

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. 55

Senator Xenophon asked the following question at the hearing on 14 February 2012:

1. What are the minimum standards in terms of qualifications and experience for ‘family consultants’?
2. Are there any provisions in place to ensure that any assessments done by family consultants do not cover areas outside the expertise of the consultant in question – for example, if they do not have mental health qualifications, are they prevented from making comments or assessments in relation to mental health conditions of the people they are assessing?
3. If a family consultant made a finding they were not qualified to make – for example, diagnosing a mental illness when they were not a qualified mental health practitioner – are there any provisions requiring the Court to disregard these findings?
4. There are examples in South Australia where a consultant, whose only experience was a certificate in social work, made some significant comments about the mental health of some parents and children, and in fact stated that someone had a Personality Disorder. This person did not have the qualifications to make this diagnosis. What would normally happen such a case? In this situation, does the parent or child’s representative have any recourse against what could well be an incorrect diagnosis that could negatively affect their case?

The answer to the honourable Senator’s question is as follows:

1. The current requirements for appointment of a person as family consultant, both as an APS employee within the Court and external to the Court under Regulation 7 of the Family Law Regulations are the same. They require the person to have a degree in either Social Work or Psychology and to be eligible for membership of the Australian Association of Social Workers or to be registered as a Psychologist.

There are some family consultants with psychology qualifications who, when they were employed by the Court, prior to the establishment of the national registration body AHPRA in 2010 were not required to be registered,. At that time, the relevant eligibility requirement for those family consultants was eligibility for membership of the Australian Psychological Association.

Additionally, family consultants must have a minimum of five years clinical experience working with children and families. Most family consultants have significantly more than five years clinical experience when they commence work with the Court.

2. The preparation of family reports is a court ordered function which aims to advise the Court by preparing expert observations and opinions on matters regarded by the Court as relevant to the issues in dispute in the particular case. As with all expert evidence, material in a family report is subject ultimately to the normal processes of assessment, challenge, weighing and judgement by the judicial officer in the course of the trial.

Family reports completed for the Family Court are subject to a quality assurance process where they are read by a Senior Family Constant or Regional Coordinator prior to their release. This enables a check by a highly experienced professional supervisor to ensure that the report meets the requirements of the order for the assessment and is of an appropriate professional quality. This could also enable any errors of process in an assessment to be identified but it cannot alter the expressed opinions of the report writer which is a matter for the Court itself.

Family consultants may be, and frequently are, cross examined by parties to proceedings who, depending on the circumstances and the issues, may seek to challenge the observations recorded by family consultants and their conclusions.

Additionally, family consultants employed by the Courts are subject to public service supervisory processes in order to monitor their performance and to ensure the quality of their work. Those appointed under Regulation 7 are monitored both in relation to their conduct and performance and the need for their services to ensure that their appointments remain sustainable and relevant. Family Consultants however, work necessarily as independent professionals in assessing families and providing expert evidence to the Court.

It is important to note that reports can be prepared and funded privately by the parties in the case. The Court does not have any responsibility for the quality assurance of these reports.

3. If the opinions given by a family consultant went beyond his or her accepted area of expertise, their report and opinions could be challenged in Court, and whether or not they were accepted would be a matter for the judicial officer.
4. Social Work is a recognised profession requiring, at minimum, a bachelor's degree from an accredited university. Social workers engaged as family consultants must also be eligible for membership of the Australian Association of Social Workers (AASW).

Social workers are qualified to comment on the presentation and behaviour of clients and children as described above. They can recommend that a psychiatric assessment may be undertaken by a suitably qualified professional.

Ultimately the Court determines what weight to put on assessments or opinions expressed within family reports. As expert witnesses, report writers can be cross examined on their assessments and opinions. Their qualifications and experience are ordinarily annexed to the report to assist the assessment of their evidence.