they feel … ‘everyone is talking about my child.’ So it affects grandparents.

Others identified that living arrangements following separation could be influenced by traditional expectations. A family support worker working with a multicultural service noted that in some Horn of Africa countries

when [separation] happens, the children tend to move back to their grandparents. … And you identify yourself by your father’s tribe. You don’t follow your mother’s tribe, in most cultures. You’re what you are because of your father’s background.
One FDRP commented on the challenges of ‘being aware of those subtle differences’ in the varying composition and significance of extended families in some CALD communities. He explained that

with the Sudanese, you’re really looking at the father’s family, whereas with Somali you’re looking at both the mother’s and the father’s family. In the African communities it really is a notion of extended family, but in the Chinese community it seems to be that extended family, in terms of care and control, ends with the direct lineage. So, parents, grandparents, great-grandparents, have control within families, and it’s not so extended. (FDRP, FRC).

FDRPs also remarked on the potential influence of the extended family on the capacity of parents to make independent decisions about the future of their own children. One FDRP observed that she questioned the capacity of both parents to make a binding agreement with the best interests of the child in mind if they’re being dominated by what they think their extended family or others in their culture will expect of them, and whether they can be free of that or not, whether they can present to them what they’ve actually agreed upon.

Another FDRP stated that it might take longer to develop an agreement with CALD families if there were familial factors which could destabilise the outcome. In her experience

you really want to make sure that they are on board because the pressures I think that they face when they go back into their communities with their friends, but particularly relatives. [They] just go ‘What do you mean you’ve agreed to doing this? This is wrong.’ … So they get a lot of pressure put on them once they leave here and we find that things can fall apart. (FDRP, FRC).

One FDRP observed that because

a lot of the conflict [between couples] is about the extended family. We’re getting higher, higher proportions of grand parents as parties. … Which is great. (FDRP, FRC).

The prominent role that extended families play post separation in all families, has led one FRC to begin an action research project to develop an ‘extended family model of FDR’. An FRC manager noted that this was still in progress, and constrained by ‘the costs of it and the labour intensive’ nature of such an initiative, and that ‘we really only want extended family when it’s a benefit to the outcomes for the child.’ She explained that this initiative was still exploratory and that this might involve ‘a series of different … interviews with people. So mum and dad in FDR and then go off and interview other people.’

Another FDRP speculated on the potential for ‘restorative practices … a family circle sort of approach’ with some cultural communities. Whilst he acknowledged that this might difficult to develop in the current FDR legislative framework, it could involve more parties who may be contributing to children’s care. He commented that this could include

anybody who’s an interested party who has some time in caring for the child [might be an] … appropriate person for participation in those kinds of family circle groups. So I think it might be aunts, it might be uncles, it might be cousins, it might be mum and dad, it might be others. It could be just elders from the group. I’m thinking fairly broadly about that, and the involvement has to be agreed by the participants, if they want somebody in there.

Other FRCs who worked with large Aboriginal communities have included a large number of participants in FDR processes. One manager explained that they

use a quite large room for Aboriginal people as they seem to like a bigger room. Of course there’s usually more people involved, because we are quite open to family members being – because of the Aboriginal culture, that it is a family responsibility, we sometimes have extra family members. (Manager, FRC).

All of these comments suggest that it would be valuable to explore the implications of adapting models of FDR to include the input of extended family members, where this is desired by both parties, considered beneficial for children, is feasible with current resources, and their inclusion is not likely to unduly disrupt the dispute resolution process. It would be beneficial to develop protocols guiding this inclusion.
6.3.2.2 Ensure sensitivity to gender

Client’s adherence to traditional gender roles may require the use of male and female mediators. Several practitioners explained that different cultural expectations about gender roles might be accommodated respectfully and safely by using a male/female co-mediator model. This has been suggested might also be appropriate for indigenous clients. One FDRP remarked that if a male client treats me in a way that shows me that his culture doesn’t necessarily support respect for woman, then I will match that in the room by choosing a more mature older man [as a co-mediator], so that … just by his presence, there’s a balance.

She also noted that altering seating arrangements in the FDR process might assist this client ‘who is struggling with the idea of a woman having some kind of control around what’s happening to him’ to participate more effectively. She explained that one way his cultural perspective might be respected, and that appropriate support for the vulnerable party also provided, by seating him opposite the man and I would be opposite the female so that I can be attentive to her first and foremost, but also be able to be respectful of him in the way that he understands within his culture. Which doesn’t mean I don’t stick to my guns, but do it in a way that’s not as overt.

There are challenges pursuing this approach in the current context, as most FDRPs in FRCs are women. Another FDRP remarked that it would be important to explore location and seating arrangements with the parties, or seek advice about what was appropriate. He observed that in his experience it had been important with some clients to be very careful about having the husband and the wife in the same room, because of issues of shaming the husband if there’s any suggestion that he’s done the wrong thing. You can do that if he’s by himself with another guy, but you really don’t want to do it in front of his wife.

Another remarked on the need during assessment to consider issues like the physical dynamics of the room during this process, but also during the FDR. She noted it was important to be conscious of little things like where they might like to sit. Some of our rooms are windowless, I think just because of my own background, I’m aware that that’s punishment for people who are African, to sit in a room with no windows!

6.3.2.3 Facilitate support structures

Many practitioners and community participants in this research referred to the value of facilitating the availability of familiar support structures for FRC clients before and during the FDR process. One experienced FDRP remarked that the support had to be consistent with ‘our model of engaging with those communities’ and that this was best done by involving people from the communities in the processes of FRC in order to provide the best opportunities for cultural groups to participate.

Respondents suggested that supports could be people familiar to the parties or they could be designated roles within FRCs providing generic support to parties where needed. Some stated that if FRCs designated staff to act in this capacity, then a dual support and cultural liaison role might provide effective assistance to CALD clients.

A professional working with a faith based organization suggested that FRCs consider developing structures and protocols to enable the presence of support personnel for parties in the FDR process. She remarked that within the community process it is important to have advocates for these people, not lawyers, but support people. Can these support people be present in these mediation processes so that [clients] feel … ‘if I’m bringing somebody along, it’s culturally appropriate for me and I don’t feel I’m doing anything wrong?’ (Lawyer, faith based service).
An FRC manager also identified the advocacy role that support personnel could play, as well as providing ‘emotional support, perhaps explaining the process’ if necessary. One FDRP explained that these roles ‘can support a family through the mediation process and … assist the family to use mediation and get the best from it.’ One FDRP illustrated the role of support personnel in facilitating client participation and control in FDR. She referred to a situation where a grandmother thought she didn’t have the respect from [her son in law] that she needed. So I spoke to him about it and he said he would be quite okay if he could have his support person in and she definitely needed her new husband in with her.

The discussion in relation to support personnel envisaged a role for supports that were known to the parties, as well as supporting roles being embedded in a ‘cultural liaison’ role. Where clients were encouraged to bring supports, it was important to develop protocols for their involvement. This might include:

- clarifying the nature of the role to be played in preparation processes and during FDR, including whether a support person could interpret for the party;
- how much of the FDR process needed to be explained to the support person, and strategies to do this;
- whether a support person ought to bound by the confidentiality of the FDR process;
- whether agreement from the other party is necessary, and the limits of any refusal;
- where a support person is to be located during FDR processes if not permitted in the room; and
- guidelines for party consultation with a support person.

An FRC manager explained the value to the FRC, and to the clients, of a support role within the FRC. She referred to a case where an Australian born father objected to the cultural practices of a Filipina mother who wanted to bring food to her children at school. This was food ‘that she’d made … something that was important to her.’ An Aboriginal advisor employed by the FRC was involved in the FDR private session with this father ‘contributing to those conversations about the importance of her culture through food and that it be passed onto the children.’ This advisor also played an ‘educative role’ in other cross cultural disputes:

applying her own principles perhaps that stem from a cultural background across other cultures. That’s been really helpful. (Manager, FRC).

Other FDRPs referred to the value of consulting a ‘cultural advisor’ to clarify or confirm the cultural dimensions of an issue in dispute. Another FRC which had employed cultural liaison officers talked of the importance of involving ‘them in the process from an organisational perspective rather than just a case perspective,’ so that their expertise is used to inform systems and policy.

6.3.2. Monitor interpreter use

The FRC data on interpreter use detailed earlier in this report indicated that it did not reflect the limited English proficiency in local communities. The need to provide adequate language assistance for CALD clients has been discussed in the broader context of enhancing access to FRCs. This section briefly surveys the attitudes to and issues with using interpreters identified by research participants.

Some FDRPs had not experienced particular difficulties using interpreters. One explained she hadn’t ‘had any experiences where they’ve had such a strong influence that has been negative or influential in that way.’ She elaborated that:

it’s just a slower process, obviously, but it’s not been negative in fact. The interpreters I’ve used have just sat there and just interpreted, just been the go between, they’ve just repeated and interpreted. (FDRP, FRC).

A number of respondents did experience difficulties working with interpreters however, including:

- difficulties translating complex terms, or culturally unfamiliar terms, or translating dialect into formal language;
- client discomfort about discussing personal issues before a stranger and clients feeling that their ‘privacy [had] been violated’, especially with interpreters who are not the same gender as the client;
• the length of time interpreting adds to the process;
• lack of availability of interpreters for new and emerging communities;
• poor quality of interpreters, for example minimising matters concerning domestic violence;
• lack of continuity of interpreters at different sessions;
• fears about confidentiality in small CALD communities;
• interpreter alignment with the client;
• interpreter inadvertently obstructing the FDR process by creating a barrier to clients taking responsibility and actively participating.

FDRPs were aware that interpreters were important for both the practitioner and the client even where the clients’ English may be functional for every day use, but [clients] need some extra support within this process. … It gives them more of a voice, even if their English appears to be very good, that insurance that we won’t miss things hopefully, that there’s more of a sense of being able to be understood correctly, to be able to express themselves as they need. (FDRP, FRC).

This FDRP had studied several languages and linguistics and was very familiar with the need for and protocols of using interpreters. She also acknowledged that interpreters are a player, and they need to be acknowledged and managed as such, even I’m very fussy about where they’re seated. … I try not to use them.

Many FDRPs shared this practitioner’s threshold for requesting and interpreter which depended on whether she could understand the client. One observed that she would ask the client obviously [if she wanted an interpreter] but the rationale I would use in the end is that I need to understand. If I can’t, if I’m not understanding what they’re saying, then it’s lost. (FDRP, FRC).

Mediators in other studies have indicated similar reluctance to use interpreters in mediation because nuances of conversation may be missed.320 Some FRCs have tried to overcome some of these difficulties by using bi-lingual staff to interpret. Whist this may be appropriate to respond to initial inquiries, it would not be appropriate during an FDR session. Given the apparent inconsistency in FRC practices of using interpreters, and the ‘the distortions, omissions and changes in connotation that can occur in unqualified translation’,321 it would be valuable to review existing interpreter practice in FRCs in light of guidelines for working effectively with interpreters.

6.3.2.5 Allow enough time and resources

A common theme among respondents was the need to allow much more time with clients from culturally diverse backgrounds during the process of intake and assessment, and during preparation for and the process of FDR. One FDRP noted that this was ‘because … you’ve got to go a little gentler and a little slower and work at it a little differently.’ Another FDRP remarked that the exploration phase of mediation seems to be fuller when I’ve got a CALD family … so that everybody is able to have some input into what the expectations need to be for the children. I actually find that a lot of the families quite appreciate that because they may have grown up in their own cultures but they recognise that their children have a foot in both worlds. (FDRP, FRC).

She also noted that reaching agreement might ‘take longer to get there with them’ because of the need to explore whether extended family or members of the community might challenge the agreement.

Practitioners were also mindful of the resource limitations to making the FDR process more culturally responsive. Discussing the value of working with cultural advisors, one FDRP remarked that this potential had not been realised, noting that

in my experience the organisational stuff got in the way. I wanted to, but there was actually supervisor direction that was saying, ‘You don’t need to do that. Just follow the process, and that’s good enough, because the process is designed to be fair and account for individual differences.’ And I think there might have been an assumption that it also accounted for cultural differences. (FDRP, FRC).
This remark highlights a common misunderstanding about providing equitable services to people from culturally diverse communities. Effective responses to culture in family dispute resolution should be worked out in collaboration with each family and its individual members. But it is apparent from the many insights provided by the professionals interviewed for this research that much can and should be done to adjust service practices to enhance fairness, to promote substantive equality for CALD clients, and to facilitate their effective participation in a service designed for all Australians. If such outcomes are to be more than rhetoric, then there needs to be an adequate understanding of some of the complexities involved in providing culturally responsive services in the family law sector, and adequate resources to facilitate and sustain good practice.

**RECOMMENDATIONS**

33. Review the interpretation and application in FRCs of the best interests principle, including the *Family Law Act* principle that ‘children have a right to enjoy their culture’.

34. Review available information about the needs and experience of children from culturally diverse backgrounds relevant to a family law context, including child rearing practices and expectations.

35. Review existing practices for including extended family members in FDR processes and develop protocols for consistent practice.

36. Review existing practices for including support personnel in FDR processes and develop protocols for consistent practice.

37. Evaluate the merits of appointing FRC staff in a client support role.

**6.4 Conclusion**

This chapter has drawn on the experience of professionals in family dispute resolution to identify good practice with clients from culturally diverse backgrounds. It describes some of the ways that mediators are responding to cultural contexts to facilitate greater participation in and party control over the FDR process. It acknowledges some of the complexities and challenges of identifying, exploring and accommodating the parties’ cultural contexts in the family dispute resolution process.

Culturally responsive FDR process and practice requires:

- an awareness or understanding of the relevance of cultural contexts, including their own, in mediating disputes in separated families;

- the skill to sensitively explore these contexts with each individual and family; and

- the capacity to respond appropriately to relevant cultural contexts in family dispute resolution processes.

This chapter has offered a number of practical suggestions about how family dispute resolution services and professionals could respond in a substantive way to clients’ cultural contexts. It suggested that developing a culturally reflexive practice might assist practitioners to enhance their responsiveness to the cultural contexts of families in FDR. This extends the concept of culturally responsive family dispute resolution and goes beyond acquiring cultural knowledge and developing sensitive responses. It recognizes that a range of cultural contexts might be relevant to families, and develops ongoing critical reflection and practice about the relevance of the practitioner’s own personal and professional cultures to their FDR practice. It requires the cumulative skill proficiency to use this knowledge and reflection to assist parties and their children in a way that responds to their uniqueness and wholeness and to the things that are important to the individuals in each family. Cultural reflexivity develops over time and is a product of knowledge, orientation, self awareness, critical self reflection, humility, experience, sensitivity and skill.
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Footnotes


250 Kelly suggests the only ‘culturally appropriate (indigenous) model is one that does not replace existing traditional dispute mechanisms, is flexible and is operated by respected community members.’ Kelly II, above n 58, 223; Sauve, above n 99.

251 Frederico, above n 219, 385; Hughton, above n 166, 4; Parika, above n 134.

252 Connolly, above n 61, 75.

253 NADRAC, Practice Standards, above n 26, 10.


256 Crockett, ibid, 265.

257 Crocket, ibid. 258 Tenvallon, above n 102, emphasis in original, 119.

259 Hughson, above n 166, 4.


261 Connolly, above n 61, 75.

262 There is a wealth of literature exploring this issue; see, for example, See Susan Moller Okin, Is multiculturalism bad for women? (1999); Ayelet Shachar, ‘Privatising Diversity: a Cautionary Tale from Religious Arbitration in Family Law’ (2008) 9 Theoretical Inquiries in Law 573-607; Walter Benn Michaels, The Trouble with Diversity: How we learned to love identity and ignore inequality (2006).

263 Crockett, above n 254, 260.

264 Crockett, ibid, 258.

265 Bagshaw, Keynote, above n 116, 6; NADRAC, Practice Standards, above n 26, 8.

266 Kelly II, above n 58, 227; Sauve, above n 99; Family Law Act 1975 (Cth) s 60I(9); Family Law Regulations 1984 (Cth) reg 62(2).

267 FCA, above n 89, 17.

268 Rees, above n 38, 3.

269 Crockett, above n 254, 258.

270 O’Hagan, above n 30, 235.


272 Brigg, above n 249, 301.


274 Connolly, ibid, 35.


276 Crockett, above n 253, 263.


278 FCA, above n 89, 5. A similar approach was adopted by the Legal Services Commission consultations by asking participants to respond to a vignette about family life from the perspective of their experience and culture: LSCSA, Report on Community Consultations, above n 138.

279 McPhatter, above n 108, 264.


281 Kleinman and Benson, above n 260.

282 Tenvallon, above n 102.

283 Bagshaw, Keynote, above n 116, 5.

284 Bagshaw, ibid; Nigel W Polak, ‘No longer neutral: Practitioner power in compulsory (family) dispute resolution’ (2009) 20 Australasian Dispute Resolution Journal 88-95, 94.


286 Frederico, above n 219, 388.

287 Bagshaw, Self-reflexivity, above n 285.


289 Rhodes et al, above n 21.

290 Connolly, above n 61, 28.


292 Sawrikar and Katz, ibid, 13.

293 Sawrikar and Katz, ibid, 13.

294 Berlin, above n 111.

295 Kleinman and Benson, above n 260.

296 Kleinman and Benson, ibid.

297 Dimopoulos, above n 110, 379.


299 Kelly I, ibid, 202.

300 NADRAC, Indigenous, above n 65, 11.
6 What Can FRCs and FDRPs Do to Implement Culturally Responsive FDR?

301 Mouzos, above n 136, 31; Rees, above n 145.
303 See the discussion on ‘triaging’ in Coumarelos, above m 149, at xxv and elsewhere in the document.
304 Bagshaw, Questions, above n 288, 6.
305 Connolly, above n 61, 76
307 Adler, above n 255, 263.
311 Family Law Act 1975 (Cth) s 60B(1)(a).
312 Rhoades, above n 21, 9, 53.
313 Family Law Act 1975 (Cth) s 63DA(2)(c).
315 FCA, above n 89, 7.
316 FCA, ibid, 7.
319 NADRAC, Indigenous, above n 65, 11.
320 Pankaj, above n 134, 10.
321 Militic, above n 202, 2.
Conclusion
This report has explored the meaning and implications of culturally responsive family dispute resolution as it is provided by Family Relationship Centres. Drawing on the reflections and experience of a range of professionals, it describes good professional and service practice to assist families from culturally diverse backgrounds participate more effectively in family dispute resolution. Fundamental to this good practice are the values and attributes of respect, mutuality, authenticity, attentiveness and mindfulness. Good professional practice with CALD families is good professional practice with all families.

The key to better understanding how to facilitate a greater proportion of CALD families using FRCs, lies in developing positive relationships with and working in partnership with a range of CALD service providers and community and religious leaders and ensuring that FRC staff and processes are culturally competent. A culturally responsive FDR service is premised on careful listening, respectful questioning and reflexive practice to assess the relevance of cultural contexts in FDR and to develop appropriate structures which will support CALD parties to participate more fully and fairly in the dispute resolution process.

As this research demonstrates, and the recommendations indicate, genuine commitment to fostering access and effective participation by CALD individuals needs to be supported by sufficient resources and capable staff. FRCs are themselves generally small organisations with limited scope to engage in large scale ongoing community capacity building. The challenges are significant, and FRCs can only achieve what they are ‘capable of doing within existing funding structures.’ (FDRP, FRC). However, with a clear purpose and plan, and the support of community based agencies, small steps can be taken which, long term, will make effective differences to the use of FRCs by CALD communities.

This small step, long term approach should also be adopted when attempting to implement culturally responsive family dispute resolution. This capacity is not a skill set but an amalgam of abilities, aptitudes and awareness which develops over time and with structured institutional support and resources. As the respondents indicate and the recommendations suggest, FRCs can put in place a number of strategies to foster and extend FDRP and FRC ability to assist CALD parents and children in a way which is respectful of their cultural contexts and enhances party control over the process.

As Hilary Astor and Christine Chinkin have observed mediation, and by implication, family dispute resolution, has the potential to bridge cultural gulfs and to allow people to understand both their own assumptions and those of others. However, in order to achieve these ends mediation must be supported by resources, skills and by the personal and political will to make it work.322
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Appendices
9.1 Interview Guide for Family Dispute Resolution Practitioners and FDR services

The purpose of this research is to assist Family Relationship Centres (FRCs) develop culturally responsive family dispute resolution for separating families. These questions are a guide to the issues we will discuss in the interview.

1. What is your cultural background? Do you identify with a religion? What language/s do you speak?

2. What work do you do? How long have you done this work? Do you work for an organisation which provides FDR?

3. How would you describe the FDR model you or your organisation uses?

4. What proportion of your clients is from culturally and linguistically diverse backgrounds? From which backgrounds do they (mostly) come?

5. What have you or your organisation done to encourage clients from culturally diverse backgrounds to approach it for FDR?

6. What do you or your organisation do to respect the cultural and linguistic background of your clients before and during FDR?

7. In your experience what are the main issues that clients from culturally diverse backgrounds have sought to address in FDR? Are the issues the same for men, women and children?

8. Have you observed that clients from culturally diverse backgrounds face any challenges before or during FDR? Could you please explain these?

9. Have you experienced any challenges before or during the FDR process working with clients from culturally diverse backgrounds? Could you please explain these?

10. Have you experienced any challenges developing parenting agreements with clients from culturally diverse backgrounds? Could you please explain these?

11. Do you commonly use interpreters in FDR? In your experience, how has the presence of interpreters influenced the FDR process?

12. Do you have a sense of the concerns of children from culturally diverse backgrounds following their parents’ separation? Has the family law principle that children have a right to enjoy their culture influenced your FDR practice?

13. In conclusion, could you briefly explain if you think it is important to consider the cultural, linguistic and/or religious background of FDR clients, and the reasons for your view.
9.2 Interview Guide for those assisting culturally diverse families

The purpose of this research is to assist Family Relationship Centres (FRCs) develop culturally responsive family dispute resolution for separating families. You offer services to families from culturally diverse backgrounds who may be separating. These questions are a guide to the issues we will discuss in the interview. I will tailor the questions to suit the work you do.

1. What is your cultural background? Do you identify with a religion? What languages do you speak?

2. What work do you do with families from culturally diverse backgrounds? Do you work for an organisation? For how long have you done this work?

3. From which cultural, linguistic and/or religious background/s do these families come?

4. How does your organisation respect the cultural, linguistic and/or religious background/s of the families you work with?

5. Is separation and/or divorce common among the families you assist? What are the issues they may need assistance with at or following separation? Are the issues the same for men, women and children?

6. Who usually cares for children following separation in the families you assist?

7. Are you aware if the families in the community/ies you assist have disagreements after separation? What do they disagree about? How do they resolve these disagreements?

8. FRCs help separating parents reach agreement about their children after separation. They use a process like mediation, which is free for the first three hours. Do you think FRCs could help the families you work with?

9. Would the separating parents you work with be likely to approach an FRC for help? What could FRCs do to encourage parents in the community/ies you work with to approach an FRC for help?

10. In conclusion, could you briefly explain if you think it is important for FRCs to consider the cultural, linguistic and/or religious backgrounds of the clients who use their service, and why you think so?
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