

CHILD INCLUSIVE PROCESSES AND REFORMS WITHIN THE FAMILY COURT OF AUSTRALIA

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**“Teach your parents well
Their children’s hell
Will slowly go by”
Graham Nash**

Overview

This paper is intended to:

- Sketch an outline of the role of the children’s representative (now Independent Children’s Lawyers) in proceedings under the Australian *Family Law Act*,
- Outline a number of amendments to the *Family Law Act* which will come into effect from 1 July 2006 and which will impact upon the role of lawyers representing children.
- Briefly outline a number of innovations created by the Family Court to more effectively address proceedings involving children and, in particular:
 - the Children’s Cases Program
 - the Child Responsive Pilot
 - the Magellan and Columbus Projects

Legislative Background

The Australian Legal System operates within a federation. Consequently, each of the eight States and Territories of the Commonwealth retains a legislative power separate from that of the Commonwealth Government.

The Commonwealth derives its powers from:

- The Federal Constitution;
- The referral of powers by States and Territories;
- International treaty obligations.

The Commonwealth, on the basis of the Matrimonial Causes Power within the Constitution and a referral of State powers, exercises jurisdiction over parenting proceedings in which disputes arise regarding arrangements for children.

Criminal and quasi criminal proceedings (relating to either police charges of assault or abuse or intervention of welfare agencies in cases where children are abused or neglected) remain within the domain of State and Territory Governments. As such a separate State and Territory Court structure exists to deal with civil disputes instigated by child protection and welfare authorities which system is entirely separate and distinct from the exercise of power by the Family Court. Indeed the Commonwealth *Family Law Act* largely excludes the exercise of Commonwealth jurisdiction (under the *Family Law Act*) when orders have been made by a State Court in their welfare jurisdiction.

Whilst both the Family Court and State Welfare Court jurisdictions provide for the independent representation of children this paper will focus upon the jurisdiction of the Family Court under the *Family Law Act*. However, some comment will be made regarding a number of legislative reforms and Family Court sponsored initiatives that seek to address the practical difficulties that, almost of necessity, arise through the division of jurisdiction between State and Federal Courts and particularly to address the difficulties that have arisen in managing the inter-organisational domain and co-operation (or absence thereof) between State and Federal Courts and agencies.

The Representation of Children

Since the enactment of the Family Law Act 1975 provision has existed for the representation of children.

The present provision of the Act providing for representation is s.68L(2) which states:

“ If it appears to the Court that the child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such other orders as it considers necessary to secure that separate representation”

As with so many aspects of the Family Law Act a broad discretion exists regarding the appointment of children’s representatives and it has been left to the Court to determine and define:

- In what circumstances it is appropriate to appoint a children’s representative;
- The role and scope of the role.

It is important to note that a children’s representative can only be appointed by the Court. Section 68L(3) makes clear that an order appointing a children’s representative can be made on the Court’s own motion or on the application of a party to proceedings. However, the parties (or one of them) cannot arrange for a child to be represented in proceedings other than by Court order.

A role of the children’s representative is filled by a solicitor who is specifically and personally appointed to that role.

A children’s representative is not, strictly, a party to the proceedings but they can participate in the proceedings in a similar fashion to the parties including by filing documents, calling and cross examining witnesses, issuing subpoena and adducing evidence, make submissions and seeking orders from the Court.

When is a Children’s Representative appointed?

A child is represented in proceedings whenever the Court considers it appropriate. Representatives are appointed in less than half of all parenting disputes determined by the Court on a contested basis.

The clearest guidance as to when a children’s representative is appointed comes from a 1994 decision of **Re K**. This case set out a list of 13 criteria or types of cases in which the Court should consider the appointment of a children’s representative and being:

- Cases involve **allegations of child abuse**, whether physical, sexual or psychological abuse
- Cases where there is an **apparently intractable conflict** between the parents.
- Cases where the **child is apparently alienated** from one or both parents.
- Where there are **real issues of cultural or religious difference** affecting the child.

- Where the **sexual preferences of either or both of the parents** or some other person having significant contact with the child are likely to impinge upon the child's welfare.
- Where the **conduct of either or both of the parents** or some other person having significant contact with the child is alleged to be **anti-social** to the extent that it seriously impinges on the child's welfare.
- Where there are **issues of significant medical, psychiatric or psychological illness or personality disorder** in relation to either party or a child or other persons having significant contact with the children.
- Any case in which, on the material filed by the parents, **neither seems a suitable custodian.**
- Any case in which **a child of mature years is expressing strong views**, the giving of effect to which would involve changing a long standing custodial arrangement or a complete denial of access to one parent.
- Where one of the parties proposes that **the child will either be permanently removed from the jurisdiction** or permanently removed to such a place within the jurisdiction as to greatly restrict or for all practicable purposes exclude the other party from the possibility of access to the child (**relocation cases**).
- Cases where **it is proposed to separate siblings.**
- Custody cases where **none of the parties are legally represented.**
- Applications in the Court's welfare jurisdiction relating in particular to the **medical treatment of children** where the child's interests are not adequately represented by one of the parties.

The above list is not (and was not intended by the Full Court) to be exhaustive of the reasons why a children's representative would be appointed.

The Role of the Children's Representative

The role of the Children's Representative has largely been defined by case law and, of more recent times, by the Court's Guidelines for Child Representatives.

For an excellent and detailed analysis of the historical development of the role of the Children's Representative one need look no further than the paper prepared by FM Judy Ryan "Separate Representation – A Child's Voice".

The role of the Children's Representative has developed and is now somewhat codified in the Court's own Guidelines as representing a diverse range of functions including:-

- To **represent a child's point of view** (as expressed by His Honour Justice Watson and, interestingly, reflecting the terminology proposed by the Exposure Draft).
- To endeavour to **insulate children from conflict**.
- To **assist the Court** in taking decisions that are in the best interests of children.
- By **enabling the child to be involved in decision making** (which role and outcome will be greatly enhanced by the Child Responsive pilot).
- To be **the honest broker of settlement** wherever such settlement opportunities are available.
- To identify and seek to put in place **therapeutic treatment and educative interventions** that will further the child's best interests.
- To **ensure appropriate and admissible evidence** is available to the Court to assist the Court in reaching a decision.
- To **co-ordinate and liaise with Experts** including any Child and Family Specialist (although the Court's present Rules do impose some strictures upon this role).
- To ensure that **natural justice is facilitated**.
- To **test evidence by cross-examination** and through use of other litigation tools.
- To **avoid delay** in the proceedings.
- To **protect the child from unwarranted interview or investigation**.
- To **adduce appropriate evidence** and include the Expert evidence that would assist the Court.
- To **act as a case co-ordinator** liaising with Government departments, contact centres and other agencies on behalf of the child.
- To **keep the child informed**, in an appropriate manner, of the proceedings, the processes involved and any outcome and, as far as possible, to provide support and assistance to the child throughout such litigation.

From 1 July 2006 amendments to the *Family Law Act* will see those representing children referred to not as the Children's Representatives but as **Independent Children's Lawyers (Section 68LA)**.

The amendments to the act will provide some further clarity as to the role of those representing children and in particular through subsections 68LA:

(2) *The independent children's lawyer must:*

- (a) **form an independent view**, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
- (b) *act in relation to the proceedings in what the independent children's lawyer believes to be the **best interests of the child**.*

(4) *The independent children's lawyer:*

- (a) *is **not the child's legal representative**; and*
- (b) *is **not obliged to act on the child's instructions** in relation to the proceedings.*

Shared Parental Responsibility Bill

On 10 May 2006 the Federal Government passed the *Family Law Act Amendment (Shared Parental Responsibility) Bill*. The provisions of the Bill will come into effect as and from 1 July 2006 and will apply to all cases heard and determined from that date.

The Bill has been heralded by Federal Attorney General Philip Ruddock as being "... designed to keep families out of the Courts and deliver practical, co-operative outcomes for separating families".

For the purpose of this paper the Bill will have some impact upon:

- The role of lawyers representing children
- The objects, considerations and presumptions to be applied by the Court.

The amendment of the objects of the Act are of some particular significance in that "the new laws reflect the Government's belief that two factors are of primary importance in addressing the interests of children in family breakdowns – the right of the child to have a meaningful relationship with both parents and the protection of the child from harm".

The *Family Law Act* has, at least since 1995 contained a statement of objects and being "... to ensure that children receive adequate and proper parenting to help them achieve their full potential and to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children".

To date four principles have been set out as achieving this object, namely:

- a) Children have right to know and be cared for by both of their parents;
- b) Children have right of regular contact with both their parents and other significant people;
- c) Parents share duties and responsibilities concerning the care, welfare and development of their children; and
- d) Parents should agree about the future parenting of their children.

The Shared Parental Responsibility Bill will introduce a tiering of objects (s.60CC) and so as to provide primary objects of:

(a) the benefit to the child of having a meaningful relationship with both of the child's parents; and

(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

whilst leaving the remaining objects (as set out previously) as secondary considerations.

The Bill also includes a presumption of shared parental responsibility. Importantly, flowing from this presumption the Court is then directed, in determining the parenting orders that it will make, to consider the following:

- (1) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
 - (a) consider whether the child **spending equal time with each of the parents** would be in the **best interests of the child**; and
 - (b) consider whether the child spending equal time with each of the parents is **reasonably practicable**; and
 - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.
- (2) If:
 - (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and

- (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; and

the court must:

- (c) consider whether the child spending **substantial and significant time with each of the parents** would be in the **best interests** of the child; and
- (d) consider whether the child spending substantial and significant time with each of the parents is **reasonably practicable**; and
- (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

- (3) For the purposes of subsection (2), a child will be taken to spend **substantial and significant time** with a parent only if:

- (a) the time the child spends with the parent includes both:
 - (i) days that fall on **weekends and holidays**; and
 - (ii) days that **do not fall on weekends or holidays**; and
- (b) the time the child spends with the parent allows the parent to be involved in:
 - (i) the **child's daily routine**; and
 - (ii) **occasions and events that are of particular significance to the child**;
and
- (c) the time the child spends with the parent allows the child to be involved in **occasions and events that are of special significance to the parent**.

The Children's Cases Program

The Children's Cases Program commenced as a pilot project in the Parramatta and Sydney Registries of the Family Court in March, 2004.

Even in its infancy the time Prime Minister John Howard described the CCP (in July, 2004) as:

"...an evolutionary change to the process of litigation in that it is less adversarial and enables the Court to take the initiative in determining what issues are in dispute and what

evidence is directed to those issues which, in turn, enables parents to focus more clearly on the best interests of their children"

At the same time Chief Justice Bryant had commented that the CCP *"...may represent the future of parenting proceedings..."*.

That this is so should now be clear from the wording of the Family Law Amendment (Shared Parental Responsibility) Bill which will, to a large extent, legislate a CCP like approach to all parenting proceedings (**see s.60KB-KI**).

On 20 December, 2005 Practice Direction 3 of 2005 was released to guide the National roll out of the Children's Cases Program (although Melbourne will continue to be governed by Practice Direction 2 of 2005 as that registry is also trialling the Child Responsive Pilot regarding delivery of the Court's Mediation and Counselling services).

Academic review of the program by La Trobe and Griffith Universities commenced in 2005 and the first report (that of Dr Jenny McIntosh) is now completed.

Significant research was undertaken by the Court prior to embarking upon the project. The research undertaken by the Court represents part of a significant body of research including the Pathways Group and the work of Chief Justice Faulks in the Self Represented Litigants Task Force.

This paper is not intended to address the practical operation of the CCP and a number of papers have now been published regarding this including materials distributed via the Law Council as part of the National Roll Out of the CCP.

How Does the CCP Differ From a Traditional Hearing?

The CCP is a **Judicially Managed Court process**. Practice Direction 3 of 2005 together with the Court's Information Pamphlet (part of the Court's *CCP Kit*) set out comprehensively the procedures adopted within the Program.

In the traditional litigation process a parenting dispute would be expected to pass through a number of administrative steps before, as the final Court event, the matter is placed before a Judge for determination. As a **judicially managed model** the parties to a dispute can expect that after their first court event (a Case Assessment Conference and directions hearing or Interim hearing) that the final hearing of the proceedings will commence before a Judge.

The hearing varies from the traditional approach in that:

- The hearing may occur over several days or events rather than all in one block;

- Evidence is not prepared and filed until the Judge directs that this occurs and nor are Subpoena filed unless leave is granted;
- The Judge directs what evidence is to be filed.

The essential differences (and advantages) of the CCP over the traditional model of case management are:

- Once accepted into the CCP the matter is **handled by the same Judge at all times** (a docket system by any other name);
- **Issues of enforcement, variation or contravention applications** regarding interim orders are brought back before the same Judicial Officer and far more informally (generally by relisting the matter via the Case Co-ordinator or Associate rather than filing a formal application);
- The **hearing commences from the first appearance** or intake event and, accordingly, there is an early focus on the resolution of contentious, factual issues between the parties;
- **Significant resources are made available** at an early stage of the matter. For example, Family Reports can (and routinely are) ordered at the first appearance or intake event;
- The **evidence of the parties** is given in a number of ways rather than purely by Affidavit. This includes:
 - Parties completing a **questionnaire** prior to the first appearance or intake;
 - **Oral evidence** being given by the parties during the course of the proceedings and commencing with the Intake event;
 - **Affidavit evidence** is ultimately produced for any final determination of the matter although the Judge conducting the hearing closely prescribes the content of such Affidavit material.
- The **issues in dispute** between the parties (whether as purely factual issues or, more commonly, areas of dispute) are defined at the outset and on an ongoing basis. The list of issues is then used as the basis for prescribing material to be contained within Affidavits and the matters to be considered and addressed by any Child & Family Consultant or court expert.
- A Judge has the benefit of **engaging more directly with the parties** through questioning, direct address by the parties to the Judge and introducing elements of

conciliation to the process (which conciliation is conducted directly by the Judge and on the record).

- A Judge is **able to deal with and determine issues** (whether final, interim or interlocutory) on any occasion that the matter is before the Court. This has the benefit, for example, of enabling a Judge to deal with and determine interim parenting issues at the intake event and to then make further orders to guide the final determination of the matter (including the allocation of resources such as Family Reports and appointment of Children's Representatives).
- **Child and Family Consultants are available from intake to assist the parties and the Court** with their input towards resolution (including their traditional role as counsellors and conciliators), advice and comment regarding developmental issues and the impact of behaviour upon children and relationships and recommendations for resource allocation and case management.
- **Orders made are “stickable”**. In a statistical sample of the first 50 cases dealt with in the CCP by my firm only 1 Appeal has been lodged (and that withdrawn) and in only 2 matters have enforcement or variation applications been brought following the completion of a final determination, (and in each of those matters a self represented litigant with previously diagnosed psychological disorders has been involved).

In adopting this model the Court has shifted the focus of dispute resolution to:-

- Become **more child focused** by shifting the attention of the parties from their own issues to the future needs and best interests of their children.
- Allow the parties (whether directly or through their legal representatives) to participate in **identifying the issues** that the Court will need to determine in order to assist the parties in resolving their matter (or, if the parties are unable to resolve the matter, in enabling the Court to determine their dispute).
- Better **identify and meet the objects of the Act** (which, after all, focus upon parents as the natural decision makers for children).
- **Better case manage matters** (in that a single Judge manages the matter from intake to conclusion).

The CCP approach allows the Court to adopt an **issues based and outcome focussed process**.

It is generally accepted that the Children's Cases Program has provided a better outcome for children through:

- Adopting a **“no further harm” model** and so as to preserve whatever remains of the fragile relationship and communication between separated parents;
- Providing some **educative input to parents** (through judicial comment, the active involvement, availability and participation of a Child and Family Consultant as well as the greater potential for the Court to identify, at an early stage, therapeutic programs which might be of assistance to the parties and directing the parties to those).
- Providing a **less adversarial and more flexible approach** to the handling of disputes and so as to enable parties to feel that they have been heard and, consequently, better accept, embrace and/or adhere to Court ordered arrangements (thus avoiding further litigation between the parties which would further deplete their emotional and financial resources).
- A Judge has a better capacity to ensure that **parties remain focused on their children’s needs and interests** and that the **Court’s processes are also directed to such ends** and needs (and that evidence to be adduced in the proceedings is confined solely to matters relevant to same).
- The overall **levels of contact exercised by parents to their children is higher** in cases decided within the Children’s Cases Program than those determined in the main stream (or more adversarial) process. As a consequence both parents and children interviewed as part of Jennifer McIntosh’s review of the parents have reported an improvement in their contentment with the living arrangements following the Court process and, correspondingly, an increased perception of their children’s happiness with living arrangements.

It is not the intention of this paper to otherwise significantly review the research and reports into the Children’s Cases Program (by Professor Jennifer McIntosh and Dr Rosemary Hunter) and particularly as Professor McIntosh will be a participant at this conference and directly addressing such issues. However, the therapeutic benefits of the “no further harm” model adopted by the Children’s Cases Program would now appear to be well documented and further reading regarding such benefits is referred to in the notes accompanying this paper.

The Children’s Cases Program approach will, as a consequence of the Shared Parental Responsibility Bill, be adopted for all parenting cases from 1 July 2006 and the *Family Law Act* will now (quite properly) mandate four principles for the conduct of all parenting proceedings as follows:

Principle 1

The first principle is that the court is to consider the needs and concerns of the child or children concerned in determining the conduct of the proceedings.

Principle 2

The second principle is that the court is to actively direct, control and manage the conduct of the proceedings.

Principle 3

The third principle is that the proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties.

Principle 4

The fourth principle is that the proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.”

The Child Responsive Pilot

In October 2005 the Family Court commenced a federally funded trial, through the Melbourne Registry of the Family Court, under the title of the Child Responsive Pilot.

The Child Responsive Pilot (CRP) will run in conjunction with the Children's Cases Program (CCP) within the Melbourne Registry.

The CRP represents a somewhat dramatic departure to the delivery of counselling and social scientist services within the Family Court.

Since its inception the *Family Law Act* has placed a focus upon the resolution of disputes through negotiated settlement and, in particular, with the assistance of the Court's own counselling service.

The Court's Counselling Service have traditionally served a two-fold purpose being:

- To **assist parties negotiate a resolution**. Such counselling services have been privileged and confidential;
- An evidential purpose in providing **family assessment reports**.

The Court's Counselling Services, at least to the extent that they have been focused upon dispute resolution, have not, generally, been child inclusive. Discussion and negotiation has occurred between the parties (whether face to face or otherwise) with the assistance of the Court Counsellor and adopting a dispute focused model.

Overtime the utility of such counselling services has been questioned. This has particularly been so as a consequence of the growth (duplication) of similar services within the community sector and the growth of which has largely been driven by the availability of significant Government funding.

From 1 July 2006 a substantial investment in community counselling and mediation services will occur through the establishment of a network of Government funded family relationship centres (which will both provide counselling and (compulsory) mediation services to separating parents as well as referral to existing community based services).

Within this context the Child Responsive Pilot has arisen as a separate trial to move the Court's Counselling Services towards both:

- A **more child inclusive model**; and
- A **non-privileged and reportable family assessment** process.

The later of these considerations arises from a recognition that most, if not all, parties before the Court have been involved in some form of counselling or mediation prior to approaching the Court and, consequently, the delivery of such a service by the Court would simply be a duplication of resources already expended.

The Child Responsive Pilot, whilst in its infancy, probably reflects the future of counselling service delivery in the Family Court. Such a prediction would appear bold but for the clear and unambiguous support given to the Children's Cases Program in its infancy and which predictions have, with the passage of the Shared Parental Responsibility Bill, come to fruition.

The Child Responsive Pilot will still afford to parties an opportunity to directly discuss a resolution of their dispute with each other and with the assistance of a Court Counsellor (or Child and Family Consultant from 1 July 2006). However, the basic elements of the pilot involve:

- **All discussion is reportable**;
- The Child and Family Consultant will also **meet with the children** the subject of the dispute (in a separate session away from the parties).
- The parties may be involved in **more than one session** (whereas traditionally confidential counselling has, with limited exceptions, involved a one off appointment).

- Attendance with the Counsellor **will commence with the first Court event** and continue for such sessions as the consultant considers appropriate.
- The consultant will have the **capacity to refer the parties to external programs** such as Parenting After Separation or Parental Communication courses.
- Once the counsellor has met with the children then a **feedback session** will be arranged. The children will not attend the session although the family consultant, the parties and their legal representatives will. The purpose of the feedback session is to enable the Child and Family Consultant to provide, as they consider appropriate, **feedback as to the children's views** (of not only future parenting arrangements but the dispute between the parties).
- The focus of the Consultant's involvement with the family will be to achieve:
 - A **shared understanding of the impact of parental conflict** upon children;
 - An **understanding of particular behaviours** which impact upon either the dispute or its continuation or upon the children;
 - A **commitment to address behaviours** which are identified as impacting upon the perpetuation of dispute or the children.
- If the parties are able to **negotiate arrangements** following all relevant interviews (including the feedback session) then the matter would not proceed further nor would any written report be prepared.
- If the matter is not resolved following all interviews and sessions then a **summary assessment report** is prepared by the Consultant. At this point the CRP and CCP dovetail so that the preliminary report is made available prior to the commencement of the hearing (or the first intake event) attended by the parties.

The CRP has some particular benefit to an Independent Children's Lawyer in that **admissible evidence will be available at an early stage** (and, indeed, at the commencement of a hearing in the CCP) regarding children's views and wishes. This is of considerable **assistance both to defining issues in dispute** and to any Independent Children's Lawyer in **presenting admissible evidence of children's views**.

The Magellan and Columbus Pilots

In June 1998 the Family Court commenced a trial of the Magellan Project in the Melbourne Registry of the Court. In July 2001 similar project (named the Columbus Pilot) was commenced in the Family Court of Western Australia.

The Magellan Project is a **Judicially managed, inter agency method of dealing with parenting disputes involving allegations of child abuse** involving welfare agencies and/or the Police.

The Magellan Pilot has now been rolled out nationally and, albeit in its infancy, is now operating throughout the Commonwealth.

The Magellan Project, like the Children's Cases Program, was, to a large extent, the brain child of former Chief Justice of the Family Court Alistair Nicholson.

The Magellan Pilot was intended to **acknowledge and address the difficulties** which arose from:

- The conduct of **separate State and Federal jurisdictions** which both dealt with children (and when allegations of abuse or neglect arise with the potential for overlap but lack of co-operation between the two systems).
- To better address such cases in a manner that encouraged **co-operation between the various agencies** involved in the investigation of such allegations and such as to promote positive outcomes for children.

The Magellan Project is significant in that it provides (similarly to the Children's Cases Program) for:

- A **child focused approach**.
- A **Judge managed process**
- A **multi-disciplinary approach involving co-operation** (and intervention and/or representation) by:
 - The parents or parties to proceedings
 - An Independent Children's Lawyer
 - The relevant State Welfare Authority
 - The State Police Service

The Magellan Project involves, from the outset and in each case, the appointment of an Independent Children's Lawyer.

From the outset the Court also directs the preparation of a report by the State Child Welfare Agency which details that Agency's involvement, notifications received by them, investigations undertaken by them and any conclusions reached and/or action intended.

Following the availability of this report (which permits a more thorough assessment of available evidence) the matter is then judicially managed to a prompt and expeditious hearing.

The Magellan Project, like the Children's Cases Program, is intended to provide a **prompt and expeditious determination** of parenting disputes. It is, perhaps, this one significant factor that is continuously identified (including through Professor McIntosh's report into the Children's Cases Program) as being the single most important factor in providing positive outcomes in parenting proceedings. This is perhaps not surprising in light of the long standing maxim "*justice delayed is justice denied*".

Challenges for the Future

The basis of success of both the Children's Cases and Magellan Programs has, to a large extent, been identified as the **prompt disposal of disputes**.

The focus upon this single key determiner of success is correctly identified in the Shared Parental Responsibility Bill wherein the principles (Principle 4) direct that "... **proceedings are to be conducted without undue delay**..."and specifically for cases involving abuse or violence that "... **the Court must take ... action ... as soon as practicable**" (Section 60K(2A)).

The greatest challenge to the success of any determination of disputes (and particularly in such a fashion as will minimise the impact of that dispute upon the children the subject of it) is the prompt and expeditious determination of the dispute. To fail to do so:

- **Increases the frustration of litigants** and such that there is a manifest lack of faith in the process
- **Increases the prospect that orders, once made, will not be complied with** (whether as a consequence of the parties' lack of faith in the judicial process or the outcome of that process)
- **Allow defective and corrupt communication** between the parties to fester and to deteriorate
- **Deplete the emotional and financial resources of parties**
- Allow **ongoing tension, conflict or hostility** between parties to impact upon parties, their children and parenting and parental relationships.
- **Allow entrenched positions to become further entrenched** (or normalised) and give rise to issues of alignment.

The Federal Government's commitment of substantial resources within the community sector (through the roll out of family relationship centres, contact centres, expansion or continuation of funding to existing community programs, etc) is commendable. However, this expenditure would appear to be somewhat misplaced if it is intended (or expected) that through this expenditure the workload of the Court will dramatically reduce.

If the roll out of family relationship centres produces a substantial downturn in the Court's workload (through the early resolution of matters) then the Family Court may well be able to administer the (justifiably) more resource intensive and onerous responsibilities imposed by the Court's pilot programs and now the Shared Parental Responsibility Bill. However, in the absence of any substantial diminution in case load the Family Court lacks the present resources or capacity to properly:

- administer the amendments contained within the Shared Parental Responsibility Bill or to do so within the spirit of the legislation; and,
- Maintain the positive direction of innovative programs such as the CCP, CRP and Magellan Project or to meet the principles as now set out in the legislation.

What may be required for the Court to achieve those outcomes (and, in particular the prompt and expeditious determination of disputes) would be an increase in resourcing and, in particular, a round of fresh judicial appointments (including some consideration of the appointment of Judges to deal purely with children's cases if need be) or at least replacing Judges as they retire.

The success of present reforms (and continuing success of existing Court initiated pilots) is prefaced upon the availability of sufficient resources to enable those programs to operate as intended. Those resources do not currently exist.

Further Source reading

1. Prime Minister's Press Release "Reforms to the Family Law System" 29 July, 2004
2. FCA Press Release "Chief Justice Welcomes Proposed Family Law Reforms 29 July, 2004"
3. Issue 1 of the Family Court of Australia CCP Newsletter and, in particular, the article "How the CCP developed"
4. "The Children's Cases Pilot Project-An exploratory study of impacts on parenting capacity and child well being" - Professor Jennifer McIntosh
5. Children's Cases Program Incorporating the Child Responsive Pilot-Law Council of Australia Training materials October, 2005
6. "Can a Court process be therapeutic? The Children's Cases Program as a Case Study?" Harman, 3rd International Conference of Therapeutic Jurisprudence Perth June, 2006
7. AG's Press release 10 May, 2006 at www.ag.gov.au/pressreleases