Managing Diversity Conference 2003

Darebin Arts & Entertainment Centre

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Cultural Diversity and the Family Court

Taking a responsive approach to the family law needs of a diversified Australia

An address by

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In his latest book ’10 steps to a more tolerant Australia’, Donald Horne talks about a new kind of speechmaking around the historic idea of a fair go – not just a fair go for underdogs, but an overall civic fair go which in his terms includes “a fair go in the Courts under the rule of law”.

At times, on radio talkback, we have been bombarded by a level of prejudice and bigotry that I hoped never to hear in my lifetime in this country. Comments that have sometimes been made in response to Family Court judgments about parents in all sorts of circumstances.

But the book is also a celebration of Australia’s diversity and asks how we can return to a situation where we rejoice in the richness and variety of our culture instead of being threatened, as many appear to be, by those who are different not only in appearance but in culture and behaviour.

In many ways the clients and litigants who walk into the Family Court are a microcosm of that national diversity. Roughly one in three marriages in Australia will end in divorce. And when you consider that over 40 per cent of those divorces will involve couples where one or both partners was born overseas, you will appreciate that for the Family Court the issue of cultural diversity is very real indeed.

The most treasured institution for us all – no matter where we come from, or whatever diverse views we may hold – is the family and all it represents. Of course, ‘family’ may include extended members, and non-blood relatives with whom we celebrate significant occasions and can share both good and sad times. It also means all types of families including gay families and non-conventional families. It means many

things to many people, which I would say is one of its strengths, but those of a more conservative nature may use as a point of criticism. Families – however defined – can hold the key to our sense of happiness, belonging and well-being. This must be especially important to newly arrived immigrants, or members of small communities, particularly those with who are isolated by language difficulties or cultural practices which are very different from those of the dominant community.

There is, of course, a dark side to the lives of many family members, and the Family Court deals with the sad and all too often destructive aspect of family life. Relationships break down for a variety of reasons, and there are often serious consequences once they do - particularly for children. Our mediation staff do a wonderful job in guiding many couples to a resolution of their disputes. However, many prefer to seek assistance from friends, relatives or community or religious leaders and they can be of great assistance.

The Australian Constitution on its face does not reflect Australia's cultural mix and was very much the handiwork of a group of Anglo Celtic white men.

The Family Law Act was a considerable advance for its time but nevertheless represents a more homogeneous nation than that current in the 21st Century.

Time and patience may resolve the issues of an outmoded Constitution and Federal, State and Territory legislation that do not reflect 21st Century mores and values, but in the meantime we have to make do with what we have.

When, in 1999, the Family Court decided to conduct an audit on cultural diversity we knew that we weren't doing enough to meet the needs of the people from different cultural backgrounds who use our services. We also knew that printing pamphlets in community languages was not enough to deal with clients and litigants from non-English speaking backgrounds. But nothing prepared us for the enormity of the hill we have to climb in order to start to meet those needs.

The audit we conducted was comprehensive and the resulting messages were very clear. Not only were we not meeting the needs of people from culturally diverse backgrounds, to a large extent because we did not know who our clients were and consequently were unable to tailor our services appropriately. We also didn't have a strategy for doing so.

The Family Court has always been an organic institution which needs to be flexible in order to reflect shifting community values and standards within the confines of the legislation. The results of the audit gave us a very clear message, where people from culturally diverse backgrounds were concerned we simply weren't sufficiently flexible or responsive to meet their needs.

The problem started the moment a person from a culturally diverse background walked through the door of one of our Court buildings. People, who let us not forget, are feeling fragile and vulnerable following a relationship breakdown – would see no signs in community languages. Once they had worked out where they were supposed to go they would be greeted by a well-meaning, but very busy member of staff, who probably

didn't speak any community languages and didn't have access to multilingual material.

If the person was very lucky an interpreter may have been available.

We still have a lot to do before the picture I have painted has totally changed but we are taking action to ensure that the situation improves significantly.

In the Family Court we aim for resolution through conciliation and mediation. And we have a very good track record. Only about fifty per cent of people whose marriages break down come to the Court and of them only about six per cent have their cases determined by a judge. The remaining 94 per cent resolve their differences through mediation or with the assistance of Family Lawyers and others.

But how much more difficult is it to succeed in mediation when English is not a first language, added to which the view of marriage and marital breakdown may be different from that envisaged by those Anglo-Celtic white males who were drafting the original legislation.

Nor must we forget that many people who have migrated to this country may have experienced repressive regimes, and sometimes torture, and retain a fear of the law which remains with them to this day. We are aware that many who may benefit from it are nevertheless reluctant to use the Family Court because of fears of Court processes, embarrassment about their situation, or a concern that their privacy will be invaded in some way. The family is ordinarily a very private institution, but it becomes the subject of public scrutiny once a family member comes to

Court seeking an order in relation to a spouse, child or property. Those born in this country are often reluctant to use the Court system, as are those who have come here from elsewhere. Aboriginal families have a similar reluctance – but their concerns are usually as a result of the treatment many have received at the hands of white legal systems over previous decades, even centuries.

The message that the Family Court is not a criminal Court nor one which will breach the confidentiality of its clients, is also one that we have to communicate, and communicate well.

In fact the purpose of the Court is to resolve or determine family disputes. To achieve this we provide a number of services which work in tandem with our case management system.

We have not sat still. The audit identified a number of key issues that needed to be tackled if the Court is to better meet the needs of people from culturally diverse backgrounds. Clearly, we didn't have the knowledge and experience to sort it out by ourselves so in April this year we organised a Roundtable Conference and called in the experts.

The Roundtable Conference was a first for the judiciary in Australia and was co-hosted by the Family Court and the Australian Multicultural Foundation. Its two major aims were to identify the good practice of multicultural organisations across Australia and develop partnerships which can develop and deliver services on behalf of the Court.

At the Roundtable Conference participants repeatedly identified the need to build relationships based on trust, transparency and openness. The

issue of respect and a need for mutual understanding were also highlighted as important ingredients to long-term relationships. Communities we were told responded to organisations that demonstrated a commitment to long-term relationship and partnership development rather than the 'flash in the pan' approach.

In other words were we here for the long haul, was there a real commitment on behalf of the Court to meet the needs of people from culturally diverse backgrounds?

The need for clarity around the reasons for undertaking consultation was also highlighted. Participants stressed that it is not enough to merely go out and ask a series of questions that may in fact be quite meaningless to people. The basis of consultations needs to be grounded in some kind of reality for the people that are being targeted to ensure their participation.

We were told we had to be good at follow-up as it is critical to successful consultation. Communities report that the lack of follow up, or reporting back, on consultation outcomes often results in consultation fatigue "Yet again, we are being consulted but where are the changes? What impact has the consultation process had" are questions commonly asked by communities.

We will continue to provide feedback to the different communities. Everyone is busy, and people who are the subject of consultations get very cynical, something I totally understand. In my view we can deal with that issue by being seen to take action.

The issue of diversity itself came up on a number of occasions. And in this instance I am not talking about diversity of communities but of the approaches we take and the communications we use. There is no such thing as “one size fits all” in life and we certainly appreciate that we must adjust what we do, the way that we do it, and how we communicate what we are doing in a range of ways to suit different situations.

Timing, geography, access to locations, and resources also might impact on people’s capacity to participate in the consultations

And we certainly got the message that there are large numbers of different communities in rural and regional Australia who frequently get ignored in consultations, pilot schemes, and new initiatives because they’ve not been able to travel and participate.

Certainly translations were identified as an effective means of communicating with diverse client groups and communities but we must also use a range of communication strategies. In addition we cannot afford to make assumptions about literacy levels in different communities and how effectively concepts translate from one context into another. These issues can and do, influence the methods we should use. Cultural norms differ and translating one concept into another language for a community for which that norm is alien is never going to work.

The use of accredited interpreters was raised as a significant issue at the Roundtable Conference. Within the unique setting of the law the provision of interpreters takes on a much greater significance in that the implications and ramifications of judicial outcomes can be quite considerable. There was understandable frustration about the use of

children in some emergency situations. Children are not appropriate to use as translators in medical situations. This is equally a no no with the law.

I agree with Roundtable delegates who stressed that although it was important to identify key community leaders it was at least as important to talk to individuals. This would ensure that the day-to-day realities of people using the Court, and its services, were reflected in the changes adopted by the Court. Whilst this might necessitate the use of interpreters, and have resource implications, these would be greatly outweighed by the benefits.

And no one hesitated to point out that an important precondition of the work we do in these areas is to understand that untrained and unaware personnel could not simply 'walk into' an ethnic community and undertake effective consultations.

It was stressed that training in relation to some of the key issues impacting on particular communities, and an awareness of the cultural context within which the communities and their members operate, would enhance the quality of consultation outcomes.

And, of course, we must use existing community organisations and forums when trying to reach culturally diverse communities.

One of the very clear messages to come out of the conference was the need for the Court to spend more time communicating its role, and what it does, to multicultural communities.

The first tentative step following the Roundtable Conference came in July when I launched the Arabic and Chinese language editions of the Family Court book.

Auburn Library in Sydney's western suburbs was chosen as the venue for the launch because it services a population which speaks 19 community languages, including Arabic and Chinese.

The event brought together community leaders and members of the Arab and Chinese communities. A great deal of networking went on that day as people renewed and consolidated existing contacts and made new ones.

The Family Court Book provides information for clients and litigants who need to know how to apply for a divorce and what to do if they are seeking resolution on child and property issues

It includes step-by-step explanations of the different Court processes and where to get help.

For justice to work it has to be open, accessible and meaningful. I am not suggesting for a moment that producing the Family Court Book in two community languages has somehow solved the problem of communicating with people from culturally diverse backgrounds. It has not. But it is a very good start and it signals a commitment on behalf of everyone who works in the Court to change the way in which we do things so that we are more responsive.

Publication of the Family Court book in other community languages will follow and we are also publishing a range of pamphlets and other publications in a wide range of languages.

To return to the client who walks through the door of one of our Courts what are we doing about him or her?

Courts are daunting places however much we try to change the environment and however hard we try as a Court to make the process as smooth as possible. The reality is that people who are in emotional pain will find the situation and the environment painful.

But we can make it easier to manage. In future clients from culturally diverse backgrounds will deal with staff who have had training in cultural awareness. This will be a prerequisite when they join the Court and existing staff will also receive similar training. Training of staff throughout the Court will not be achieved overnight but we have made a start.

Training will be across the board and will include my judicial colleagues and myself. Those who are collecting data about the characteristics of our clients are a particular priority, and our staff are being trained to be sensitive to concerns about the use to which this information will be put. Unless we know the range of backgrounds we service we cannot do the job properly nor can we be sure that everyone has an equal access to the Court and its services. We are tackling information collection in a way that attempts to be culturally sensitive, and respects and protects the privacy of clients.

Over time the information we collect will ensure that our services are more reflective of those needs.

I regard the work the Court is doing as very much a partnership with culturally diverse communities in which we work together to build and strengthen relationships.

One issue that has been of concern to me for many years has been the reduction in Legal Aid funding which in turn has had a very significant impact on the Family Court. In about 40 per cent of our Court cases at least one of the parties dos not have legal representation. This has horrendous implications for the judicial process. In the current adversarial system the Judge is not able to give legal advice. Frequently, this results in cases where one party is represented by experienced counsel whilst the other is trying to represent him or her self.

Is this justice? I think not. But added to this imbalance in legal representation is the language issue. If the unrepresented party comes from a non-English speaking background the problems become even more difficult. To try and assist litigants who are not represented we established a Self-Represented Litigants project to look into these issues and how we can provide information given that we are not allowed to provide legal advice.

The Family Court's website features a special section on self-represented litigants and we also have the 'babel' translator software on the site which, although not perfect, will translate Court information in to a number of community languages. I direct you to the Court's website at

www.familyCourt.gov.au as another source of accessing information, some of which is available in community languages.

One of the most fraught and sensitive areas is that of child abuse. This can be a dreadful situation for both children and parents, which is why the Court initiated the Magellan pilot project in Victoria.

Magellan considered how we can improve the ways in which we deal with disputes involving allegations of child abuse.

The use of Magellan in 100 cases significantly reduced the period in which cases were heard and resolved and consequently reduced the stress on the children concerned. The system is now being introduced in most States and Territories.

Clearly Magellan cannot tackle the abuse itself, but it does attempt to reduce the trauma involved in cases which involve accusations of child abuse. It achieves this by reducing the number of hearings; the cases that end up before a Judge; the length of time before cases are concluded. A benefit of Magellan, according to the research, is that the number of highly stressed children fell from 28 per cent to four per cent.

Violence is a scourge on our society, and it is something that as a society we all have a responsibility to try and tackle. The Australian Institute of Family Studies research indicates that two thirds of separating couples point to violence as a cause of marital breakdown, with one third of the couples describing the violence as serious. Our own research also indicates the significance of violence.

This is a truly horrendous situation especially when faced with the reality that in a large percentage of those marriages children are being abused.

These are very sensitive and touchy issues but it is important that I raise them as a way of making a point that is crucial in any speech, debate or discussion on cultural diversity.

People from culturally diverse communities have additional needs but the fundamental issues remain the same across communities and across society.

And whether we like it or not family violence, child abuse, and putting the needs of parents before children, are to be found all too often.

Consequently, men and women within the culturally diverse communities are suffering just as much, and sadly to the same degree, from these issues as anywhere else. We have to address them, we have to work within and between communities if we are to ensure that families are whole and healthy. And if families are not coping, if children or one of the parents is subject to abuse or intimidation, we have to ensure, that the messages about access to services and information is readily accessible to victims.

Donald Horne also reminds us in ‘Ten steps to a more tolerant society’ that “although we are many we are also one”. The reality is that everybody in this room today has the same need for love and nurture, to have a roof over their head, to have food to eat and water to drink, clothes to wear and air to breath.

In Australia we are indeed blessed by the richness and diversity that derives from a myriad of different nations and cultures that live here.

Sadly, people in every community in Australia will suffer from the heartache of family breakdown. It is a painful process, but at the Family Court we are doing what we can to ensure that the process is as uncomplicated as possible. And if by implementing a range of services and programmes which include adequate and effective translation services; Judges and staff who are trained to be culturally sensitive and responsive to the needs of people from culturally diverse communities; publish documents that are not only accessible and easy to read but also readily available in community languages; then we will have achieved a great deal on the path to meeting the needs of people from culturally diverse communities.