

In this update, *Josephine Akee* discusses the role of Indigenous Family Liaison Officers in the Family Court of Australia and *Stephen Ralph* outlines recent initiatives in family law and the implications for Aboriginal and Torres Strait Islander families.

## The role of Indigenous Family Liaison Officers in the Family Court of Australia

### JOSEPHINE AKEE

This viewpoint is an edited version of a speech given by Ms Josephine Akee at the *International Forum on Family Relationships in Transition: Legislative, Practical Response*, 1-2 December 2005.

The Aborigines of mainland Australia and the Torres Strait Islanders of the Torres Strait see ourselves as the two Indigenous peoples of this nation. As two peoples, we do have some things in common but we are two culturally different peoples, and there is diversity among each of our peoples. As first peoples of this nation, our ancestors and their way of life have been impacted on since colonisation. For instance some of you may not be aware that our peoples have gone through a time of having to live under the supposed protection of an Aboriginies Act and a Torres Strait Islander Act. Our peoples' lives were such that others (not our own people) thought, did, and made our own people do, what was supposed to be best for us – and we are talking about the “best interests” of the children. I'd just like to highlight the fact that best interests of the children according to what aspects? The right of thinking and doing for ourselves was significantly removed from our people.

Another important impact has been “the stolen generations” issue, which, no doubt, most of you are aware of, and which I won't go into. So not only were our adults treated like children but their children were also taken away from them. This is very significant to how our people operate today. The purpose of my sharing this piece of information with you at the outset is so that it might help you gain some kind of an understanding as to the fact that we are different lots of people (the two Indigenous races of Australia) who operate differently and who, at times, need to be treated differently.

It is also not uncommon for our people to have a distrust in:

- the Australian system;
- the Government departments;
- the Courts;
- the non-Indigenous agencies and service providers; and
- programs and services.

More so, if there are none of our own people working in these particular places and services to:

- help us know about those service deliverers and their programs;
- show our people how to access these programs;
- enhance the possibility of our people coming to trust them

then this makes access difficult. Accessing services and programs without having any faith that we will be dealt with appropriately and with positive outcomes, as opposed to the negatives is hard.

I work in the family law courts (the Family Court of Australia) and I have been with the court for some seven or eight years. I am one of the six Indigenous Family Liaison Officers<sup>1</sup> employed by the Court. There are two Liaison Officers placed in Darwin (a male and a female). They are both Aboriginal. Similarly another two are in Alice Springs. In Cairns there are also two of us: an Aboriginal brother and myself (the Torres Strait Islander Family Liaison Officer). These positions are very limited – six for the whole of Australia, (excluding W.A., which has its own family law system).

Our positions were established as a result of the Family Court consulting with Indigenous community members – first in the Northern Territory and then in North Queensland. Community people, as a result of those consultations, strongly recommended that if Indigenous people are to know about, access, and receive appropriately delivered services from the Family Court, then the Court needed to employ Indigenous people to enhance the possibility of that happening. To my understanding the Court has done that. While the Court has needed to extend its number of Indigenous Family Liaison officers, its hands have been tied.

I will now share with you some information about my work as an Indigenous Family Liaison Officer. I work in the mediation part of the Family Court, and basically see myself as a link between my fellow Indigenous Australians and the Family Law Courts. My job entails responding to Indigenous clients' first contact with the Family Law Courts. I take details about Indigenous clients' circumstances, their concerns, their issues. In doing so, I am then able to suggest to them which other service deliverers they might like to approach. For instance I would suggest that they get legal advice. I would need to stress "free" legal advice because, as most of you would know, Indigenous people often aren't necessarily people who can afford the heavy costs of legal representation. So a significant part of my job is to make sure that my people are clear about the first instance of free legal advice about their status in a given situation, and also the difference between that and seeking legal representation.

Can I say here and now that I have had a good working relationship back home in Queensland with Legal Aid Queensland. It has recently seen fit to employ fellow Indigenous people in their ranks and who, like me, work as the link between Indigenous people out in the communities and Legal Aid. So it's not uncommon for me to pick up the phone whilst I am talking with a client and say "Look, I have this sister in the Torres Strait" (or wherever she might be) and "May, can you help me?" (May is my counterpart in Legal Aid.) So those sorts of conversations, and the very fact that I can say to my fellow Indigenous person on the other end of the phone or in the room with me, that "I will now hand you over to another Indigenous person who will help you understand their system through Queensland Legal Aid", are good things. It's no good me saying "Well look, they [Legal Aid] are down Spence Street, and you go down round the corner and four doors up". That is not necessarily going to get our people there.

Originally when I first started in the Family Court I was not criticised but was asked: "Why are you hand feeding and namby-pambying Indigenous people?" I would respond: "Because our people need that at this stage. They need to be given and paid the courtesy of explaining where they have got to go, because our

people might have English as a third language". Even when I pick up the phone to take a client's call, it's interesting for me say in my nice English: "Hello Family Court here. Josephine, Family Liaison Officer speaking" and you can hear the person mumbling at the other end of the line. Then when I wouldn't get a further response, I would then break into what we call Torres Strait Creole: "It's only me – Josephine talking" and then you can almost feel the difference, and then they will open up. And I say: "You don't have to speak good English when you speak to me, a fellow Islander". We do things like that and it makes a difference.

As well as that, I refer people once I know what their issues are. It's not uncommon if, for instance, once it's known that there is an Indigenous person working in Family Court that they could say: "Can you help me? I don't know where to turn to." I would say: "Ok this is what Family Court can do for you but you need to go and seek help from the Women's Shelter, and I will steer you over there. I will link you up with the Women's Shelter. I will even take you to the Women's Shelter, and you need to also talk to that mob down the road". (I would say the "welfare mob down the road" because they are the people to talk to about child protection issues. Now it's not uncommon for our people to back away and say, "No I don't want to go there", and I would say, "No, they have got a bad track record of taking our kids but they have got to smarten up their act. They don't do that anymore - they are not supposed to." These are the sorts of things that I have to encourage my people about.

I also have to explain the difference between "free legal advice at the first instance", and "legal representation" – to the point where I say that "you need to get legal representation if you can't come and use our mediation service, (which is the privileged mediation service at the first instance) then hopefully we might be able to help you and your family members get yourselves sorted out.

In the event that it doesn't happen, then you might have to get legal representation, so you have to fill in this form. You go down to May (at Legal Aid) and she will help you fill out the form, ok?" Otherwise my people will say: "I don't want to fill out any form". That's because we are not a writing people traditionally. After that, I would also explain the mediation process – the privileged mediation and the due full process – in both instances I can participate.

Therefore I can jointly mediate with one of the Court's Family Consultants and that could be in the privileged family dispute resolution or the ones where the case goes ahead. I can also assist Family Consultants as well as "Reg 8s" (Psychologists or Social Workers from outside brought in by the Court to do family reports). I assist them with setting up interviews and I link them up with the other players in a case. This is because we are an extended family mob ►

and you don't just deal with the mother and the father. We do those sorts of things, and I, in fact, help with the interviews. I work with other registries, not just my registry in Cairns, because there are not enough of us (Indigenous Family Liaison Officers)

I assist and support Independent Children's Lawyers and client legal representatives in a similar way - provide information about the structure of the family and the significant players in a given case. I link them to appropriate cultural advisors and elders. These elders must have the relevant knowledge and the relevant authority to be able to provide the required information regarding protocols etc.

One of the things that our people have been highly concerned about is that "wrong people" are being brought in to give special or expert (cultural) advice. It has been brought to my notice that anthropologists have been brought in to talk about and throw light on our Indigenous culture. Our people are saying, "These are white fellows that have got some good education at some university, but they are not us. "We have to have our own people." It comes back again to the fact that people (Indigenous) might not have the formal qualifications - but I would argue any time that what's important is the formal qualifications according to your culture and that's something that definitely needs to be recognized.

I have also planned and delivered information sessions and workshops for Indigenous community members - be they in discrete Aboriginal or Torres Strait Islanders communities or in urban areas. I have also jointly facilitated (with other Court staff) cultural diversity training sessions for other staff within the Family Court. I have worked together with the other Indigenous Family Liaison Officers on a module for Aboriginal and Torres Strait Islander Culture Awareness for various registries of the Family Court. There we have stressed the need for having participation by Indigenous people - be they elders or respected people who have the authority to throw light on the cultural traits of a given locality.

It is in these small and varied - yet important - ways that I try to make the family law system more accessible to my people. But there is still much more to be done.

**Endnote**

<sup>1</sup> Initially in the Family Court the Indigenous Family Liaison Officers were known as Indigenous Family Consultants who worked closely with Court Counsellors/Mediators. However in 2006 changes within the Family Court resulted in the changing of titles for some positions, namely that Counsellors/Mediators became Family Consultants and Indigenous Family Consultants became Indigenous Family Liaison Officers.

**Ms Josephine Akee** is a Torres Strait Islander mother of five adult daughters and grandmother of seventeen grandchildren. She is a qualified primary school teacher. Her work background has mostly been in public-sector service delivery to Indigenous Australians, the last seven or so years of which have been in the Family Court of Australia. Indigenous community-level involvement has added to her awareness of issues that impact negatively on Indigenous people, but, she believes, none more so than the breakdown of how Indigenous families operate. Josephine has been a member of the Family Law Council, and is currently a member of the National Alternative Dispute Resolution Advisory Council (NADRAC).

# Recent initiatives in family law and implications for Aboriginal and Torres Strait Islander Families

**STEPHEN RALPH**

Aboriginal and Torres Strait Islander families

have traditionally encountered a number of barriers when seeking to make use of the family law system. The Family Law Pathways Advisory Group in its 2001 report - titled "Out of the Maze" - acknowledged that Indigenous families encounter barriers that "affect their ability to access and benefit from the family law system<sup>1</sup>."

Since the release of this report the Commonwealth Government has responded with a range of new initiatives targeting the needs of Indigenous families. At the forefront of these initiatives has been the proposal to establish sixty-five Family Relationship Centres across the country. These centres are to provide information, support and referral services, as well as some limited family dispute resolution services.

These centres are required to provide services to all Australians, including Aboriginal and Torres Strait Islander families. They are required to provide flexible, culturally sensitive and accessible services to Indigenous families in their locations, and have in place strategies to achieve this. Identified strategies include:

- providing an appropriate environment, including alternative sites, that are welcoming of Indigenous families
- recruitment of Indigenous staff
- networking with other providers of services to Indigenous families, and
- providing interpreter services where needed.

Of the first fifteen centres established four have been allocated funding to provide outreach services to Indigenous families. The Family Relationship Centres in Darwin, Townsville, Lismore and Mildura have all engaged local Indigenous people as Indigenous Advisors. The role of Indigenous Advisors is to assist Indigenous families to access services and to assist the agencies to develop services that are responsive the needs of these families.

A key issue underlying this initiative is whether Indigenous families will choose to access services provided by agencies that are often construed by Indigenous families

as “mainstream” agencies that have traditionally lacked a focus on services and programs for Indigenous people. A further question is the extent to which Indigenous Advisors will be adequately resourced to engage with Indigenous families living in remote and rural areas.

Efforts are also currently being made to develop dispute resolution services that are responsive to the needs of Indigenous families. Mediation training was recently provided by Regional Extended Families Services (in Melbourne) to Indigenous staff working for agencies that come under the umbrella of the Family Relationship Service Providers (FRSP) program. The training aims to develop the capacity of these services to provide family dispute resolution and counselling to Indigenous families.

There are several other initiatives that are also relevant when looking at Indigenous families’ access to the family law system. One important initiative impacting on Aboriginal and Torres Strait Islander families is the expansion of the Family Violence Prevention Legal Services across the country. Thirteen new FVPLS were established in remote and rural areas this year effectively doubling the number of these services in the community. These services provide vital assistance and support to Indigenous people who are victims of family violence or who are at immediate risk of family violence. The expansion of these services is to be commended as an important step forward in addressing the issue of family violence in Indigenous communities.

Recent amendments to the Family Law Act have also introduced significant changes to the way the court considers Indigenous cultural issues in children’s cases. The most prominent change is to be found in the new Section 60CC that covers how a court determines the child’s best interests. The new legislation has much clearer provisions relating to how the Court considers the best interests of Indigenous children. Section 60CC states that, among other things, the Court must consider:

- (i) the child’s right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
- (ii) the likely impact any proposed parenting order under this Part will have on that right

Section 60CC(6) provides further clarification of the above requirement stating that the Indigenous child’s right to enjoy his or her culture includes the right:

- (a) to maintain a connection with that culture; and
- (b) to have the support, opportunity and encouragement necessary:

- (i) to explore the full extent of that culture, consistent with the child’s age and developmental level and the child’s views; and
- (ii) to develop a positive appreciation of that culture.

This section provides clear direction to Judicial Officers in considering the importance of the Indigenous child’s right to a connection with their culture. It emphasises that in making a parenting order the Court will need to consider whether a parent displays the capacity and willingness to promote the child’s right to enjoyment of, and participation in Indigenous culture, as well as a capacity and willingness to assist the child to develop a positive appreciation of that culture. This is an important consideration in dealing with the many matters that involve parents of differing cultural backgrounds.

Section 61F of the Act also has highly significant implications for how the Court considers the best interests of Indigenous children. Section 61F states that in considering the issue of equal shared parental responsibility, or in identifying those who may have exercised, or who may exercise, parental responsibility for a child,

“the Court must have regard to any kinship obligations, and child-rearing practices, of the child’s Aboriginal or Torres Strait Islander culture.”

This provision effectively removes a blind spot that existed in the old legislation in that under that legislation the Court was unable to effectively consider the role of extended family and kinship obligations impacting upon a child. Under the new legislation the Court *must* consider these important aspects of Indigenous culture.

In concluding, these initiatives aim to more positively engage Indigenous families in the family law system and as such are welcome developments. In particular, the changes to the Family Law Act that relate to Indigenous children and their families are to be commended. It is now vitally important that these initiatives and legislative changes be supported and appropriately resourced by government if they are to make a significant impact on the barriers that impede Indigenous people’s access to the family law system.

#### **Endnote**

<sup>1</sup> Report of the Family Law Pathways Advisory Group, *Out of the Maze*, July 2001, page 8

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**Stephen Ralph** is Manager of Child Dispute Services, and National Coordinator of Indigenous Programs at the Family Law Courts, Darwin.