

# The Family Law Act – Resourcing Implications for Social Welfare

## Internal Report for the Ministry of Women, Social Welfare and Poverty Alleviation

by

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## 1: Executive Summary

- The Family Law Act, amongst other strategies, tries to offer effective counselling throughout the whole process that might aid in (prioritised):
  - (i) reconciliation of the marriage
  - (ii) mediation of how best to split the marriage
- It specifically targets counselling for children of couples who are going through marital trauma.
- The Family Law Court may use 'counsellors' outside the Family Law Court system. One of the identified sources of potential 'counsellors' outside the Courts are the 'welfare officers' of the Department of Social Welfare.
- The resource implications specific to Social Welfare are two fold:
  - (i) in having any staff to actually provide this additional Court duties and;
  - (ii) to have enough training and expertise to provide the counselling services that are implied in the Act.
- The professionalism of the counselling services offered by this Act appear to be hinged on two sections of the Act. The first is the quality and experience of the **Directors of Counselling** that the Family Law Courts are to employ. The second is the degree to which the **Family Law Council** is aware of the needs of professional counselling when giving creditation to individuals or bodies to act as Court counsellors (i.e. outside of the Court's own counsellors). Guidelines are suggested for these important bodies.
- It seems prudent to differentiate between the different sorts of consellers and different skill levels within these different sorts.
- It is almost certain that the Act must be phased in over time. A number of scenarios is given as to how this might be achieved.
- Certain aspects of the Act open up Government departments (such as Social Welfare) to potential litigation by members of the public or other independent organisations such as not taking parents to court for providing effective parenting to their children.
- A number of miscellaneous concerns and comments outside the contracted remit of this report is given.
- This report has observations and/or recommendations that could be useful to departments and organisations outside of the Department of Social Welfare; such as the Ministry of Justice, Ministry for Women and NGOs.
- There nine appendices to support or expand on the information given in this report.

## 2: Preamble

The Family Law Act 18-2003 (hereafter referred to as the Act), replaces a number of existing Acts (Matrimonial Causes Act, Maintenance Acts: Cap. 52-55), that will modernise the process of trying to maintain a family unit together wherever practicable and when this cannot or does not occur, to enter into a break up of the family with the least possible disruption to affected members, with particular emphasis on the well being of children in the care of the couple.

One of the core attributes of this Family Law Act is an emphasis on providing counselling functions at many stages of this Act. Although the plan is to hire personnel that act as counsellors **within** the court systems, there is also provision that members **outside** of these appointed counsellors could act in their stead. A legitimate concern then for the Department of Social Welfare (which will now be referred to as the 'Department'), then is how much any 'excess' court concerns or even apparent 'counselling expertise' is shouldered onto the already over burdened Department. This could be especially problematic in the early phases of the Act's implementation if the Family Law Court does not have it's respective full compliment of Court Counsellors.

This report is an independent assessment of the Act on the resource implications for (but not exclusively) the Department of Social Welfare. The remit is as follows:

1. A prima facie analysis of implications of the Family Law Act are
  - [a] particularly with regard to the Social Welfare Department
  - [b] an impact from January 1st 2005 when the Act is to be first implemented
  - [c] identify the respective roles of: Social Welfare, Min. of Justice, Police & the Family Courts.
2. Identify current resources within agencies to implement Act.
3. Make a set of proviso resource costing from prioritised to full implementation
4. Recommendations, particularly to save costs/resources
5. Finally to draft a consolidated report on the resource implications for each of the key agencies. This is that report, the header will identify whether this is a draft or a final version.

### 2.1: Caveat

This report has been written from the standpoint of trying to assess how the Act might be interpreted and the consequential resource implications that this might impact on Social Welfare and other departments. It is clear from both reading and discussions with key stake-holders of the Act, that there are different interpretations as to how the Act is to be implemented or interpreted. Highlighting the ambiguities is not meant to be an authoritative view of how the Act will or even should be implemented. Rather it is

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supposed to highlight an issue that carries a resource implication. This can subsequently be acted upon by the relevant department or Ministry if considered of sufficient concern.

### **3: Rationale of the Act**

One might be tempted to assume that the rationale of the introduction of the Act, is merely to update and modernise the existing antiquated legislation that had its roots in the colonial days of the English legal system. However, the Act is far more than that, and has a radically different underpinning or philosophy. At its heart the Act recognises that the bedrock of society is 'the family' and that any disruption to the family appears to result in present personal problems in coping with the change in family dynamics, and future problems for the children growing up in 'broken homes'. It may be a cliché to suggest that the Act needs to be considered as more than just another piece of reformed legislation. Never the less it is one that deals with real people who are suffering real trauma. The Act takes on the 'no-fault' position in terms of not attempting to lay fault or blame for either party in the couple seeking to divorce. It tries, whenever possible, to have a stab at trying to consider reconciliation as a viable alternative. If that appears to be out of the question, then it tries to mediate as amicable a split as possible without having to go through the courts. Only if that cannot appear to work, does the couple appear in the courts for adjudication.

Throughout and even after this process, there are (theoretically) counselling resources available to both help in the mediation processes and also to help in personal adjustment. This is not just for the adult couple but perhaps most especially for well being of the children of the couple. A comprehensive review of the research literature (Bauserman, 2002) on the psychological adjustment and well being by children in joint custody vs. sole custody arrangements, shows a clear advantage in the joint custody cases. In fact the joint custody cases appear to compare favourably to children from 'intact' families (i.e. those that have not been split or separated).

Thus the emphasis has been conceived as trying to maintain as much dignity by all parties on the scientific understanding that children of joint custody cases are statistically less likely to have psychological or societal problems later on. The Act is not just about 'touchy-feely' sentiments but practical economic strategies in trying to prevent socially and financially costly exercises in having families split or to split with considerable hostility remaining between the couple and their dependants.

If one wanted to see a clearer link between the welfare of the family and the degree of social disquiet, one need only look at the divorce or maintenance statistics of Fiji's Domestic Magistrates Courts between the years 1998-2003. One can see a dramatic increase on the year of the 2000 crisis which then gradually drops to the same level pre-2000, by last year.

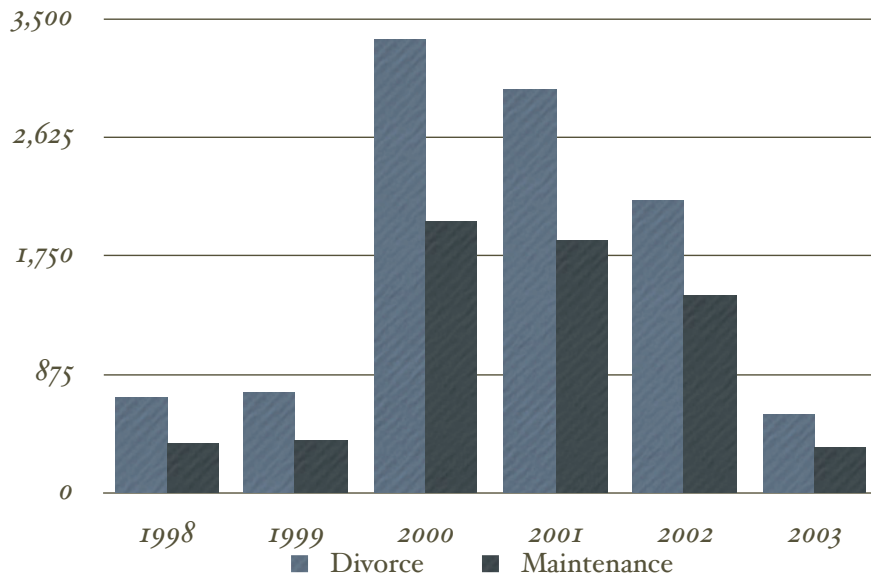


Chart 1: Frequency diagram of the incidence of divorces and maintenance proceedings in Fiji between 1998-2003

### 3.1: The Family Law Court

To give some orientation for the rest of the report, a brief outline is offered of the Family Law Court.

When a couple comes to file initial proceedings for a dissolution of their marriage they will come to the Family Law Court. In the first instance, they may ask for, or may be advised to take counselling sessions to see if they can effect a reconciliation.

Theoretically reconciliation services could be offered by the Court's counsellors but normally they would be referred to an outside set of counsellors who are concerned with marriage reconciliation.

Either if this is unsuccessful or it appears as if there is immediately no chance of a reconciliation, then the couple may be referred to the Court's counsellors working under the Director of Counselling for that particular Court. The Court's counsellors are there to try and help the couple to agree to their own terms of reference for the split, i.e. to work out material allocations and to work out parental residence orders.

If the couple cannot make headway amongst themselves, only then does the dissolution case go to litigation and proceed through the Courts formal system.

Counselling may also be offered to the children of a couple to help them adjust to the

fact that their parents are splitting apart.

Counsellors that are not part of the Court system or not part of Government, have to be given accreditation by the Family Law Council to offer appropriate counselling services. The Family Law Council can also confer accreditation powers onto an organisation that has applied for this and meets the Council's, as yet unspecified, requirements.

A rough diagram to represent the counselling part of this system is shown below.

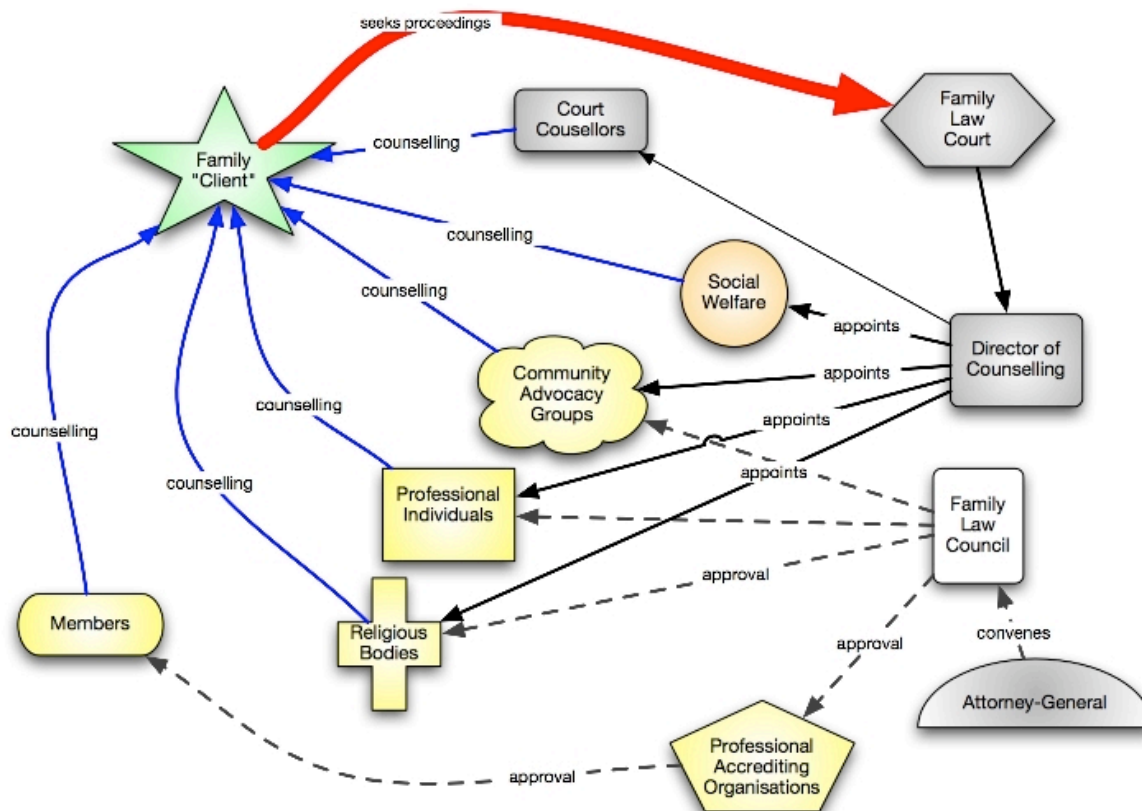


Figure 1: Diagrammatic representation of the Family Law Court structure in relationship to the counselling services offered.

#### 4: Prima Facie Resource Implications of the Act

In trying to keep the family as a functioning unit the Act has three main strategies:

- by potentially having to arrange for pre-marriage counselling if requested.
- by trying to reconcile a family that appears to be about to break apart ('dissolution').
- by providing "counselling services" to the members of the whole family to minimise the stress if reconciliation is not possible and the family appears to be set on a course of dissolution.

In addition to this, the Act makes considerable specific provision for the well-being of children, particularly in the event of a family break-up, offering counselling services if



requested, or offering counselling if the Court feels it is appropriate.

In short the main resource implications of the Act are the provision of professional and adequate counselling services.

The Act has tried to provide for this resource by setting up a a Counselling Section housed within the Family Law Court. The section consists of a Director of Counselling for the relevant court (High or Magistrate) and associated counsellors.

There is considerable provision within the Act to use counselling services outside of the Court if required. Specifically it mentions 'welfare officers' which has three definitions (2.-(1)):

- (a) a person who is permanently or temporarily employed as a welfare officer in the public service:
- (b) a person nominated by an organisation concerned with the welfare or children, being an organisation that has been approved under section 6
- (c) a person appointed as a welfare officer in accordance with the regulations

## 5: Resource Implications for the Department of Social Welfare (Task 1[a])

The Act specifically mentions 'welfare officers' and the Director of Social Welfare. The relevant sections of the Act have been identified in Appendices II & III.

### 5.1: Welfare Officers

For those welfare officers employed in the public service, this is automatically understood to someone who works in Social Welfare under the title 'welfare officer'. There are broadly speaking two major resource implications when the Act speaks of 'welfare officer'. The first is to do with straight personnel resourcing. Presumably, when the Court Counselling services cannot cope, then Social Welfare *might* be called upon to 'fill the gap'. This might be especially frequent during the early phases of the Act, when all the designated Directors of Counselling and their appointed counsellors, might not be recruited. The second has to do with the degree to which the welfare officer is synonymous with a 'counsellor', namely that the degree of training to make the two government officials truly synonymous in terms of counselling skills level, has to be borne in mind.

### 5.2: Welfare Officers Specifically Mentioned in the Act

Please see Appendix III for a summary of all the captions in the Act that refer to welfare officers. However, the main points where welfare officers *might* be called upon to

perform duties under this Act are:

- Acting in a counselling role in pre-marriage counselling (improbable but possible).
- Acting in the role of a counsellor with the aim of reconciliation of family members.
- Acting in the role of a counsellor with the aim of amicable dissolution of the family (where the dissolution is unavoidable).
- Interviewing potential family members at the request of the court to see if they require counselling services.

In addition, welfare officers would continue in their other roles as welfare officers such as the Juvenile Act, Penal Code, and in their roles as welfare officers that currently exist in the soon to be repealed acts.

### **5.2.1: Pre-marriage counselling**

The link between the Act and pre-marriage counselling is tenuous. However, in the Act 'marriage counselling' is defined as including "... the counselling of a person in relation to – (a) entering into a marriage". Articles 10-11 are suggestive that a 'party to a marriage' may ask for counselling services, hence they could theoretically ask for pre-marriage guidance counselling. This would be an unusual function of a Family Law Court compared to other countries who have similar Acts – that should not be necessarily a suggestion that it is altogether a bad thing, but it might need to be linked explicitly with other Acts (such as the Marriage Act).

### **5.2.2: Reconciliation services by welfare officers**

The Act is suggestive that the skills that a welfare officer might have to employ, could be that of a counsellor used to try and bring about a reconciliation between family members: 9.–(2(c(ii))).

#### PART III - COUNSELLING AND RECONCILIATION

##### Possibility of reconciliation

9.– (2) if, in such proceedings, it appears at any time to the judge or magistrate. from the evidence in the proceedings or the attitude of the parties, or either or them, that there is a reasonable possibility or such a reconciliation, the judge or magistrate may

- (a) adjourn the proceedings to afford the parties an opportunity to consider a reconciliation:
- (b) with the consent of these parties, interview them in chambers, with or without counsel, as the judge or magistrate thinks proper, with a view to effecting a reconciliation: and
- (c) if the judge or magistrate thinks it desirable to do so, nominate-
  - (i) a marriage counsellor or an approved marriage education and counselling organisation: or
  - (ii) in special circumstances, some other suitable person or organisation

to assist those parties in considering a reconciliation.

### **5.2.3: Mediation/conciliation services by welfare officers**

A number of articles in the Act (53, 54, 67, 68,72, 88, 114) refer to the Court instigating counselling sessions or with reference to counselling sessions regarding the welfare of

children from the marriage, where 'welfare officers' are specifically mentioned as taking part in those sessions, or related to their participation in the counselling sessions. .

#### **5.2.4: Interviewing by welfare officers for potential counselling**

Welfare officers may be used by sections of the Act that deal with an interview to consider whether counselling services are required (50) and then to go onto offer those services.

### **5.3: Training Implications in Social Welfare for it's Welfare Officers**

It is difficult to justify the skills level of a welfare officer being markedly different from a Court Counsellor when the Act makes their potential tasks in various proceedings, synonymous. Currently the minimum qualification requirements for a Welfare Officer Class II, is a pass in the Fiji School Leaving Certificate, Form 7, or equivalent. With 2-3 years experience at this level (or equivalent) they can progress onto become a Welfare Officer Class I. There is no formal training within Social Welfare specifically to hone and refined counselling or mediation skills.

#### **5.3.1: Worst-Case Scenario 1: wife beaten to death after being told to reconcile by undertrained welfare officer**

A “worst case scenario” would be that a decision in a counselling session, which looks on the face of it as being a bad decision. For instance the welfare officer persuades the family to try to reconcile. The wife subsequently is killed in an episode of spousal abuse. It matters not if a 'trained' counsellor would have made the same decision, but when it subsequently transpires that the welfare officer had inadequate training compared to the Court Counsellors; Social Welfare might subsequently be held accountable for the consequences of the decision.

Although the motivation for making the training as good as possible should be in the interests of 'best-practice', the lack of resources may suggest that Social Welfare might have to consider protecting themselves against a 'worst-case-scenario' as the main motivation for insisting on equivalence of counselling skills in their welfare officers, which if it could not be provided, would be a case for refusing to engage in this type of counselling.

#### **5.3.2: Formal Training Required**

If there were minimum criteria for acting in a counselling role (currently not provided for in the Act), then Social Welfare would have a stronger argument to make that either their staff cannot take on a counselling role, or that further resources are required to give a minimum set of formal training in counselling/mediation skills. Minimum criteria can potentially be made by the Family Law Council. This makes composition of the Family Law Council a critical exercise in the interests of specifying professionalism in the

execution of this Act.

### **5.3.3: Worst case scenario 2: Family torn apart by false accusation of child abuse**

Of relevance/concern is the article 114 which deals with suspicion of abuse to the child resulting from such a counselling session. The risk of making a false call (suggesting that abuse has taken place when in fact it has not) is that serious damage to the well being of the family can take place. Either the family is put under severe strain in trying to prove that this is a case of mistaken reading of the signals, or in fact it may sow a seed of suspicion which is subsequently never dispelled. Ironically such a family may enter into dissolution proceedings.

There is a strong argument to state that it is better to err on the side of caution. However, it is of course better to not make any mistakes whenever possible. Hence the actual people conducting the interviews or counselling sessions need to be highly trained to accurately detect symptoms of abuse and not make many or any 'false calls'

### **5.4: Social Welfare being Sued for not Enforcing the Act**

There is a section of the Act (41. b) in which it is possible that a member of the public or a public organisation may pursue litigation against the Department who might be accused of not enforcing the Act. The relevant section (41) says:

[The objects of this Part are–] (b) to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

Also these responsibilities are exceedingly broad, there is one area in which the parental responsibility is clearly lacking and that is in homeless children or so called 'Street-Kids'. If a parent is absent, they can in no way be described as giving any (let alone sufficient) 'care, welfare' and responsibility for the development of their children. Social Welfare, already confronts this problem in particular with 'Street-Kids' in the Juvenile act, in which parents must not to 'neglect' their children. However, the term 'neglect' could be open to a number of different interpretations which might make taking a set of parents to task for this hard. Parents might argue that they are not 'neglecting' their children by allowing them to learn about from the 'University of Life', on the streets of Suva city. This Act appears to make a clearer case for (in)adequate parenting in the eyes of the law.

This Act though has made a statement with respect to parental responsibilities which most likely leaves little room for interpretation. Social Welfare (and the Police) could potentially prosecute parents of such children under this Act. Conversations with the Director of Social Welfare, make it clear that he believes that although this is possible, this is not a 'clean' solution as it ignores the holistic question of 'poverty' being the root cause for such phenomena as Street-Kids. If, say, Social Welfare were to use this Act to

simply 'clean' out the cities of Street-Kids, there is a danger that another social problem or ill will supplant the problem of Street-Kids.

Other conversations though (such as Ministry of Justice, UNICEF) take the view that this is not an all together unwelcome part of the legislation and that, whilst it may not 'cure' the larger issues, it could force parents to consider their parenting duties more seriously.

However, this is interpreted though, it is possible that Social Welfare (or the Police) could be sued by the public for not using the Act to attend to Street-Kids.

## **6: Impact on 1st Jan 2005 Implementation for Department of Social Welfare (Task 1 [b])**

Three major impacts are most likely to occur during the implementation of the Act on the 1st of January, 2005:

- An awareness of the Act and it's relationship to the previous acts that will subsequently be repealed. Clarification in interpreting the Act will need to be highlighted so that the Department can agree to a set of interpreting principles.
- A set of in-house guidelines, and appropriate training, of the logistical processes that need to occur when Social Welfare is called upon by the Family Law Court.
- The ability to provide personnel for the purpose of counselling as the Family Law Court may ask for under the Act. This impact is likely to occur under the (realistic) presumption that the counselling facilities will not be up to the projected full compliment, and Social Welfare will have to provide 'welfare officers' to breach the shortfall.
- Aside from providing personnel to give counselling under the Act, it is the ability to provide some minimum level of 'counselling' for families in proceedings under this Act.
- Social Welfare need to have access to promotional and educational material that can explain to the general public both the changes in legislation that the Act brings about, and an explanation of the new procedures. This might be in-house or might be a referral, however, Social Welfare is likely to be a pivotal point of communication that the public are likely to ask about the Act.

## 7: Ministry/Departmental Roles in the Act (Task 1[c])

In this section, the discussion is confined to where the roles of various Ministries', Departmentals' and other groups' are defined that are different from what they currently do prior to the implementation of the Act.

Attorney-General	The Attorney-General's main role in the Act, is to appoint a Family Law Council – the Attorney-General could in principle not do this however. Her or his function is to ensure the effective running of this Council.
Family Law Council	This is a body that the Attorney-General is likely to convene. It will consist of a body of people who have a remit to consider advising the Attorney-General on any aspect of the implementation of the Act and family law in general.  One of this Council's most important functions will be in conferring the status of 'counselling' to either individuals, or giving the power of organisations to confer counsellor status to individuals who such an organisation's guidelines.
Ministry of Justice	Essentially the place from which the Family Law Courts are administered. This applies to both High and Magistrate's Courts. The Family Law Courts employ the counselling services that the Court provides under this Act.
Social Welfare	Social Welfare will continue to provide services that it provided under the soon to be repealed Acts (Matrimonial Causes Act, Maintenance and Affiliation Act and three Maintenance Acts (Cap. 53-55).  It will also play a role in providing counselling services that a Court Director of Counselling may request.  It may also have to provide interviews as requested by the Court to ascertain whether family members require counselling.
Department for Women	With the welfare of women as a focus, the Department is most likely to provide advice and education about the workings of the Act and how it is implemented to the benefit of women in a family under potential dissolution.  They might need to help provide gender sensitivity training for the Family Law Court and other personnel that might be instrumental in the effective running of the Act.
Police	Currently, the Police are involved in the Family Law Act, only in that they have the power to arrest person's who do not comply with certain aspects of the Act. They could potentially in the future play a role in being able to:  (i) provide initial information about the rights under the new Act; and  (ii) realistically provide some fundamental counselling as they are many times the initial point of contact in a Family escalation of a feud.

NGO's	Accrediting Organisations	An organisation that has been given accrediting powers by the Family Law Council, can appoint individuals as suitable counsellors who can be employed under various parts of this Act.
	Religious Bodies	Religious bodies play an important role in the current Act because they are potential partners who can assist as non-governmental parties interested in both pre-marriage guidance counselling, and in helping families to come to a possible reconciliation if the family is in danger of splitting apart.
	Community Advocacy Groups	Advocacy groups such as the Women's Crisis Centre, or Women's Rights Centre to name two organisations, are likely to be potential community partners who are able to promote the mechanisms of the Act, and help to provide some initial guidance .
	Clinical Psychologists and Psychiatrists	These individuals may be used to fulfil an order by the Court to have a child who is separately represented, to undergo an psychological/ psychiatric evaluation. These individuals may also submit evidence to submit relating to child abuse which has not been ascertained by the normal Court officers.
	Fiji Law Society	The Fiji Law Society may be an important place where lawyers are made aware of the implications of the Act and even assist in being able to provide adequate training for lawyers. Law societies in both Australia and New Zealand have membership that focuses on the issues of their respective equivalent Family Law Acts.

Table 1: Table showing roles played by Ministries, Departments and organisations in the Family Law Act.

## 8: Current vs. Required Resources within Agencies (Task 2)

Agency	Existing Resources	Required Resources
Family Law Council	not yet established	<p>a body of expertise within the Council that can advise generally about the Family Law Act, but who also have considerable knowledge of the requirements of professional counselling.</p> <p>A suggested make up and composition of the Family Law Council is given in Appendix V.</p>
Family Law Court	not yet established	<p>Personnel appointed to the Court who are either familiar with the counselling process and professional issues (eg the Judges) or who are required to be the counsellors. This requires a Director of Counselling for each court and associated counsellors who would work for her or him.</p>
Social Welfare	already have expertise in some areas of the Act, since the new Act replaces some that Social Welfare is already working on	needs to be some educational issues sorted out to clarify how Soc. Welfare operates under the new Act.
	has welfare officers who may be appointed as Court Officers in the new Family Law Court	given that Social Welfare is already severely understaffed, the resources required to fulfil their existing role that they currently are required to do in the soon to be repealed Acts, is to have staff appointed.
	little, or no expertise in professional counselling	if the Family Law Court expects to appoint the Department's welfare officers in any counselling capacity, then the training and expertise to that expectation should be carried out.



Department of Women	a mandate to promote the welfare of women. The Family Law Act has legislation to help in this promotion.		training to understand exactly how the Act helps to promote women's welfare
			appropriate marketing and promotional information on and about the Act in relation to women's welfare. This needs to be handled with some aplomb given the political resistance to the Act being passed on the (false) understanding that the Act would encourage divorce.
			building confidence in new Act, given that the 'same players' are likely to be involved especially initially in the implementation fo the Act.
Accrediting Bodies	Fiji currently has two professional bodies (Fiji Association of Social Workers, Oceania Psychology Register) that promote ethical standards that are consistent with internationally agreed upon working principles for counsellors.		These bodies have yet to be endorsed by the Family Law Council
NGO's	either a mission statement or a mandate to fulfil to varying degrees, aspects of the Act. Examples include:		Identifying at what level of counselling skill these NGOs have and considering how they could fit in with the Family Law Act as 'community-partners'.  Encourage these bodies to upskill their counselling abilities.
	Religious Bodies	involved in pre-marriage and some in marriage guidance counselling	
	Community Advocacy Groups	some counselling skills present which is relevant to the NGO (eg Women's Crisis Centre)	

Table 2: Required resources for the Family Law Act

## 8.1: Levels of Counselling Skills Identified and Accredited

Currently, the Act does not specify what a 'counsellor' actually is, or rather what levels of skill training she or he has. Reading the Family Law Report 1999, which tried to make the strong case for the Act being implemented as part of the Fiji Law Reform Commission, there is also a clear intention that there should be different levels of counselling offered. It is worth considering those differences and how that has (not) been translated in the Act.

### **8.1.1: Counselling in the Family Law Report 1999**

The report makes distinctions between counsellors that can offer pre-marriage, marriage and reconciliation counselling, family and child counselling and Property/Financial conciliators. Unfortunately, this has not translated into the Act, which means that they have the potential to be consolidated into generic 'counsellors'; or the provisions in the Act allow individuals to possibly have to act in any of these capacities. The functions as laid out in the report are:

<b>Counseling type</b>	<b>Position in the Family Law Court</b>	<b>Role/Description</b>
pre-marriage guidance counselling	outside the Court	to offer pragmatic advice and to counsel on realistic expectations to the intending marriage couple
Marriage guidance counselling	outside the Court	Offering counselling services to couples who want to improve their relationship, normally couples would not consider counselling unless they feel that they are having severe difficulties within their marriage (but this need not necessarily be so).
Family & Child counsellors	work in the Family Law Court	to offer an alternative mode of settling custody claims on children in the event of a couple having irreconcilable differences, or to offer counselling for children affected by a couple splitting apart.
Property/Financial conciliators	work within the Family Law Court	these are trained lawyers who have had some counselling skills training. Their focus is to find a legally binding but non-litigious resolution to the couple that are splitting on matters that ONLY have to do with financial or material matters.
Mediators	work within the Family Law Court	these are also lawyers similar to the conciliators above. However, they also have a second qualification in counselling other than their legal qualifications. The focus (like professional counsellors) is to guide the couple into settling the dispute between themselves without the need to go to court.

Table 3: Different levels of counselling identified in the Family Law Report 1999.

The biggest conflation in the Act is to not separate the role of Family/Child counsellors (professional counsellors) and Property/Financial conciliators (lawyers with some counselling skills training).

### **8.1.2: Clinical Counsellors**

Internationally the title 'counsellor' has a core set of expectations of what they can (and cannot) do, including an expectation of professionalism and subsequent accreditation to ensure that the highest levels of guidance are offered without contravening any fundamental ethical or moral standards. It is suggested that Fiji should strive towards such a high level of competence when describing someone as a 'counsellor' so that Fiji

can claim a sense of equivalence with the international community.

However, the reality is that such highly trained and qualified people are probably not currently in Fiji (see Appendix VI for a description of the training levels required).

Therefore it is suggested that Fiji might want to acknowledge the skill levels of their Court officers with *operational titles* that indicate an appropriate level of expertise or training. These levels are merely a description of their skill level. It is not supposed to supplant the actual title that individuals have within the Family Law Court. 'Welfare officers' are still welfare officers. The counsellors associated with the Court are still 'Registrars' or 'Deputy Registrars'. Each of operational titles builds up from one to the other so that the top of the scale is a 'senior counsellor'. A tentative progression of skill levels with respective operational titles is suggested:

<b>Life Skills Coach:</b>	someone who has had a minimum set of skills training to let them become someone who can effectively listen to people and offer general or rudimentary advice on overall life skills strategies.
<b>Mediator:</b>	someone with qualifications that allows them to offer effective impartial but relevant mediation between parties who are having difficulty negotiating an agreement. They have some minimum background legal training.
<b>Trainee Counsellor:</b>	someone who has had the theoretical and practical training as a counsellor, and who is under a qualified supervision programme in their career track to become a qualified counsellor.
<b>Counsellor:</b>	someone who would be acknowledged as having the core training and qualifications as an internationally recognised 'counsellor'.
<b>Senior Counsellor:</b>	A counsellor, who has had further training to be able to offer professional supervision and advice for counsellors.

Table 4: Tentative labels of operational skill levels of counsellors

Such a tiered system has the advantage of acknowledging honestly where the skills or court officers lie in relation to the Family Law Act. It also allows the Director of Counselling to quickly acknowledge who is skilled to do what in the court proceedings. Currently with respect to Social Welfare and their welfare officers, they could probably act in the capacity of a 'mediator', but there would have to be a relative intense set of training to up-skill them in both mediation skills and legal knowledge.

The Act refers to Family and Child counsellors. In professional counselling terms these are actually two separate specialisations. Child counsellors differ from a specialisation in 'Family Counsellors' in that their exclusive focus is on the child. A Family counsellor treats the whole family as a unit of which the child is but a part of it. Clearly the counselling skills have a large degree of overlap but it is important to note that a good practitioner of one specialisation does not automatically mean that the same person would have the same skill level or success rate in the other specialisation. When resources are scarce, it might be that it is not possible to have separate specialisations,

however, the individuals who have sufficient training in both these areas would be highly trained and therefore probably command a higher salary.

The Family Law Report 1999, is quite specific about the role of Financial/Property conciliators who **should not** be anyone else other than someone with legal training. This would (if implemented) mean that Social Welfare's welfare officers could NOT be employed under the most places in the Act.

A set of recommended minimum requirements for counselling skills services is given in Appendix VII, and a recent job advert for a Court counsellor for the Australian Family Law Court is given in Appendix VIII. A description of the kind of skills required to be an effective counsellor and needs of a 'clinical' supervisor are given in Appendix VII.

### **8.1.3: Director of Counselling**

There is some doubt in the Act in which capacity the 'Directors of Counselling' will operate. The Act and discussions with the Commissioner of the Family Law Report, 1999, appear to suggest that the role of the Director of Counselling is one that is more administrative in function with some skills in a social science. However, in professional counselling, there is a need to have an objective pair of ears and eyes to 'counsel the counsellors'. The Directors of Counselling should in fact be trained senior counsellors. Appendix VIII gives a recent job advert complete with job requirements for such a post in the Australian Family Law Court.

It is highly unlikely that there exists sufficient expertise in the country so one would imagine that the job would have to be recruited from abroad. However, there is a danger that hiring a 'qualified' person from abroad would result in someone who may be excellent where they come from, but who are inflexible to the societal context that Fiji is currently in. In other words the person should be open (rather than necessarily being an 'expert'), to the unique ethno-cultural social environment of Fiji.

Further discussion on the role of the Director of Counselling and a suggested minimum required qualifications is given in Appendix IV.

## **9: Implementation Options (Task 3)**

The Act could theoretically be implemented in a number of ways. An ideal implementation would be to have fully trained resource personnel and logistical systems in place by 1st of January, 2005. However, the fiscal reality in Fiji is that such an implementation may be too much to hope for as financial resources in Fiji are very tight indeed. Three modes of implementation are offered as a starting point to consider with resulting resource implications highlighted for each scenario. A 'worst-case-scenario' is also offered not so much as a 'recommendation' but rather as a pointer of what could happen if virtually no resources *in the right places*, was given. The scenarios are presented

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from most expensive to least expensive to implement.

### **9.1: Full Implementation**

All resources to fully realise the Act as it stands in the legislation.

- All Court Directors of Counselling would be the equivalent of a 'senior counsellor' as outlined above. The associated court counsellors would be the same as the 'counsellors' described above.
- All 'welfare officers' as defined in the Act would have the same skills training and qualifications as counsellors as defined above. All departments with designated 'welfare officers' would have appropriate resources allocated to not burden them with their extra duties as relevant to this act.
- Sections of non-Governmental Organisations that might effectively be involved in counselling as defined in the Act, would have the equivalent training of a Counsellor as defined above. An example of this might be religious bodies that offer pre-marriage guidance counselling.
- Extensive marketing of the Family Law Act, communicates the Act and it's implications as well as educates the Fiji public as to how they might be affected by the Act.

### **9.2: Phase Approach**

A phased in approach that starts off with reduced set of resources given to the prioritised areas, and which over time is supplemented such that over a specified time frame, the legislation becomes fully realised.

- All the Family Courts employ Directors of Counselling who are 'Senior Counsellors' as defined above. They also have at least one court counsellor amongst their staff that are designated as 'Counsellors' as defined as above. The rest of the Court's counselling staff are either at the Trainee Counsellor or Mediator level as defined above.
  - All departments which may be asked to offer counselling services under the Act, have at least one 'Senior Counsellor' in their department and the rest of their welfare officers have the minimum qualifications of 'Mediator' or above as defined above.
  - Both in the Court system and in the Government departments with welfare officers, the skills of the relevant people are successively trained up until they are qualified 'Counsellors' as defined above. Each relevant Government department to eventually acquire the equivalent of a Senior Counsellor.
  - Government departments with welfare officers would not have the Family Law Court duties on top of their existing duties without resource recompense for the relevant departments.
  - Non-Governmental bodies (such as Religious bodies) to have the minimum qualifications of a 'Life Skills Coach', which is eventually upgraded over time to the position of 'Counsellor' as defined above.
  - Marketing of the Family Law Act, is communicated in both a pragmatically effective and cost effective manner to sections of the community who are most likely to benefit from understanding the Act.
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### 9.3: Minimal Implementation

The absolute bare minimum or resources that must be given for the Act to have any semblance of a piece of legislation that aims to protect the integrity of the family (whether they remain together or are in fact subsequently split).

- At least half the Directors of Counselling are at the level of Senior Counsellors. The others are at the level of Counsellor as defined above. The rest of the Court Counsellors to be at the absolute bare minimum of a trained Mediator as defined above.
- Government welfare officers to be at the bare minimum of a trained Mediator, if they are required to act outside their already existing capacities as court officers.
- A reasonable time line (i.e. within the mid term future career path of any individual outlined immediately above) to be successively upgraded to the position of at least a Trainee Counsellor if not higher.
- Non-governmental organisations (such as religious bodies) to be given training opportunities to their respective officers to eventually attain the skills of a "Life Skills Coach", and to be encouraged to do so over time.
- If Governmental departments cannot be resourced adequately to cover the additional burden that their welfare officers have to take on under the Family Law Act, then the time frame is an acceptable maximum in which the relevant Department's resources are stretched but not overtaxed to be irreparably damaged (such as an irretrievable loss of Departmental Staff morale). After this maximum time frame, the resourcing would be available to recompense the department's resources.

### 9.4: Worst-Case-Implementation-Scenario

An indication of the probable consequences if resources are not given to help realise this act; or if resources are given in the wrong prioritised areas. The consequences of this would be at the very best – no change from the current set up (i.e. prior to the implementation of the Act), but a considerable waste of tax payers money. However, it would be optimistic to think that the outcome would turn out to be 'at best'. Most likely it is going to be worse as a consequence of poor counselling, more processing time spent in obtaining settlements, a greater drain on scarce resources on all parties to this Act (including Social Welfare), greater dissatisfaction with a Government Ministry (and by implication the Government of the day), the potential to have litigation proceedings placed against the Government/Ministry/Department because of disastrous counselling services.

- The Directors of Counselling are employed in the capacity of administrators of the Court's counsellors (rather than professional 'supervisors'). They are employed under the current Act's guidelines that they have some skills in social sciences and a familiarity of Fiji's legal system.
  - Court Counsellors are employed on the basis that they have had an undergraduate certification in a social science with a short 'top-up'
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course in mediation skills and are titled 'counsellors'.

- Government Departmental welfare officers are simply seconded as court counsellors under the orders of the Act.
- No recompense is given to Departments for the extra burden of these duties under the Act.
- There is a stated intention to upgrade the qualifications of relevant personnel but that this is always 'sometime in the future', or 'as soon as resources allow', and effectively this does not happen (since as the saying goes 'tomorrow never comes').

## **10: Miscellaneous Comments/Concerns**

### **10.1: Impartiality of the Court Counsellors**

Even if the Director of Counselling is a third party to any individual proceeding under the Act to act as a potential buffer and avoid any personal bias/conflict of interest, the Director is still part of the Court system. There appears to be no mechanism to ensure that a truly independent assessment of any case 'could' (if need be) take place. The concern is particularly this. Fiji has a small population and there is a good chance that some of the parties seeking proceedings under this Act will have a relationship or connection with the Court Counselling system. Where or how could a party have confidence that their case will be seen as impartially as any other case? Maybe there needs to be an arrangement with someone like the Ombudsperson.

### **10.2: Ethno-Cultural Sensitivity**

The Act unfortunately is an obvious transplant of a 'Western' piece of legislation. Fiji in both major communities (Indigenous and Indo-Fijian) still operates on what has been described as an 'extended' family system/network. The Act tends to be couched in the language and assumptions of a 'nuclear' family composition. This is not meant to imply in any way that the Act is doomed to failure, but rather there are likely to be teething problems. If statements and intent of the CEO of the Ministry of Justice is correct in stating that it is a 'living piece of legislation', then the Act can adapt and evolve into an even more appropriate Family Law Act that more specifically acknowledges the ethno-cultural practices and continuing traditions of Fijian communities.

### **10.3: Gender Sensitivity Training**

Given that the Family Law Court was in part driven by the needs to readdress the imbalance of bias against women both a global and more specifically local patriarchal mindset, there would be a special irony if the Officers of the Court were themselves party to gender biases. For instance, the Act has a strong sense of attempting a reconciliation of a marriage before it moves onto the stage of dissolution. If, (say), the Court officers (Judge, Director of Counselling, Registrar, Counsellor, welfare officer) are men with no gender sensitivity training, the attempt at a 'reconciliation' may end up

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with a couple being 'dictated' to patch things up, which in reality translates into the wife having to make the compromises (or vast majority of them) – ultimately ending in failure for the reconciliation when the couple return a few months later in the dissolution stage.

Another aspect of the gender sensitivity training has to do with the recognition that the dynamics of inter-gender communication may make any attempt at effective problem solving/mediation fraught with problems. Women in the Fiji context may feel intimidated to assert themselves in front of any male officer of the Family Law Court, despite the best intentions of the latter. One way past this would be to lobby for equity in numbers between the two genders employed as officers. This may be desirable in Society in general but particularly in the Family Law Court, this may be essential to attempt that both genders enter into the Court on a level playing field.

#### **10.4: Requesting Counselling Services**

A curiosity in the Act, in that the Act appears to suggest that a welfare officer might be used if the Court makes an order for some sort of counselling, however, if a member of the Family asks for counselling, then it appears as if the Director for Counselling must use her or his own Court Counselling staff: 10.-(1).

Notice to seek assistance

10.-(1 ) A party to a marriage may file in either Family Division a notice stating that he or she intends to seek the assistance of the counselling facilities of the Family Division.

(2) If such a notice is filed, the Director or Counselling of the relevant Division must arrange for the parties to the marriage to be interviewed by a marriage counsellor for the purpose of assisting the parties with a view to a reconciliation or the improvement of their relationship to each other and to the children of the marriage.

One wonders if this was deliberate because there appears to be no reason for this disparity.

#### **10.5: Marketing Material**

Discussions so far with relevant stake-holders to the Act, suggest that there are currently no concrete plans about when relevant and appropriate marketing material that will be commissioned and constructed/written to help in the awareness building of the Act and the new Family Law Courts. In fact this should have already been started. The fear is that it will be a 'last minute' rushed job which will probably at best be simply an ineffective and hence waste of valuable resources. There is a wealth of resources in the Family Law Courts of Australia and New Zealand but it would be inappropriate to simply transplant them here in Fiji with a few *word-tweaks* here and there and a few 'local' pictures substituted. Particularly if the focus is on the normally disadvantages segments of the population learning about the Act and the new Courts, then emphasis might be placed on alternative modes of information dissemination such as radio programmes in the vernacular, commissioning of development theatre plays/workshops, the use of pamphlets and posters that rely mainly on eye catching and relevant graphics/



pictures.

## **10.6: Highlighting Psychology Skills at USP**

Although there is increasingly in the media and within government an awareness of the skills that generic psychology skills training has for a country like Fiji (professional Social Workers, Community Psychologists, Counsellors), this is not reflected in either the career choices available in Fiji or even in the tertiary institutions that could or even should offer relevant skills training.

Currently of the tertiary institutions in Fiji, only the *University of the South Pacific* has a psychology programme, but as previously mentioned, it has been systematically dismantled and lies in imminent danger of subsequently being abandoned into merely a service course for the Bachelor of Education programme. This has happened essentially because Psychology was housed within the department of 'Education & Psychology', where the senior Head of School and Head of Department have always been educationalists. Psychology could never really grow until it was in its own Department. From a compliment of almost 6 full time staff members for the psychology programme, there are currently two staff members teaching psychology with psychology degrees. The postgraduate programme has been dormant for 6 years and is being resurrected by a single staff member who can only offer courses over a minimum two year period.

It should be pointed out that professional counselling qualifications internationally are postgraduate programmes, the counselling units that USP offer currently are in the main undergraduate courses. The postgraduate diploma course offered would be considered 'weak' and not substantive enough to be considered as a suitable replacement for professional recognition of counselling qualifications in either Australia, New Zealand or the United Kingdom.

It might be worth considering whether USP might be approached to consider recognising the Psychology programme to be of prime importance and how this could be achieved within the University structure such as budding it off into its own department.

The alternative is to be totally dependent on trained counsellors coming from abroad, either as ex-patriots hired for the job, or Fiji citizens who have to go abroad for their training. Both of which are expensive and not sustainable options.

## **10.7: Physical Location/Building of Court's Counselling Services**

The construction and physical layout of the counselling service rooms/facilities actually needs some considerable thought and care. For instance having an easily seen entrance and/or waiting room can be counter productive as people can be seen by outsiders and assumed to be 'having problems'. Hence, a reluctance can be built up to effectively use the Counselling services (even if they are required to). For similar reasons, having the

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same exit and entry points for the counselling services tends to make for awkward exchanges as one couple may leave and the next couple is there waiting for their appointment. Professional counselling is mostly about building up trust between the counsellor and clients. The environment (lighting, seating arrangements, distance between the counsellor and clients), play a significant role in helping to build a comfortable zone in which trust can be forged.

## **11: Recommendations for Implementation of the Act (Task 4)**

These recommendations are made on the following presumptions in the formulation and enactment of the Family Law Act.

- Namely that the Act is a piece of legislation that recognises the importance of the family unit for the well-being of society in general.
- A family be in danger of breaking up, should be given adequate chances to potentially reconcile via the best available counselling services, hopefully avoiding the negative psychological, social and ultimately societal aspects of a break up.
- A family set on a course of breaking up, should be given the best counselling support available that promotes the welfare of family members, particularly children of the marriage so that all parties retain as much dignity and amicable relationships possible despite the break up.
- That the intention behind the Act was not simply an introduced set of newer legislative machinery, but rather it was passed by the members of the Government on understanding the spirit of the Act in being able to enhance the welfare of the people of Fiji.

### **11.1: The Value of the Family Law Council**

It seems that however the Act was originally conceived or even how key stake holders perceive the Act and its purpose, the whole venture hinges on the Attorney-General appointing a strong membership of the Family Law Council. Particularly of concern to Social Welfare, will be the function of the Council to appoint either individuals or organisations with the credentials to offer counselling services. It is imperative then that the Council must have a membership that is at least half comprised of individuals who are familiar with the concerns and professionalism of counselling. A suggested composition of the Family Law Council is given in Appendix V.

### **11.2: Support an Initiative to have different functional skill levels of 'Counsellors'**

It is recommended that the Department should support an initiative by the Family Law Council to consider different levels of 'counselling' with clearly defined operational minimum qualifications for these different levels. This would make it clear in what capacity the Department can offer potential support to the Act via its welfare officers. Note that this does not consider the actual staff resourcing implications of the

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Department. Please see Appendix VI.

### **11.3: Hiring Qualified 'Relevant' Directors of Counselling**

Consider a Director of counselling to be more than just administrative, but rather someone who is themselves a trained counsellor and who is able to offer 'clinical' supervision for the Court's Counsellors. A potential set of minimal qualifications for this important post(s) is set out in Appendix IV & VIII.

### **11.4: Training Judges on the Value of Counselling**

Support an initiative that would give Judges appointed to the Family Law Court, a workshop (even a short one) that would explain the value of counselling in relationship to the Act. The workshop would highlight the mechanisms by which counselling tries to achieve its aims. This would also highlight the high skill levels required in effective counselling. This would help judges to decide not only the efficacy of potential counselling programmes, but if there was a version of different levels of counselling expertise, judges could appoint precious counselling resources appropriately.

### **11.5: Clarification of Department's welfare officers in this Act**

Establish as early as possible what the perceived role of Social Welfare's welfare officers are in relationship to this Act, with the senior officers of the Family Law Court, and (if possible) establish where Social Welfare sees themselves from a professional point of view. The Act has not specifically made it clear whether it perceives the 'welfare officers' in the Act and who might act in a counselling role as being those that might come from Social Welfare. In part, this might be a hard negotiation to make if the Family Law Council has not met to establish minimum qualifications for the Court Counsellors or welfare officers who might stand in their place. It probably would also pay if prior to this negotiation, the relevant Court Officers (probably the appointed Judges) have had a workshop clarifying the role, capabilities and training required of professional counsellors.

It should be noted that a role of conciliators being distinct from counsellors was originally identified when the Act was being put together, but the Act itself does not make a distinction on these roles.

### **11.6: Support Initiatives to Out-source Pre-marriage counselling**

Should be done both to prevent potential personnel being used (unlikely) but also to suggest that this is an initiative that hopefully would avoid a heavy case load on the Family Law Court and thus prevent potential resource implications for welfare officers, both as potential officers of the Family Law Court and also in other Courts in which welfare officers might appear under the Juvenile's Act or the Penal Code

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## **11.7: Gender Issues**

### **11.7.1: Gender sensitivity training**

Lobby for appropriate gender sensitivity training for all Court officers and organisations that might be asked to contribute to the working of the Family Law Court.

### **11.7.2: Gender equity in the Family Law Court**

Strictly speaking having an equity of gender within the Family Law Court per se should not be necessary if sufficient gender sensitivity training has taken place. However, gender sensitivity training is not enough. The public needs to build up a sense of trust that they will be treated as fairly by the next person regardless of their gender. Before this can happen, there needs to be a realistic recognition that this trust does not exist at present and that a person seeing a Family Court counsellor ought to have the choice of seeing a counsellor of their preferred gender.

## **11.8: Consider Donor/Aid Funding in the Court's Establishment**

Particularly in the early phases of the implementation of the Act, consider requesting for technical aid in helping to establish the machinery of the Family Law Court and the institutions that support the Act. Apparently, such requests would be well received by funding bodies, who are otherwise slightly shy of offering funding because it might be taken politically as 'meddling from the outside'. In other-words they have a policy of reacting to requests rather than suggesting them.

### **11.8.1: Help in Writing the Rules of the Act**

It is understood that the Rules of the Act are currently being written by a Judge coming across from Australia. Aid money might help employ a person/people on the ground to help this person become enculturated to the Fiji context and specifics, especially as it relates to the Act the way it is currently written.

### **11.8.2: Family Law Court Officer from Australia/New Zealand**

An aid project might identify a qualified Family Law Court Officer (such as: Judge, Magistrate, Senior Registrar) who might be employed for half a year to help out with experience and/or training in the machinery and mechanics of running a Family Law Court. Someone who has recently retired from such a position might be an ideal candidate in that they would have relevant experience as well as the time.

### **11.8.3: Counselling Expertise**

Aid money might be able to hire a either a senior person or a suite of people relevant in the professionalism and training of counsellors, mediators, conciliators and life skill coaches. This appointment might be for the duration of a year or longer during a phased in approach of the Act. This person should be a critical advisor to the Family Law Council on the need for assessing the professionalism of individuals applying for

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accreditation for counselling, or organisations which can give accreditation. They might also be instrumental in helping to set up short term courses, or helping to identify institutions that could offer the relevant training.

#### **11.8.4: Workshops for Judges on Counselling**

Discussions with UNICEF representatives, sound as if a request from the Fiji government would be well received.

#### **11.8.5: Identifying Psychology Skills Training Resources**

Hire suitable people/person to help identify where the relevant training for future counsellors, mediators and conciliators could take place either within or outside of Fiji. There is an urgent need not only in relation to this Act, but also in other Governmental Acts to recognise that psychology skills training is urgently needed not only in Fiji but in fact throughout the region.

#### **11.8.6: Gender sensitivity training**

This is probably an area which could be asked for funding for. Not just for 'workshops' of a few days duration, but rather to set up a whole on-going training programme complete with appropriate support literature and supplemental materials. Part of the funding would also be used to promote the efforts made by the Family Law Court, to try and instil a sense of trust by the community that, at the very least, the Family Law Court does take the issue of Gender equity very seriously.

### **11.9: Education, Marketing and Self-Help Ethos of the Act**

Spend considerable resources in educating not only the officers implementing the Act, but also the public that is supposed to benefit from the Act. This requires some considerable sensitivity as the Act has been seen previously as 'encouraging divorce'. One of the ways that this myth may be dispelled is by having educators of both genders on any educational outing, where the different perspectives from both genders can be presented sensitively enough to explain how the Act is beneficial to all parties in the long term. Educational and marketing efforts tend naturally to be translated into posters'n'pamphlets and maybe television commercials. However, this may target a small and not necessarily correct segment of the population. The Act has been conceived to address imbalances that affect particularly the poorer or more remote sections of Fiji's population.

#### **11.9.1: Radio**

One of the easiest and cheapest ways to impart information is via the radio. Particularly for outer islands, the AM radio stations still offer the best opportunity to learn about current developments. Rather than have rather stodgy didactic programmes about the Family Law Act and the Court, professional radio production (which there appears to be very little of here in Fiji) might focus on hosting talk show discussions on the Act and it's

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implications, or even commissioning a/several radio play/sketch that could be used to highlight the new Act. It might even be three plays written in vernacular (Fijian, Hindi, English) each story catering to the main community that speaks the relevant language.

### **11.9.2: Suitable Literature**

Consider not just the normal pamphlet or poster which tends to cater to the literate urban populations. Professional graphic designers might be employed to even produce a 'comic' that explains the Family Law Act and Court. That is not to say that pamphlets and posters are not suitable but it seems that many marketing drives seem to focus solely on these avenues alone.

The literature from Australia and New Zealand Family Law Courts and associated centres, appears to focus on empowering potential users of the Courts to try and do as much of the preparatory work themselves, much of it download-able from the Internet. Fiji should consider looking at this literature and modes of delivery and consider what could be relevant or spark off an idea of something that speaks to the Fiji context.

### **11.10: Working with Professional Organisations**

Currently there are two organisations that might have the time/experience and relevance to help identify suitably qualified people in the community that could act as counsellors in relevant sections of the Act. They are the *Fiji Association of Social Workers* and the *Oceania Psychology Register*. The Act does provide a formal course for working with them via accreditation from the Family Law Council. Discussions could however already be started with the Family Law Court to help learn about professional issues and potentially to identify the organisations minimum professional requirements (if not already in place).

### **11.11: Hire Expertise to Identify Appropriate Training Resources**

Ultimately, Fiji needs to consider where it's own professional training in counselling, mediation and conciliation skills will take place. This needs to be not only for the training of the actual counsellors, but also to 'train the trainers'. A suitable resource person or panel of experts might be found to help the Fiji Government identify and formulate an appropriate suite of training resources, both within or outside of Fiji.

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## **Appendix I: Resources and People Consulted for this Report**

Dr. Clarence Auxier: Senior Lecturer in Counselling, University of the South Pacific

Judge Mere Pulea: Director for the Family Law Court

Mr. Aseri Rika: Director for Social Welfare Department

Mr. Sakiusa Rabuka, CEO Ministry of Justice

Ms. Kiti ?, Assistant Director for Ministry for Women

Mr. Apolosi Bose: Chief Resource Trainer (Legal), Ms. Sandra Bernklau: Project Manager, Ms. P. Imrana Jalal: Human Rights Advisor, RRRT

Ms Gillian Mellsop, Ms. Mereia Carling, Ms Holly Doel-Mackaway, UNICEF

Mr. Qeitaki, Chairman of the Implementing Committee

## Appendix II: Director of Social Welfare is Implicated in the Act

### Intervention by social welfare officer

178.-(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of the Director of Social Welfare.

(2) If the court has, under subsection (1), requested the Director of Social Welfare to intervene in proceedings

- (a) the Director of Social Welfare may intervene in those proceedings; and
- (b) if the Director so intervenes, the Director is deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

### Intervention in child abuse cases

180.--(1) In proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused, each of the following persons is entitled to intervene

- (a) a guardian of the child;
- (b) a parent of the child with whom the child lives
- (c) a person who has a residence order in relation to the child;
- (d) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;
- (e) any other person responsible for the care, welfare or development of the child;
- (f) the Director of Social Welfare;
- (g) a person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(2) If a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with all the rights, duties and liabilities of a party.

## Appendix III: 'Welfare Officers' implicated in the Act

A summary of the sections in the Act that specifically mention 'welfare officer' are:

- 50 (2)
- 53 (4(b)),
- 54 (2,4,5,6),
- 67 (1)(2(a)),
- 68 (2(a(i),(ii))),
- 72 (1(a)(b)),
- 88(2(d)),
- 114(1(c)),

These specific sections are given below.

Request for counselling made through a court

- 50.- (1) A party to proceedings under this Part. or a person representing a child under an order made under section 125 may file in the Family Division of the High Court or of the Magistrates Court a notice stating that he or she wishes to have the assistance of the counselling facilities or that Court.
- (2) On the filing of the notice, the Director of Counselling must arrange for parties to the proceedings (with or without the child), to be interviewed by a family and child counsellor or **welfare officer** to assess whether the counselling is appropriate in all the circumstances, and if it is—
- (a) to discuss the care, welfare and development of the Child, and
  - (b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child—to try to resolve those differences.

Conferences with family and child counsellors or **welfare officers**

- 53.- (1) This section applies if, in proceedings under this Act, the care, welfare and development of a child is relevant.
- (2) The court may, at any stage of the proceedings. make an order directing the parties to the proceedings to attend a conference with a family and child counsellor or **welfare officer**
- (a) to discuss the care, welfare and development of the child: and
  - (b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child - to try to resolve those differences.
- (3) The court may make an order under subsection (2) –
- (a) on its own initiative; or
  - (b) on the application of-
    - (i) a party to the proceedings or
    - (ii) a person representing the child under an order made under section 125.
- (4) The court may, in an order under subsection (2)
- (a) fix a place and time for the conference to take place or
  - (b) direct that the conference is to take place at a place and time to be fixed by a family and child counsellor or **welfare officer**.
- (5) If a person fails to attend a conference in respect of which the court has made an order under subsection (2), the counsellor or **welfare officer** must report the failure to the court.
- (6) On receiving a report under subsection (5). the court may give such further directions in relation to the conference or otherwise as it considers appropriate.
- (7) The court may make further directions under subsection (6)

- (a) on its own initiative; or
  - (b) on the application of
    - (i) a party to the proceedings or
    - (ii) a person representing the child under an order made under section 125.
- (8) Evidence of anything said, or of any admission made, at a conference that takes place in a strictly confidential place pursuant to an order under subsection (2) is not admissible
- (a) in any court; or
  - (b) in any proceedings before a person authorised by law or by consent of the parties, to hear evidence.

#### Reports by family and child counsellors and **welfare officers**

- 54.– (1) This section applies if, in proceedings under this Act, the care, welfare and development of a child is relevant.
- (2) The court may direct a family and child counsellor or **welfare officer** to give the court a report on such matters relevant to the proceedings as the court thinks desirable.
- (3) If the court gives a direction under subsection (2) it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.
- (4) A family and child counsellor or welfare officer may include in a report prepared pursuant to a direction under subsection (2), in addition to the matters required to be included in it, any other matters that related to the care, welfare or development of the child.
- (5) For the purpose of the preparation of a report pursuant to a direction under subsection (2), the court may make such orders, or give such further directions, as it considers appropriate, including order or directions for the attendance on the counsellor or **welfare officer** of a party to the proceedings or of the child.
- (6) If a person fails to comply with an order or direction under subsection (5), the counsellor or **welfare officer** must report the failure to the court.
- (7) On receiving a report under subsection (6) the court may give such further directions in relation to the preparation of the report as it considers appropriate.
- (8) A report given to the court pursuant to a direction under subsection (2) may be reports are admissible. Need to note that this should NOT include info. from received in evidence in any proceedings under this Act.

67.–(1) In proceedings for a parenting order in relation to a child, the court may order the parties to the proceedings to attend a conference with a family and child counsellor or a **welfare officer** to discuss the matter to which the proceedings relate.

- (2) Subject to subsection (3), a court must not make a parenting order in relation to a child unless
- (a) the parties to the proceedings have attended a conference with a family and child counsellor or a **welfare officer** to discuss the matter to which the proceedings relate;
  - (b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence) that makes it appropriate to make the order even though the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or
  - (c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

#### Order by consent in favour of a non parent the

- 68.– (1) This section applies if-
- (a) a court proposes to make-
    - (i) a residence order; or
    - (ii) a specific issues order under which a person will be responsible for a child's long-term or day-to-day care, welfare and development; and
  - (b) the court proposes to make the order-
    - (i) otherwise than in favour of a parent, or of persons who include a parent of the child

concerned: and

(ii) with the consent of all the parties to the proceedings.

(2) The court must not make the proposed order unless either

(a) the following conditions are satisfied

(i) the parties to the proceedings have attended a conference with a family and child counsellor or a **welfare officer** to discuss the matter to be determined by the proposed order; and

(ii) the court has considered a report prepared by the counsellor or **welfare officer** about that matter; or

(b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though the conditions in paragraph (a) are not satisfied.

72.– (1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders–

(a) an order requiring compliance as far as practicable with the parenting order, to be supervised by a family and child counsellor or a **welfare officer**;

(b) an order requiring a family and child counsellor or a welfare officer to give any party to the parenting order any assistance reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.

(2) In deciding whether to make an order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### Subdivision B –Applying for and making child maintenance orders

##### Who may apply

88.– (1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by

(a) either or both of the child's parents;

(b) a person representing the child under an order made under section 125; or

(c) any other person concerned with the care, welfare or development of the child.

(2) A child maintenance order in relation to a child who is under the guardianship, or in the care (however described) of a person under a child welfare law may only be applied for by

(a) the child (through the guardian or care-giver);

(b) a parent of the child who has the daily care of the child.,

(c) a relative of the child who has the daily care of the child: or

(d) a child **welfare officer**.

##### Where member of the court personnel or counsellor suspects child abuse etc.

114.– (1) This section applies to a person in the course of carrying out duties, performing functions or exercising powers as–

(a) a member of the Court personnel:

(b) a family and and child counsellor: or

(c) a **welfare officer**.

(2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for it.

(3) If the person has reasonable grounds for suspecting that a child

(a) has been ill treated, or is at risk of being ill treated or

(b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child.

the person may notify a prescribed child welfare authority of his or her suspicion and the basis for it.

(4) The person need not notify a prescribed child welfare authority of his or her suspicion that a child has

been abused, or is at risk of being abused, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or under section 113(3), but the person may notify the authority of his or her suspicion.

(5) If notice under this section is given orally, written notice confirming the oral notice is to be given to the prescribed child welfare authority as soon as practicable after the oral notice.

(6) If the person notifies a prescribed child welfare authority under this section or section 113(3) the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of the notification.

In addition, it might be plausible that the Court might interpret any phrase which includes the term '[a person] concerned with the care, welfare and development of a child', as a Social Welfare 'welfare officer'. Just about all of the

## **Parental Responsibility and Social Welfare**

The Act, makes it possible that Social Welfare has an obligation to prosecute parents who do not fulfil their obligations as parents to the children.

Section 41 states:

41.-(1) The objects of this Part are–

- (a) to ensure that children receive adequate and proper parenting to help them achieve *their full potential*; and
- (b) to ensure that parents fulfil their duties and meet their responsibilities concerning the *care, welfare and development of their children*.

The italics have been subsequently added to highlight these terms which are vague enough to not be defined operationally, but are there to give a body such as Social Welfare a mandate to consider prosecuting a parent who fails to live up to these objects under this Act. This may be of a concern to civil liberty groups in terms of the power of a Social Welfare Department to 'dictate' what good parenting entails, but this report is not so concerned with this aspect, but rather areas where children are clearly not receiving good parenting because the parents are absent from the lives of children. This could suggest an avenue where a resource implications could occur under the Act, namely that Social Welfare has (under this Act) a duty to actually prosecute such parents – and if they do not they could in turn be prosecuted for not living up to this task. There is a clear case where this possible and that is the undesirable by-product of urban drift, namely 'street kids', or homeless children.

## Appendix IV: Directors of Counselling

A critical component of the Family Law Act and the Family Law Court is the effective functioning of the Directors of Counselling that are appointed to each of the Courts. The Act is not clear on what the job description of these individuals will be as the Act states that they ought to have some training in a 'social science' and a familiarity of the law court situation. This might suggest that their function is mainly administrative, assigning cases to appropriate counsellors. However, it is suggested that in fact these individuals should be highly trained counsellors who can offer effective 'clinical supervision' of the Court counsellors. That is that in the course of professional counselling, the counsellors need to be 'counselled'. This effectively gives a set of independent eyes reviewing the case and allows counsellors to 'off-load' any issues that they may be having in the course of counselling. The Directors of Counselling are ideal candidates to take on this responsibility. The only caveat is that there could be a conflict of interest if the Directors are providing administrative and clinical supervision. Ideally, these are two different functions offered by two different people. Whether this can be implemented by a change in roles within the existing posts created for the Court, or whether this is a future addition needs to be ascertained.

### Suggested Minimum Qualifications

#### Essential

An internationally recognised post graduate degree in counselling or related field (e.g. clinical psychologist, social worker).

Demonstrated legal experience with an institution that resembles Fiji's incoming Family Law Act/Court – such as experience in working in the Australian or New Zealand Family Law Courts.

Minimum of 5 years clinical experience as a counsellor

An 'open-mind' set to become aware of the psycho-social context in Fiji.

#### Preferable but not essential

Work experience in small island states.

## Appendix V: Suggested Composition of the Family Law Council

The broad mandate of the Family Law Council is to advise the Attorney General “...(a) the working of this Act and other legislation relating to family law; (b) the working of legal aid in relation to family law; and; (c) any other matters relating to family law. However under Part II of the Act (article 6) of the Act, the Council is the approving body of organisations for either marriage education and counselling or concerning the welfare of children. As such the composition of the Council is of critical importance in relation to the professionalism of the counselling approved. The composition of the Council ought therefore to have a minimum of half it's composition of people who are keenly aware of the criteria and issues surrounding modern counselling skills and services possible. They need not be counsellors themselves but it would be desirable. Currently the Act suggests that the composition is at least:

- a judge from the High and Magistrates Family Law Court
- an officer of the public service
- representatives of organisations offering pre-marriage guidance, family and child counselling

Then there is a provision for any others that the Attorney-General sees fit. This could easily become a rather unwieldy group.

The following recommendation sees that the council consists of a core of eight people who are:

1. Family High Court Judge
2. Family Magistrate's Court Judge
3. One of the appointed Directors of Counselling
4. A representative of the Christian churches with strong counselling experience/sensitivity.
5. A representative of the Hindu religion with strong counselling experience/sensitivity.
6. A representative of the Muslim faith with strong counselling experience/sensitivity.
7. A member of a non-religious community advocacy group concerned with the welfare of family issues
8. A member of a non-governmental organisation concerned with the professionalism of social scientists practising any form of counselling (such as psychologists or social workers).

This means that five members have experience in counselling issues. Both Judge and Magistrate would have had some training and/or induction into the counselling process. Additional members would be co-opted when and where needed. Eight core members is still potentially too many to be productive but the eight would probably be the minimum to suggest some balance and fairer representation of the Fiji population.

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The last five positions could be advertised for expressions of interest from the community, but their subsequent appointment should be made carefully and possibly not at all if no suitable candidates apply. The Attorney-General should then consider making a direct approach/appeal to the relevant groups to find a suitable candidate.

## Appendix VI: Professionalism in Counselling Services

No-one would disagree with the notion of having the highest set of professional standards in any party that is involved in counselling, however there are potentially severe costs in trying to enforce these minimum standards, namely that counsellors normally have to undergo considerable training (which itself costs money) and normally they command a relatively high salary.

There are two main issues to bring up in mentioning the professionalism of counselling within the Act.

- (i) as a (potential) resource implication by all parties that are required to act in a counselling function;
- (ii) a discussion on the need for professionalism and the various interpretations of how professional the Act is required to be.

### What does Counselling mean?

In the Act, a counsellor is essentially anyone who has been approved by the Family Law Council as a 'counsellor'. However, this Council has yet to be formed and until such time the definition of what a 'counsellor' means under this Act is nebulous. Counselling is normally a technical term in the Social Sciences, normally entailing a high degree of training and supervision. Appendix II outlines some of the reasons why the the counsellor has to undergo this extensive training.

If you state your are a counsellor in Australia it has the following implications, namely a counsellor is someone who has undergone either:

- 3 years' Training in Psychotherapy or Counselling (3 years - 400 hours min), + 750 hours' client contact with 75 hours' post-training supervision (minimum) over two years (minimum)

or:

- a relevant Degree (as defined by the Applicant's Professional Association), + Specialist Training in Psychotherapy or Counselling (2 years - 250 hours min), + 750 hours' client contact with 75 hours' post-training supervision (minimum) over two years (minimum)

or:

- A specialist training in Psychotherapy or Counselling (2 years - 250 hours minimum) +150 hours' additional professional training which was completed after the Specialist Training, and which was more advanced and/or more specialised than the Applicant's previous Specialist Training. Any course include here must have been successfully completed. These 150 additional hours must comprise: the first 150 hours of a larger course which is more advanced and/or more specialised than Applicant's previously completed Specialist Training; or two course of at least 75 hours each which are more advanced and/or more specialised than the Applicant's previously completed Specialist Training; or a package of advanced and/or more specialised shorter courses (in total, 150 hours minimum) that
-

includes a significant progression from one course to the next (conference attendances do not meet this criteria), + 1,200 hours' client contact, + 120 hours' post-training supervision over three years (minimum)

or:

- Recognition of Prior learning. Where an applicant's professional training and formation does not fit the above pathways, but is based on extensive training, practice and supervision over several years, it may be possible to be admitted to the Register based on recognition of this prior learning.

**USA:** A counsellor is someone who has undergone a minimum of a 60 hour masters programme, passed a relevant exam and has had between 1000-3000 documented supervised supervision.

### Reasons for Extensive Training of Counsellors

It is worth repeating why this extensive training is required. A counsellor has to be someone who can:

- listen to people
- communicate well
- be non-judgemental
- maintain objectivity without being 'robotically' clinical
- instill trust with the client
- maintain confidentiality
- bearing the above in mind, understand the legal requirements to divulge certain information (such as criminal activity).
- have a good grounding in psychological principles
- be able to see 'blind spots' in a client's behaviour patterns
- be able to expose the blind spot in an acceptable manner to the client

the skills in providing effective counselling become considerably harder in both child and family counselling:

- have a good grounding in developmental processes for children
- have an understanding of empathising with children who do not have the same conceptual understanding or modus operandi as adults
- dealing with the views and sensitivities of several parties at the same time (being sensitive to one party may automatically be insensitive to another party involved in the counselling process).

### 'Clinical' supervision in the counselling process.

Professional counselling normally requires at the very least a network of peer counsellors to mutually support each other. The counselling programme cannot occur in isolation and normally counsellors need to debrief or have at the bare minimum peer evaluation of their practice to provide a sense of third party objectivity. Normally this evaluation/

support process occurs under a supervisory role. This is sometimes referred to as 'clinical supervision'. Other countries have found that if the role of a 'clinical' and an 'administrative' supervisor are conflated, then there can be a conflict of interest. For example, a large case load may have an administrator assign a large number of cases to a Court counsellor. However, the clinical supervisor may hear from the counsellor that they are finding it too demanding having such a high case load. If the two supervisory roles are the same person then it could be that the one of the functions will have to be superseded by the other.

## Appendix VII: Recommendations on Minimum Qualifications for Counsellors and Other Persons Offering Counselling functioning

In the ideal fully resourced world, everyone would be a 'counsellor'. However, the pragmatic considerations of a nation like Fiji suggest that different levels of counselling ought to be set up with different levels of minimum requirements for each. This has the advantage of allowing the title of 'Counsellor' to have international equivalence and yet in a pragmatic sense allow Fiji to try and carry out the actual process of 'counselling' particularly as it applies to the Family Law Act, with the view to up skilling people to eventually become Court Counsellors, or have the equivalent training in other Departments such as welfare officers in Social Welfare.

**Senior Counsellor:** Effectively all Directors of Counselling in the Family Law Court would be senior counsellors. In addition there might be positions or posts of a similar standing advertised in any Department or Institution where Counsellors might be involved such as Social Welfare, the Police, Health Institutions.

**Counsellor:** Someone with an postgraduate degree in counselling (or equivalent) and a minimum number of supervised counselling sessions/hours of contact.

**Trainee Counsellor:** Someone who is under training supervision in their career training to become a counsellor. They are doing an 'internship' in professional counselling having successfully completed their formal counselling tuition.

**Mediator:** this is a person who has qualifications that allows them to offer effective mediation between parties without necessarily having the full training of a counsellor – the latter of which might deal with unusual or more complicated cases. They would also have a moderate understanding of the legal issues and procedures relevant to the Act. A Guidance Counsellor might have enough understanding of complications in a counselling situation to effectively refer them to a counsellor.

**Life Skills Coach:** this is someone who has had a minimum set of skills training to let them become someone who can effectively listen to people and offer general or rudimentary advice on overall life skills strategies. Examples of this might be someone who can offer pre-marital advice. The Life Skills Coach could effectively be people in the community who may already be expected to function in a counselling role such as Community leaders, or priests within the various religious bodies in Fiji.

## **Appendix VIII: Comparative Counselling Job Descriptions in Australian Family Law Courts**

Appended are two positions recently advertised for the post of 'mediator' (the equivalent of a counsellor) and a 'Mediation Manager' (equivalent of a Director of Counselling).

### **Mediator**

The points to take out of the Mediator are that they have to have qualifications that are virtually the same as those highlighted in Appendix I.

### **Mediation Manager**

Looking at the job description of this advertised job it is clear that the manager must be:

- (i) skilled in family mediation/counselling and
- (ii) offer professional support services for the Court's mediators/counsellors. This role and function has been outlined in Appendix VIII.



## **Information Package For Applicants**

**MEDIATOR  
EXECUTIVE LEVEL 1  
SALARY: \$64,676 - \$69,838  
(\$66,616 – \$71,933 from 1 July 2004)  
ONGOING - FULL TIME  
POSITION NUMBER: 14222  
CAIRNS REGISTRY**

**Date of Press advertisement:** Saturday, 12 June 2004  
**Date of Gazette advertisement:** Thursday, 10 June 2004  
**Closing date for applications:** c.o.b. Thursday, 1 July 2004

For information concerning the duties of the position once you have read the information package contact Virginia McKendrick, Manager Mediation, Townsville Registry on (07) 4722 9341.

**FAMILY COURT OF AUSTRALIA  
Position Description and Selection Criteria**

**Position:** Mediator

**Position Nos:** 14222

**Classification:** Executive Level 1

**Salary:** \$64676 - \$69838 (\$66,616 – \$71,933 from 1 July 2004)

**Division:** Mediation

**Location:** Cairns Registry

### **Court Context**

The Family Court of Australia (FCoA) is the largest superior court in Australia providing resolution and litigation services for over 200,000 new clients each year. It has a federal jurisdiction with the exception of Western Australia, which has its own family court operating under state legislation.

The Court's Strategic Plan clearly identifies the Court's purpose, vision and business outcomes. The National Strategic Themes, the Key Result Areas and the Business Outcomes all imply a strong focus on service delivery and the development of staff of the Court in order to meet our strategic goals.

### **Purpose of the Position**

The Mediator's role is to provide conciliation counselling, and case assessment conferences to assist clients of the court to attempt to resolve their issues. The Mediation section also prepares Family

Reports for final hearings in the Family Court and Federal Magistrate's Court.

### **Statutory and Court Requirements**

The person appointed to the position is expected to perform all aspects of the position in order to:

- Satisfy all relevant statutory obligations;
- Satisfy the APS Values and Code of Conduct;
- Contribute to and support achievement of the Court's Strategic and Business Plans;
- Operate within the Court's policies and procedural guidelines; and
- Support and contribute to the Court's Service Charter.

### **Reporting Relationships**

The Mediator reports to the Manager Mediation.

### **Nature and Scope of the Position**

The Court is seeking applications from committed and experienced professionals for the position of Mediator at the Cairns Registry.

The successful applicant will be required to undertake a range of counselling and dispute resolution activities within the provisions of the Family Law Act and in accordance with Court policy including:

- conciliation counselling involving a variety of intervention strategies depending on the needs of the particular children and their families
- preparation of assessments and family reports for the Court relating to disputes over parenting arrangements of children for hearing before the Court
- joint Case Assessment Conferences with Court Deputy Registrars
- information and education services to the community
- managing a substantial caseload, including complex cases, within the Court's case management framework

Participation in the Courts Performance Development Scheme is a requirement and continued employment will be subject to satisfactory performance. The successful applicant must have an ability to work within the Court environment and be committed to the Court's Strategic Plan, Client Service Charter and client service improvement initiatives. It is also expected that applicants will have a minimum of 5 years post-graduate experience, at least 2 years of which is working with children and their families, including child and family relationship assessment. The successful applicant would be expected to undertake his or her own word processing and computer data entry.

## **ATTACHMENT A - POSITION DESCRIPTION AND SELECTION CRITERIA**

### **Key Responsibilities**

Undertake a range of counselling activities within the provisions of the Family Law Act and in accordance with Court policy, including:

1. Provision of conciliation counselling involving a variety of intervention strategies depending on the needs of the particular children and their families;
  2. Preparation of assessments and family reports relating to the welfare of children and their families;
  3. Attend and arrange court circuits, counselling circuits and other outposted counselling services as required ;
  4. Liaison and consultation on counselling and case management matters with lawyers and other professionals;
  5. Provision of community education and consultation about the impact of separation and the services provided by the Family Court;
  6. Participation in on-going professional supervision and professional development programs, including the provision of peer support and mentoring activities as required;
  7. Provision of case assessment conferences and joint conciliation conferences in
-



- cooperation with Registrars of the Court;
- 8. Conduct of mediation sessions as required;
- 9. Participation in planning, evaluation and policy projects; and
- 10. Performance of administrative and related duties.

**Selection Criteria**

1. Knowledge of the Family Law Act and its operations, particularly with regard to the Court mediation service.
2. Sound knowledge of counselling theory, developmental psychology, child development and family relationships.
3. Demonstrated ability to integrate counselling theory and practice with strong clinical casework skills, particularly in relation to family assessments.
4. Proven initiative and ability to manage a heavy caseload involving complex cases, with a minimum of supervision.
5. Ability to critically review own work and accept regular professional evaluation in addition to and as part of performance development.
6. Ability to work effectively as part of a professional team within a legal system, including Judicial officers, Registrars, managers, administrative staff, legal profession and community generally. This includes the ability to provide case assessment conference and joint conciliation services with Deputy Registrars.
7. Demonstrated capacity to contribute to ongoing program evaluation and/or policy formulation.
8. Oral and written skills of a high standard.

Other requirements:

- A recognised degree or diploma in psychology, social work or related discipline is essential. The successful applicant must be eligible for membership of the Australian Psychology Society or the Australian Association of Social Workers.
- Relevant post-graduate experience, working with family relationships is essential.
- Experience working with children, including the assessment of children and family relationships is essential.



## **Information Package For Applicants**

**MANAGER MEDIATION  
EXECUTIVE LEVEL 2 - \$85,910 - \$89,631  
FULL TIME - ONGOING  
POSITION NUMBER: 2454  
PARRAMATTA REGISTRY**

**Date of Gazette advertisement:** Thursday, 6 May 2004.  
**Closing date for applications:** c.o.b. Thursday, 20 May 2004.

For information concerning the duties of the position once you have read the information package contact Garry Wilson on (02) 9893 5504.

**FAMILY COURT OF AUSTRALIA**  
**Position Description and Selection Criteria**

**Position:** Manager Mediation

**Position No:** 2454

**Classification:** Executive Level 2

**Salary Package:** \$85,910 - \$89,631

**Division:** Mediation

**Location:** Parramatta Registry

### **Court Context**

The Family Court of Australia (FCoA) is the largest superior court in Australia providing resolution and litigation services for over 200,000 new clients each year. It has a federal jurisdiction with the exception of Western Australia, which has its own family court operating under state legislation.

The Court's Strategic Plan clearly identifies the Court's purpose, vision and business outcomes. The National Strategic Themes, the Key Result Areas and the Business Outcomes all imply a strong focus on service delivery and the development of staff of the Court in order to meet our strategic goals.

The Chief Justice is responsible for the management of the administrative affairs of the Court, assisted by the Chief Executive Officer. The Senior Administrative Judge and the Judge Administrators (Queensland/Northern Territory, New South Wales, Victoria/Tasmania and South Australia) assist the Chief Justice in ensuring the orderly and expeditious discharge of the business of the Court.

The FCoA has introduced significant changes to its administrative and governance structures that has confirmed the importance of the position of Manager Mediation as a key member of the Registry Management Team which is led by the Registry Manager.

### **Purpose of the Position**

Reporting to the Registry Manager at Parramatta Registry, the Manager Mediation is focused on the professional requirements of the Court's mediation services at a registry level ensuring quality outcomes for clients. The position is accountable for the day to day line management of the mediation service delivered by Registry staff at Parramatta and Dubbo Registries. The position is responsible for establishing systems to ensure standardised implementation of policy; mediation practice; family assessments and procedures consistent with national standards set by the Principal Mediator.

### **Statutory and Court Requirements**

The person appointed to the position of Manager Mediation is expected to perform all aspects of the position in order to:

- Satisfy all relevant statutory obligations;
- Satisfy the APS Values and Code of Conduct;
- Contribute to and support achievement of the Court's Strategic and Business Plans via the Registry Business Plan ;
- Operate within the Court's policies, practices and procedural guidelines; and
- Support the Court's Service Charter
- Promote an evidence based practice and client focussed culture

### **Reporting Relationships**

The line manager for the position of Manager Mediation at Parramatta is the Registry Manager of Parramatta Registry. For professional issues guidance is provided by the Principal Mediator. The Registry Manager is also the line manager for the Senior Deputy Registrar, Caseflow Manager and the Client Services Manager.

The positions of counsellor at Parramatta and Dubbo registries and the Deputy Manager Mediation at Parramatta Registry report to the Manager Mediation.

### **Nature and Scope of the Role**

The role of Manager Mediation requires a capacity to work closely with other external mediation bodies and organisations that are important to promote the welfare of children post-separation and divorce in the emerging family law system.

The Manager Mediation needs to establish and maintain strategic working relationships with the Legal Profession, key government agencies and community based organisations at the state and regional level. The Manager Mediation will need to work closely with Government agencies such as Legal Aid Commission, Child Support Agency (CSA) and the Department of Community Services (DoCS) as well as community based agencies such as Unifam, Centacare, Relationships Australia, Contact Services and Community Legal Centres.

The organisational and functional changes that have occurred in the Court require the Manager Mediation to have prime responsibility for the implementation of strategies and frameworks determined by the Principal Mediator to ensure the delivery of quality mediation services from the Court in conjunction with the community based sector in the emerging family law system. This includes the provision of effective supervision in mediation and family assessments to all Counsellors in the Parramatta and Dubbo Registries.

As part of the Registry, the Manager Mediation is required to ensure the effective co-ordination and integration of the Mediation Section with the other sections of the Court including Registrars, Client Services, Caseflow and appropriate liaison with the Judiciary.

### **Position Dimensions**

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The Manager Mediation is responsible for the counsellors at both the Parramatta and Dubbo Registries in their delivery of mediation and family assessment services. This includes the quality of the services provided and the professional requirements of counsellors. The number of counsellors is determined by the funding set by the Resource Planning Model in conjunction with the Registry Management Team.

### **Communication and Interpersonal Requirements**

The role of Manager Mediation requires the ability to motivate counsellors of the mediation section to cooperate in the achievement of registry client service objectives in the delivery of mediation and family assessments. There is also the need for regular consultation and promoting of Court policy and practices in order to implement both national and registry initiatives and establishing systems to ensure standardised implementation of policy and procedures. Often the Manager Mediation will be operating within the broader family law system involving ongoing relationships with agencies such as community based counselling and mediation organisations, as well as government organisations such as the Legal Aid Commission, Child Support Agency (CSA) and Department of Community Services (DoCS). Development and maintenance of key relationships with indigenous and culturally diverse community groups is also important in the role to ensure that the Court's services as delivered through the Registry recognise the different needs of these client groups.

### **Decision Making and Influence**

The role demands within the registry the identification and development of ideas, the detailed analysis of alternative courses of action and their implications, addressing difficulties/problems, devising action plans and advancing new approaches in collaboration with the Registry Management Team and other sections of the Registry.

Thus a variety of alternatives must be analysed before a decision is made. Resolution of problems is structured by established national and Registry management systems, Registry budget parameters as well as both national and Registry operating guidelines and often will entail the recommendations to be accepted by the Registry Management Team before implementation.

The position is also expected to contribute and participate nationally in the development of policies and delivery of services in respect of identified areas by the Principal Mediator and other senior managers of the Court.

### **Key Responsibilities**

1. As a member of the Registry Management team, plan, manage and coordinate the mediation services in the Parramatta and Dubbo Registries including the management of staffing and financial resources.
2. As part of the Registry Management Team co-ordinate initiatives identified in the Registry Business Plan.
3. Plan, develop, and monitor the mediation services within the Registry to ensure quality outcomes for clients and the achievement of designated outputs.
4. Promote, monitor and standardise mediation policy, practice and procedures within the Registry that are consistent with National Standards.
5. Establish and maintain links with all relevant Commonwealth, State and community based organisations to establish and deliver high quality mediation services for the Court.
6. In conjunction with the Principal Mediator, implement quality assurance and purchasing frameworks that apply to the Court and community based mediation services.
7. Plan and maintain Information Systems within the mediation services in cooperation with other teams of the Registry.
8. Implement professional development and training activities for Mediators consistent with the framework established by the Principal Mediator.
9. Undertake some direct client mediation work.

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### **Person Specification**

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The person for this role will have strong mediation and family assessment skills with an ability to implement quality assurance systems and purchasing frameworks for the provision of services to clients of both the Family Court and the Federal Magistrates Service. The person will have sound strategic, analytical, and organisational skills and will be able to fulfil a leadership role in implementing applicable strategies at the registry level to achieve continued improvements in service delivery for clients of both the Family Court and the Federal Magistrates Service. They will have strong management skills and have worked in a variety of situations. Personally, they will be an effective communicator, negotiator and have highly developed relationship management skills.

### **Mandatory Qualification**

A recognised degree or diploma in psychology, social work or related discipline is essential. The successful applicant must be eligible for membership of the Australian Psychology Society or the Australian Association of Social Workers. Relevant post-graduate experience, working with family relationships and experience working with children, including the assessment of children and family relationships is essential.

### **Selection Criteria**

1. A knowledge of the role and structure of the Family Court and the capacity to conceptualise its development, especially in relation to the mediation service and its part in the emerging family law system.
2. Proven ability in the area of leadership, management and supervision of professional staff, including the monitoring of quality and performance standards, including the capacity to achieve work objectives through strategic planning and the effective management of resources.
3. Extensive experience and sound theoretical and practical knowledge in family interventions, family mediation and conflict resolution, child development and assessment and the provision of behavioural science expert reports.
4. Ability to assist in the development and implementation of Court policy and mediation practices.
5. Professional integrity and credibility with evidence of commitment to continuing professional development and the ability to manage own performance.
6. Demonstrated written and oral expression of a high standard for the completion of submissions and provision of expert reports to Court and subsequent cross-examination.
7. Demonstrated ability to working effectively as part of the registry management team as well as persons at all levels of the Court and the community generally.
8. Demonstrated relationship management ability to develop collaborative arrangements with key government departments and community based organisations for the referral of clients and purchasing of services.

Other requirements:

1. A recognised degree or diploma in psychology, social work or related discipline is essential. The successful applicant must be eligible for membership of the Australian Psychology Society or the Australian Association of Social Workers.
  2. Relevant post-graduate experience, working with family relationships is essential.
  3. Experience working with children, including the assessment of children and family relationships is essential.
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