

Self-represented Litigants *A Challenge*



PROJECT REPORT

Family Court of Australia, Self Represented Litigants ~ A Challenge: Project Report
December 2000–December 2002
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PREFACE

The Family Court of Australia was one of the first courts to recognise the challenge represented by the increasing numbers of litigants who, either by choice or necessity are self-represented in proceedings before it. As a consequence, the *Self-represented Litigants - a Challenge* project was set up. This project has now completed the first phase of its operations.

At the beginning of the process the project determined that it should advance its activities in three main directions – Information, Collaboration and Innovation. These three headings corresponded in more colloquial terms to the challenge of getting self-representing litigants lawyers, making them lawyers or changing the system.

Research undertaken in conjunction with and at the request of the Court has indicated that (in first instance) 30–40 per cent of the matters involve litigants who are self represented at some point. The analysis of this phenomenon and the development of strategies to meet the challenge have resulted in many initiatives which are reflected in this report.

It was never expected and indeed cannot be expected that the Court will finish the process of designing and reforming its supply of information and procedures to take account of the changing face of litigation and the needs of those who are self-represented. So far we have made a substantial start and have recognised that this process involves much more than simply the handing out of a "kit" at the time of the hearing. It is rather the provision of relevant information in a comprehensible and comprehensive form at appropriate times during the proceedings. This is consistent with and supportive of the Court's objectives to find the most appropriate way to resolve disputes.

As we move from phase one to phase two the project team will be reorganised to reflect the more outward-looking process of seeking collaboration with the external stakeholders of the Court and to examine how the information, assistance and advice that is necessary can best be provided using the resources available. The project has always recognised that Legal Aid resources are limited, as is the goodwill of the profession and the budgetary capabilities of the Court. Ultimately what can be done, must be done with the available resources applied as collaboratively and skilfully as possible.

In addition, the Court looks finally towards the implementation of the visioning process which it has conceptualised and developed. This process has recognised the inevitability of change in the way in which litigation will be conducted. It has adopted a commitment in due course towards a process of Court-assisted litigation. It has recognised that this process can only be accomplished in collaboration and cooperation with all of the stakeholders in the process of litigation.

In its new outward-looking phases of development the project team will share experiences with other courts and work cooperatively with those courts towards the achievement of the goal of justice and a fair go for all.

Justice John Faulks

MAY 2003

BACKGROUND

The Family Court of Australia, like other Australian courts, operates within an adversarial system, and is built around an expectation that parties will attend with legal representation. While the majority of Court clients are represented, the proportion of unrepresented parties is now very significant. Although there is limited precise information about the profile of self-representation there is a perception across the literature¹ that the number of self-representing litigants (SRLs) is increasing in the court system, both within Australia and internationally.

In 1998 the Chief Justice of the Family Court of Australia appointed the Future Directions Committee within the Court to initiate, support and monitor projects which focus on the improvement of the efficiency and effectiveness of Court services. In its final report the Committee stated that "self-representing litigants are increasingly the new reality and all Court services and procedures must address them as a permanent, significant and growing user group".²

SRLs are clients of the Court who, for many and varied reasons, attend Court without legal representation. The percentage of SRLs who are unrepresented throughout the entire Court process is very low. Current research indicates that most SRLs have partial representation at different stages throughout their proceedings. Court services at all levels enable clients to manage Court processes, but must necessarily avoid stepping into the bounds of legal advice.

The Court commissioned research into self-representation in family law. Conducted by Professor John Dewar, Barry Smith and Cate Banks in 2000, the report *Litigants in Person in the Family Court of Australia* was informed by The Family Court of Australia's *Research Report No. 19 1998 Study of the effects of legal aid cuts on the Family Court of Australia and its litigants*, which found that 35 per cent of Family Court matters involved at least one party who was unrepresented at some stage.

Key findings from the Dewar Report included:

- the majority of SRLs cannot afford legal representation, although a significant minority said they did not need or want to be represented by a lawyer
- SRLs are disproportionately concentrated in children's matters as opposed to property matters

1 See bibliography for relevant literature

2 Family Court of Australia *Future Directions Committee Report* July 2000

- SRLs have a wide range of needs: for information, such as relevant support services, Court procedures etc; for advice, about such things as form-filling, Court etiquette, preparation of documents, the formulation of legal argument etc; and for support, both emotional and practical
- judicial officers and registry staff experience difficulties when dealing with SRLs, because of the SRL's lack of legal and procedural knowledge
- SRLs use up more of the Court's resources than represented clients
- Judicial impartiality and the need to help SRLs compromised the role of judges and registrars as the presiding officer
- an unevenness in the way judicial officers and registry staff respond to the needs of SRLs, suggesting the need for a more consistent policy
- an identifiable link between the unavailability of legal aid and self-representation

The report also included the following recommendations:

- there should be more and better timed information and assistance to SRLs
- although the Family Court cannot be the chief provider of the support needed by litigants in person, the Court does have a role in coordinating those agencies that are able to offer support
- the Court should consider developing a clearly articulated policy, applicable to all Court personnel and judicial officers, setting out the Court's approach to SRLs from filing to disposition, and practices and procedures for assisting them
- there should be better coordination at a local level of information regarding support services (such as Court networkers, duty lawyer schemes or support programs sponsored by community legal centres) relevant to the needs of SRLs - this would require funding and active management by the federal government and legal aid bodies

The findings of this research have informed the initiatives of the Court since 2000 to address the needs identified.

THE SELF-REPRESENTED LITIGANTS PROJECT

The Purpose

The *Self-represented Litigants – A Challenge* project, a two-year initiative of the Court, was launched by the Chief Justice in December 2000 to address the needs of self-representing litigants within the Family Court of Australia. Based on the principle that the Court must seek to deliver its services in ways that provide ‘a fair go for all’, the goals of the project were:

- to develop a consistent national approach to providing services to litigants that is sensible, effective and understandable and conscious of the requirements of SRLs
- to improve current Court services, including practices, procedures, protocols and proformas
- in parallel with the previous objectives, to evolve deliverables that are clear, consistent and understandable to litigants of average ability

The project team identified the ‘challenge’ in this project as ensuring that family law services are provided fairly, openly, consistently and understandably to all, by ensuring that initiatives developed for SRLs do not impact unfavourably on clients who do have legal representation.

The project identified a range of key activities. These being:

- to review information and publications
- to establish an integrated and coordinated approach to instituting existing initiatives, such as the Family Court Support Program in Dandenong, nationally and review the suitability and the development of any partnerships that may be required to ensure they operate effectively
- to review Court processes and procedures to determine ways to make them clear and understandable
- to review avenues for producing package material or establishing touch screens in Registries
- to establish national protocols and guidelines with particular reference to SRLs

- to develop internal and external communication campaigns outlining project activity to staff, clients and stakeholders respectively
- to develop Rules of Court that are fair, clear and understandable
- to develop a framework for the evolution of the Court processes into the 21st century recognising the changing character and needs of those SRLs (and represented parties) who appear before the Court or seek its help in the resolution of conflict

The Project Team

Justice John Faulks, was asked by the Chief Justice to lead the project team. Justice Faulks, with a keen interest in "justice and fairness", had previously attended the National Conference on Pro Se Litigation in Arizona, USA and reported on this to the Court.

Other members of the project team consisted of representatives from the various streams of expertise within the Court such as: registry manager; manager of mediation/counselling; client services officer, deputy registrar; and registrar. This enabled individual team members to utilise their internal networks to get input and feedback on the work of the project team. Administrative and research support for the project was provided by the National Support Office.

The team was also fortunate to have Professor John Dewar, at that time Dean of the Faculty of Law of Griffith University and author of the original research, as consultant to the project.³

The Steering Committee

In the later stages, the project was oversighted by a steering committee comprising the Senior Administrative Judge, the Chief Executive Officer of the Family Court and representatives from the National Association of Community Legal Centres and the Family Law Section of the Law Council of Australia. The steering committee provided strategic guidance and advice to the project team.

PRIMARY OUTCOMES

The Family Court recognises that self-representing and other litigants are entitled to all reasonable information and assistance from the Court, so far as is possible, to enable a person to understand what is required to present his or her case to the Court or to engage in dispute resolution processes under the Court's auspices.

In addition to specific outcomes, during the two years of the project the team has noticed a significant "cultural shift" in the perception of, and attitudes to, SRLs among Court staff. The work of the project team has helped to ensure that SRLs are now a recognised and accepted client group that will be included in any considerations of future strategic developments, not only at the national level but also at the local registry level, through Registry Business Plans and quarterly reports.

In addition, the project team has developed programs, procedures and brochures at a national level aimed at enabling clients who represent themselves to have a "fair go" at doing a reasonable job for themselves. Most Registries around Australia have taken these on board and have developed and implemented local programs to assist SRLs. This will continue as Registries address the needs of SRLs through their Registry Business Plans.

Links to the Court's Strategic Plan

The project plan was developed to contribute to Key Results set out in the Court's Strategic Plan, which are:

- *Better targeted services*
- *Improved relationships and communication*
- *Improved Judge and staff capability*
- *Improved systems and management*
- *Influence in shaping the family law system*

The contributions of the project to these Key Results are set out on the following pages.

PROJECT ACHIEVEMENTS

December 2000 – December 2002

In meeting the challenges of the project, the team developed its initiatives in three main areas:

- Information
- Collaboration
- Innovation

1 Information

Ensuring that information about Court processes and procedures was available to all clients in clear and easily understandable ways was a key area of work for the project team. A review of existing Court documents and brochures identified the need for the development of a range of new brochures written in plain English (full details are below). The team was also charged with developing alternative models of information delivery. The new website *Step-by-Step Guide to Proceedings in the Family Court* was a major achievement in this area. The project team consulted with a wide range of stakeholders, through informal and formal submissions, consultative workshops and email correspondence, in the development of the information products.

1.1 Pamphlets & Publications

The project team pulled together and reviewed a significant amount of information available throughout Court registries and produced nationally consistent material to deliver information or the same message to clients regardless of where the information is obtained. This has been beneficial to clients and to staff when assisting SRLs in the Registry, or those who are not able to personally access Court registries and rely on mailed documentation. In compiling this information the team consulted extensively with all levels of Court staff who are responsible for the delivery of information, and with SRLs to ensure that the information produced was in line with what clients needed.

New brochures have been produced and are currently available in all Registries. They include:

- **The Case Assessment Conference** – A guide providing general information and suggestions for how to prepare for the first major ‘event’ most people have at the Family Court after documents have been filed.
- **The Trial** – A guide for people who have received a Family Court Trial Notice. It outlines what may happen in the lead-up to and during a Trial in the Family Court, and what needs to be done to prepare for it.
- **What is a Subpoena?** – A guide providing information about the use of a subpoena by Family Court clients when they are preparing for a hearing (or trial).
- **Service** – A step-by-step guide for the serving of Court documents.

Other information brochures in various stages of development include: *What is an Affidavit?* *Frequently Asked Questions*, *Court Etiquette* and *Legal Terms*. These are expected to be finalised by mid 2003.

A poster showing *How your case may progress through the Family Court* was also an initiative of the project team. This poster demonstrates visually at what point in the Court process a client will be when attending Court events and is displayed in all Registries as well as community legal centres and other community based organisations. The poster has recently been incorporated into edition 3 of the *Family Court Book*. Copies of this poster are available by contacting the Communications Office.

The project team also contributed to the development of another poster, *Welcome to the Family Court* and matching brochure which explains some of the limitations on assistance staff of the Court can provide. It distinguishes information from legal advice and lists the things Court staff can and cannot do. This poster, now displayed throughout all registries, complements the Court’s Service Charter.

STRATEGY The Court will continue to develop and improve its information delivery.

1.2 Newsletters

A newsletter was produced by the project "Fair Go For All". It was developed as part of the communication strategy designed to keep Court staff, stakeholders and all other interested parties informed about the progress being made by the project. Four editions of the newsletter have been published. The newsletter was widely distributed to libraries, universities, community legal centres, government organisation and SRLs. The newsletter was also distributed electronically and available to download from the Family Court website.

Back issues of the newsletter are available by contacting the Court's Communication Office or by downloading from the Family Court website at www.familycourt.gov.au.

1.3 Project Website

A project website was set up on the Family Court website to publicise the activities and achievements of the project and to seek input from interested people. Information contained on the site included:

- Background to the Project
- Project Brief
- Contacts
- Project Team
- Newsletters
- Related Projects
- Further Reading & Interesting Links
- Relevant Reports & Papers

STRATEGY Addressing the needs of SRLs is now core business of the Family Court. The Family Court Newsletter "*Courtside*" and the Family Court website will continue to inform the public, Court staff and the judiciary about SRL related initiatives.

1.4 Emails

An electronic mail box was set up at the start of the project to provide an open channel for SRLs and other interested parties to contact the project team at any time and to provide comments and/or feedback. All emails were responded to by the project officer and catalogued into the following categories:

- Information, Forms and Language
- Court Processes
- Relationship Building
- Assistance (requests/offers)

Well over 300 emails were received and the analysis of these informed the work of the project team, particularly in the development of the pamphlets and brochures (see above) and in the development of the website *Step-by-Step Guide to Proceedings in the Family Court*. Where appropriate, emails received were provided to other areas in the Court, such as the Rules Revision Committee, the Forms Committee and the Family Law Information Service.

The following is a brief analysis of the emails received and a description of the actions that were taken.

INFORMATION, FORMS AND LANGUAGE

A range of valuable comments and feedback was offered including requests for more information about affidavits, the availability of Court brochures, the use of language and feedback on project material, draft brochures and project newsletters. Many of these comments contributed to the team's work in the production of new brochures such as: *What is an Affidavit*, *Court Etiquette*, *Frequently Asked Questions and Answers*. Relevant comments have also been passed on to the Court's Forms Committee, which is currently reviewing all Court Forms. This information has also informed the work of the Rules Revision Committee, in its efforts to make the Rules of the Court easier to understand and more accessible for SRLs.

COURT PROCESSES

Many people utilised the email as an opportunity to share their personal experiences of being a self-represented litigant in the Family Court. The experiences of those who contacted the project team were greatly varied. This was an invaluable resource for the project team. It highlighted the need for consistent, national guidelines for addressing the needs of SRLs in all Family Court Registries. This also provided a source of contacts for direct community consultations to assist with the development of the *Step-by-Step Guide to Proceedings in the Family Court* website, through useability testing and other contributions such as commenting on various drafts of the brochures produced.

RELATIONSHIP BUILDING

The project attracted interest from many overseas courts that are also developing strategies aimed at assisting their self-representing clients. Those inquiring included the Equal Access Project from the California Courts, Office of the Chief Justice of New Zealand, a Judge from the state of New Jersey and the American Judicature Society. Australian organisations that were keen to contribute to the project or requested information included community legal centres, legal practitioners, family services, men's support services, mediators and the Child Support Agency. The project also received many inquiries from students, researchers and journalists interested in self-represented litigants. Communication and information sharing has continued with many of these organisations and individuals.

ASSISTANCE (including requests for assistance and offers to assist the project team)

This category included people offering to assist the project, people requesting assistance on how to proceed as a self-representing litigant and a range of other requests regarding Court processes. While the project (and the Court) could not offer legal advice on individual cases, the project officer would when possible make an appropriate referral.

A significant number of requests were from people outside of Australia requiring information on Family Court of Australia matters. The Family Law Information Service is looking into the possibility of developing information, for the specific benefit of those outside of Australia, on the Court's website.

STRATEGY Comment and feedback will now be managed through the Family Court website at clientfeedback@familycourt.gov.au

1.5 Case Studies

The project developed and published in July 2001 a document: Registry Case Studies. This was a collation of Registry based initiatives⁴ assisting SRLs throughout the Court. Collating the initiatives in this way has helped to transfer effective strategies across other Registries where possible and/or appropriate. This document was also made available for information sharing with external agencies. Some examples of these case studies included:

- Introduction Sheet For Self-Represented Litigants/Community Based Organisations. Brisbane Registry developed a system of making client files accessible to Community Legal Centres (CLCs) that are providing advice to SRLs, by having the client complete an Authority to Inspect Files. The CLC could use this authority to access to the Court file. As a result the CLC can provide more effective and relevant advice.
- Regional/Rural Services for Self-represented Litigants. Adelaide Registry is developing ongoing relationships with SRLs and community service providers in rural, regional and remote areas to help the Registry identify the needs of SRLs, and develop mechanisms/programs to address them. Project partners include: Volunteer Migrant Network, Aboriginal Projects through a joint Family Court/Aboriginal & Torres Strait Islander Committee, and Distance Parenting programs through Family and Youth Services (FAYS) & Child Support Agency (CSA).
- CSA Partnerships. The client service team at Adelaide Registry has been working with the Child Support Agency to build a stronger interagency relationship and foster a mutual understanding of how the two organisations can better work together in the interests of mutual clients.
- Personal Computers for Client Use. Canberra, Adelaide, Hobart, Newcastle, Sydney and Brisbane Registries provide stand-alone computers in appropriate locations. The PCs are connected to the Family Court internet site and associated links and include printing facilities, Many registries now also provide photocopying and fax facilities.
- Joint Community Information Sessions are provided by Dandenong Family Court Registry in partnership with Child Support Agency, Centrelink, Monash University Family Law Assistance Program, Victoria Legal Aid, local community legal centres and local community based organisations. Monthly sessions are delivered by "partner agencies" which provide an overview of agency operations including advice on fees and options/limitations for accessing the services provided. Written materials such as handouts, pamphlets, brochures, forms, kits etc are provided and the sessions conclude with an opportunity for participants to ask questions.

4 Current at time of printing. Many of these initiatives have since been picked up by other Registries.

- Availability and Collection of Divorce Applications and Related Information for the Family Court of Australia. Through Service Tasmania Shop fronts, the Hobart Registry of the Family Court now provides a localised collection and preliminary checking service of divorce applications and other over the counter applications for clients in regional and rural Tasmania.

1.6 Website ~ STEP-BY-STEP GUIDE TO PROCEEDINGS IN THE FAMILY COURT

Developing the *Step-by-Step Guide to Proceedings in the Family Court* was a major initiative of the project. The website was launched by the Chief Justice, at the Australian Institute for Judicial Administration (AIJA), Technology for Justice Conference in Sydney in October 2002.

The aim was to provide information to assist not only self-represented litigants but all clients of the Court, represented or not. The specific outcomes for the project brief were:

- to develop a 'user friendly' web interface, which allows self-represented litigants to access information relevant to their needs at any point along the Court's case management pathway
- to provide procedural information around Court events eg. filing, case assessment conference
- to provide information about Court events (eg. a hearing in chambers, a hearing in Court) that will allow them to prepare for that event

Another important aim was to provide information and links to services for people who were considering separation or who had recently separated.

The Court engaged consultants known for their expertise in the presentation of information for easy understanding and accessibility to develop this project.

The first step was to scope the project, then to gather information from stakeholders and likely users via a consultative process. As part of this phase, as well as discussion with staff in the Court, interviews were undertaken with self-representing litigants, ordinary 'people in the street', and agencies which deal with people seeking information on family law matters. Further information was gathered from the project email box.⁵

Literature on self-represented litigants, legal information, website navigation and useability as well as a review of many legal websites contributed to the development of the concept for the site. The consultants presented a comprehensive report which included recommendations for content, structure, navigation and design elements.

The next step was to develop a prototype for the site based on a slice of the proposed content, and to test this with users. The legal profession also viewed the prototype and provided input. After some minor adjustments, full development of the site was approved by the Court.

All content was developed using information-mapping principles to ensure consistency and a high level of ease of understanding. The final product was a joint effort, of the consultants for development of the concept and the content, the project coordinator, a graphic designer, 'subject matter experts' from within the Court who reviewed content, communications staff, project support staff and the Court's webmaster.

While the impetus for the website was the SRL project it is anticipated that it will be a valuable resource for anyone interested in the operations of the Family Court. Lawyers, legal aid and community legal centres can direct their clients to the site, to give them a clearer understanding of Court processes. The Court is looking at building the website into its induction program for all new staff. The website also has potential for those in rural and remote areas where there is limited direct access to a Family Court Registry.

Since its launch the site has been well received and has sparked interest from other courts interested in developing similar sites for their clientele. In the first three months the number of hits on the top 10 pages of the Step-by-Step guide exceeded 60,000, including:

- Separation & Divorce – 10,550
- Front Page – 8038
- Property & Money Matters – 7938
- Children's Matters – 6546
- Family Law Basics - 5064

The website is divided into three key areas, *Before You Begin*, *Resolution Phase* and *Determination Phase* in line with the Court's case management pathway:

- **Before You Begin** – covers general information on what to consider before beginning proceedings in the Court. It includes contact information on sources of advice and assistance.
 - ~ Personal Safety
 - ~ Separation & Divorce
 - ~ Children's Matters
 - ~ Family Law Basics
 - ~ Getting Help
 - ~ Property & Money Matters
 - ~ Reaching Agreement

- **Resolution Phase** – covers all the Court events in the early stages which help to resolve the dispute.
 - ~ Filing an Application
 - ~ Information Session
 - ~ Case Assessment Conference
 - ~ Directions Hearing
 - ~ Conciliation Conference
 - ~ Mediation

- **Determination Phase** – covers the events which prepare a case for a final decision by a judge.
 - ~ Interim Hearing
 - ~ Pre-trial Conference
 - ~ Listing Trial
 - ~ Trial

The Step-by-Step guide provides information in bite-size chunks at each step in the process through the Court. This helps litigants to prepare beforehand, to be informed about what might happen during a conference, appearance in Court, mediation session, or other Court related event, and to understand what might happen afterwards. Direct links to relevant sections of the Family Law Act and Rules and Regulations are also included. The site contains a range of other relevant links and has an excellent virtual tour of the courtroom.

STRATEGY The Court will maintain and continue to develop the "*Step-by-Step Guide to Proceedings in the Family Court*" website.

A national promotion strategy will be developed by the new team⁶ to target a wide range of services such as community based organisations, family /relationship services, local courts, libraries, schools, etc to ensure that those who could benefit from access to such a site are aware of its benefits. Links from other relevant websites, such as Family Law on Line will also be negotiated.

2 Collaboration

Collaboration with service providers, including the legal profession, that are also impacted by the increasing SRL phenomenon, has been a high priority. Since the publication of the Family Law Pathways Advisory Group Report *Out of the Maze*, the Family Court has been increasingly developing collaborative approaches to helping separating families as one of many possible strategies for achieving an integrated family law system.

A number of other government and non-government agencies provide assistance to clients of the Family Court. The project team developed and the Court will continue to develop collaborative strategies through consultation with: local community based agencies; Legal Aid Commissions; community legal centres; legal practitioners; Child Support Agency; Attorney General's Department; and family relationships service providers.

Team members also attended or presented at a range of workshops, forums and conferences at local, national and international levels.

2.1 The Dandenong Family Court Support Program (FCSP)

As a precursor to the SRL project, and in response to the concerns held both for SRLs and for their effect on the Court, the Family Court Support Program (FCSP) was established in November 1999. It was a joint initiative between the Dandenong Registry of the Family Court and a number of local agencies: Monash University's Family Law Assistance Program; Victoria Legal Aid; the Family Mediation Centre; and Victoria Court Network.

⁶ See Conclusion/What next page 25.

The general aims of the FCSP are:

- to assist SRLs through the provision in the Registry of additional support, advice, representation, and referral services
- to achieve better coordination of services to clients from the Court and other agencies
- to reduce the number of times SRLs come to Court on one application
- to reduce the impact of SRLs on the courtroom process
- to reduce demand on filing and counter staff
- to indirectly benefit all legal practitioners and the community

The program, staffed by a lawyer and several Monash University law students from the Family Law Assistance Program, a duty lawyer from Victoria Legal Aid, a mediator from the Family Mediation Centre and volunteers from the Victoria Court Network, provides services such as immediate legal advice, assistance with the drawing up of legal documentation, some legal representation and access to mediation.

An evaluation of the service, undertaken in 1999–2000 found that:

- assisted cases are resolved more quickly and with less Court appearances
- the self-representing litigants generally were satisfied with the legal advice given; very satisfied with the assistance received in the preparation of documents; and found the program very helpful overall
- the general opinion of judicial officers was that the program assists the Court to function more efficiently and that other registries would benefit from a similar program

Established prior to the beginning of the SRL project, this program was identified by the project as a valuable model, and strategies for the development of similar approaches in other registries are underway. The FCSP provides an excellent example of what can be achieved through collaborative partnerships.

STRATEGY Registry Managers will be responsible for identifying and implementing initiatives that meet the aims of the FCSP but best fit their environment. These will be included in their business plans.

2.2 Community Consultations

With the assistance of an external consultant community consultations with service providers and SRLs were held in Brisbane and Parramatta in November 2001. The workshops provided valuable input into the work of the project team.

The aims of the consultations were to hear directly from litigants and other service providers through an open discussion and to:

- review participants' experiences of the Family Court
- identify needs of SRLs
- explore strategies for how the Family Court can assist SRLs

The workshops were divided into two sessions. The morning sessions were attended by service providers from community legal centres, community based organisations, the Child Support Agency, Legal Aid commissions, and the legal profession.

Afternoon sessions were devoted to people who had first hand experience of representing themselves in the Family Court.

The consultations were well attended and a number of issues were raised. While there were some conflicting views on some issues, there was general agreement around simplification of Court processes. All parties believed that resolving family law disputes through alternative/primary dispute resolution processes was preferable to litigation. This highlights the importance of working together with a range of other services in the community.

Suggestions which emerged from the consultations included:

- provision of comprehensive and easy to understand information on Court processes, through posters, brochures and a specially targeted website
- provision of assistance and support at Court
- coordination with external services providing sources of legal and other support and advice

Issues emerging from these consultations are being addressed through a range of projects being undertaken by the Court. Some issues were seen to be beyond the capacity of the Court to address and are matters for referral to government.

Originally a third workshop in Adelaide was planned to complete this consultative strategy. However, it had to be abandoned due to lack of time and pressure of other Court business.

A comprehensive report on the workshops, which has been published on the website, is available at Appendix 7.

2.3 Legal Aid Commissions

During the project the team had a number of opportunities to consult with Legal Aid Commissions.

Project representatives attended two national meetings of the managers of family law practices in Legal Aid Commissions in 2002. These were an opportunity to discuss a range of possible strategies for improving services to SRLs at the Family Court. The limits of duty lawyers and differing positions with respect to professional indemnity appeared to be a stumbling block to providing duty lawyers in all locations. It was agreed that it was important that courts and other lawyers, including child representatives, and litigants be fully aware of the limits on what a duty lawyer can do.

At the second meeting of the same group, duty lawyer schemes were further discussed. In the intervening period a new scheme had commenced at Parramatta. Its success was contributed to by the Court's resources in the form of a well-equipped room, including access to computer, telephone etc. It is also underpinned by a clear Memorandum of Understanding and an evaluation is proposed before it can expand to other Registries in NSW.

Discussions also covered unbundling of legal services, family report summaries and collaboration on information and community education strategies.

Victoria Legal Aid worked closely with the Melbourne Registry in redesigning its monthly workshops for SRLs. Classes for SRLs on how to get a divorce have been introduced at Parramatta. These are good examples of the types of collaborative efforts that can be achieved.

The Court has proposed that a collaborative working party with National Legal Aid be set up to continue developments in:

- duty lawyer schemes
- the issues of conflict and indemnity to facilitate unbundling
- collaborative information sessions at Family Court Registries and other community education initiatives
- arrangements between Registries and Legal Aid Commissions which can enable streamlined referral to legal aid offices for clients who approach the Court without representation

STRATEGY To continue to work with National Legal Aid to develop a range of collaborative initiatives that are of benefit to mutual clients and separating families in general.

2.4 Legal Profession

In recent years the legal profession has identified a number of its own concerns in relation to SRLs. During 2002 The Law Society of New South Wales published a position paper.⁷ In October 2002 it hosted a forum attended by representatives from federal and state courts.

The team consulted with legal profession representatives' regarding the website development. As a result it is made clear on the website that the site does not replace access to good legal advice. The website has a number of places where people can get a direct link to sources.

Representation of the legal profession on the project's Steering Committee enabled ongoing dialogue on these matters. The legal profession is also supportive of developments to 'unbundle'⁸ legal services as a way of extending access to legal help which might otherwise not be available.

⁷ *Self-Represented Litigants*, Position Paper, The Law Society of New South Wales, 21 May 2002.

⁸ Full details in section 3

2.5 Links to other Court projects

Information exchange and links between Court projects ensures that Court resources are used to their best advantage. Much of the information received by the SRL project team was passed on to relevant Court projects and committees such as:

- Rules Revision Committee
- Forms Committee
- Family Violence Committee
- Client Services Environment (CSE) Committee

The CSE Committee developed Guidelines that require Registry Management Teams (RMTs) to identify critical factors when considering making changes to public waiting areas. The factors range from amenity, security, access, image and cultural diversity through to the work environment, legislative requirements, public waiting spaces and the Court's focus on determination and resolution.

RMTs are asked to consider several components. Under each of the components is a set of criteria which need to be considered and linked to each other. The needs of SRLs are taken into account when making any changes to public waiting space. RMTs are currently assessing the client service environments and identifying such changes as may be required.

2.6 Community Education Workshops

The project team supported and contributed to community education workshops that were developed in collaboration with local community based agencies, community legal centres and Family Court Registries.

- A one-day workshop for self-representing litigants was held at Dubbo in November 2002. The workshop, supported by the Law and Justice Foundation of NSW, was a joint initiative of the Western NSW Community Legal Centre (CLC) and the Court's Dubbo Registry. The aim of this workshop was to improve access to the Family Court for SRLs in the Dubbo area, by providing information and skill development.
- A similar workshop was held at Penrith City Library in March 2002, by the Hawkesbury Nepean CLC involving the Family Court's Justice Boland and Federal Magistrate Ryan.

STRATEGY The Court will continue to support working relationships with community legal centres and others to contribute to community education and information.

2.7 Conferences and Speeches

Team members represented the Family Court's work in relation to SRLs at a range of workshops, conference and seminars. The following is a list of events attended:

- National Conference on Pro Se Litigation, Arizona, 18-21 November, 1999, Justice Faulks and Judicial Registrar Jonathan Ramsden.
- Justice Faulks - presented a paper at a Legal Aid Commission Conference, *Family Court's commitment to finding solutions*, 10-11 March, 2001.
Supports the need to recognise and respond to the increase in the number of litigants representing themselves. Presents an 'eclectic selection of ideas for consideration and discussion' including collaborative approaches.
- Professor John Dewar presented at the Queensland Law Society meeting, April 2001.
- Justice Faulks - *Family Court's commitment to finding solutions*, National Court Administrators Conference, Adelaide, 25 June 2001.
- Justice Faulks - presentation about the SRL project to the Australian Institute of Judicial Administration in Adelaide, June 2001.
- A hypothetical Panel Discussion around SRLs at the 25th Family Court Conference, July 2001.
- Justice Faulks - presented a paper to the Judges of New Brunswick Canada, *Equality Access and Accommodation: Assessing and responding to the challenge of self-represented litigants*, 26 June 2002.
- Justice Faulks - guest speaker at the launch of *The Changing Face of Litigation: unrepresented litigants in the Family Court of Australia*, research of Rosemary Hunter published by the Law and Justice Foundation, August 2002.
- Justice Faulks - presented a Paper at the Plain Language Law Seminar organised by the Law and Justice Foundation, September 2002.
The aim of this seminar was to facilitate the availability of legal material in plain language provided by government, courts, tribunals and legal service providers by: demonstrating that plain language law is both possible and advantageous to an organisation; and providing tools to promote the importance of plain language law.
- Justice Faulks & Virginia Buring attended a NSW Law Society Forum on self-representing litigants, October 2002.

3 Innovation

With SRLs the increasing reality for the Court, the project team developed a vision for the delivery of Court services which reflected this reality into the future. The present adversarial system is fraught with difficulties for self-representing litigants. One of the questions for the team to address was, "how will the Family Court evolve to meet the changing needs of the community, while at the same time preserving essential elements, which ensure balance, fairness and stability of decision making within our society, and the Rule of Law?" The Visioning Project was thus developed, under the umbrella of the SRL project.

3.1 Unbundling Legal Services

Because it has the capacity to extend access to legal advice from both legal aid and private practitioners the team actively considered the concept of 'unbundling' legal services. 'Unbundling' enables the provision of legal assistance and support at various stages throughout proceedings. Limited legal assistance can then be applied most effectively and strategically. SRLs could be assisted by targeted legal advice and assistance as they progress through the Court. Availability of 'unbundled' services would increase access to advice and possibly targeted representation. Some legal aid bodies and the legal profession are resistant to this idea due to concerns about the impact of professional liability.

Professor Dewar wrote a short paper⁹ on the issues involved and a proposal for addressing the main concerns. In the paper he identifies civil liability risks and ethical issues as the two most cited obstacles to providing unbundled legal services. He suggests that the solutions to these problems in Australia lie with state and territory legislatures and with state and territory professional bodies. Possible solutions include:

- statutory immunity for work not covered by retainer
- amendment of ethical rules

Given that the issues raised have an impact beyond the jurisdiction of the Family Court, the Chief Justice wrote to the Attorney-General, providing the paper and inviting his further consideration. The Attorney-General's Department has advised it is actively considering this matter.

3.2 The Visioning Project/Workshop

The Visioning Workshop was a structured consultation process aimed at enabling the Court to develop a framework for gradual incremental change, towards a system that is more accessible to SRLs. It was held in Melbourne in April 2002.

The goals of the workshop were to:

- identify important and useful features of adversarial and inquisitorial systems
- critically examine those elements which are crucial to fairness
- encourage the abandonment of the unnecessary or unimportant to achieving justice or fairness
- encourage the critical evaluation and the sensible development of factors which will benefit self-representing litigants
- supporting, informing and helping litigants, and recognising their right to a fair go

The two-day workshop, facilitated by the Honourable Fred Chaney was attended by:

- The Hon Justice Geoff Davies from the Queensland Court of Appeal
- Associate Chief Judge David Carruthers from the District Court in New Zealand
- Associate Professor Kathy Mack from Flinders University, South Australia
- Professor John Braithwaite from the Research School of Social Science at the Australian National University, ACT
- Ms Sarah Mansfield from Victoria Legal Aid, Victoria
- Mr Tim Mulvany an experienced family law practitioner and child representative, Victoria
- Ms Zoe Rathus from the Women's Legal Service, Qld
- Judicial Registrar Dianne Smith from the Family Court's Brisbane Registry
- Professor John Dewar from Griffith University and consultant to the SRL project, and
- Justice John Faulks, Project Leader, ACT

The workshop also included three individuals who had previously represented themselves in the Family Court. Their presence and contributions helped to ensure the focus of discussions did not unnecessarily deviate from the desired goal.

A number of proposals were put forward over the weekend. A report of these outcomes was presented to the Court's governing body the Chief Justice's Consultative Council (CJCC). Some of the recommendations that came out of the workshop included:

- to provide a service to clients based on a fair litigation model that so far as possible eliminates the bias created by the adversarial system between parties of unequal resources and capability
- the development of a ready guide of hints for SRLs
- recognition and definition of the role of McKenzie's friend
- making more of the resource of SRLs with experience
- provision of a resource room for SRLs
- the introduction of time staggered lists
- introduction of family conferencing

The objectives of developing a fair, less adversarial, less costly and less time consuming process for litigation in family law matters remains an objective of the Court. Further work in this area is progressing. The Court is now in the process of developing and researching less adversarial models of litigation for family law disputes and is working towards piloting a Court assisted litigation model.

A copy of the report of the visioning workshop appears in full at Appendix 8.

CONCLUSION/WHAT NEXT

The initial two year tenure of *The Self-represented Litigants – A Challenge* Project concluded in December 2002. Significant advances towards a national approach to meeting the needs of SRLs have been made.

The project team made a number of recommendations on the outcomes from the project to the Court's governing body, the CJCC, in December 2002. These have been accepted. A new structure will be established to support the ongoing implementation of a national approach strategy, and to continue to monitor the implementation of the outputs from the project and to support the objective of ensuring access to justice. This will be taken up by a new national group. The composition of the group will be settled in the near future.

The Terms of Reference for this new group have been developed:

- 1 Oversight of the implementation at all Family Court Registries of the achievements of the SRL project by translating them into strategies which are embedded into the day-to-day core responsibilities of the Family Court. This will be undertaken in the following ways:
 - ~ Each local Registry Management Team (RMT) will be responsible for ensuring the ongoing consideration of SRL needs and that staff at all levels are able to have input into local issues – including development and enhancement of contact with local non-government organisations.
 - ~ RMTs will provide a conduit for information to and from each registry and to the new national group.
 - ~ Registry managers are to be charged with the ongoing development of a model of best practice in the provision of access to justice.
- 2 The ongoing development of a national strategy for ensuring access to justice. This will include:
 - ~ Exploring possible mechanisms for independent monitoring of the Court's delivery of access to justice, including developing a strategy for a transition to an external mechanism for scrutiny of access to justice across all federal courts.
 - ~ Engaging with academics, community representatives and governments (at both federal and state level) to advance the development of system wide strategies.

- ~ Contributing to the development of a new way of conducting family law proceedings following the development by the SRL project of a "Court Assisted Litigation Model".
- ~ Promoting awareness of the Court's position with respect to access to justice and of the initiatives undertaken to support it.

- 3 Monitoring and evaluating the contribution made by the past achievements of the project to access to justice, including the Step-by-Step website, information brochures and collaborative initiatives with community and other government services which assist our clients.

In 2002 the Court implemented its new case management computer system (Casetrack) which it is anticipated will enable the Court to develop a much richer picture of the level, trends in and impact of self-representation on the Court's workload.

Prior to the introduction of Casetrack, Court data collection provided information regarding self-representing litigants at time of application and defended hearings. This data clearly had limitations. Rosemary Hunter's¹⁰ research found that the percentage of SRLs who are fully unrepresented is very low. Most SRLs have some representation at different stages throughout their proceedings and that respondents are more likely to be unrepresented than applicants.

The Casetrack system now fully implemented throughout the Court registries includes more comprehensive data collection about SRLs. Casetrack will be able to provide information about representation at the various Court events.

This improved data from Casetrack will enable close monitoring of trends and will assist the Court to manage, target and streamline the services of the Court.

Through the new structure outlined above, the Court will continue to maintain its commitment to addressing the needs of all clients who are disadvantaged in accessing justice through the Family Court. This will include attention to the needs of clients who are not represented by a lawyer.

APPENDICES

1 TEAM MEMBERSHIP

- Justice John Faulks - (Chairperson) (Dec 2000 - Dec 2002)
- Ms Juliette Ford - Deputy Registrar, Canberra (Dec 2000 – June 2001)
- Ms Sue Lynch – Manager, Family Law information Service (Dec 2000 – Dec 2002)
- Professor John Dewar – Griffith University (Dec 2000 – Dec 2002)
- Ms Lenore Bryant – Mediation Manager, Brisbane Registry (Dec 2000 – Dec 2002)
- Ms Alison Foulsham – Communications Manager, National Support Office (Dec 2000 – Dec 2002)
- Mr Greg Burnett – Principal Legal Advisor, National Support Office (Dec 2000 – June 2001)
- Ms Jan Ramsdale – Counter Officer, Adelaide Registry (Dec 2000 – Dec 2002)
- Ms Jacqui Montefiore – Project Coordinator (Dec 2000 – Sept 2001)
- Mr Mick Rogers – Registry Manager, Dandenong (Dec 2000 – August 2002)
- Ms Linda Symons – Deputy Registrar, Parramatta Registry (June 2001 - April 2002)
- Mr Mario Cattapan – Manager Planning & Relationships (June 2001 – Dec 2002)
- Ms Virginia Buring – Project Manager, National Support Office (Sept 2001 – Dec 2002)
- Ms Jill Raby – Registrar, Melbourne (Sept 2001- Dec 2002)
- Ms Kathryn Heuer – Deputy Registrar, Canberra Registry (April 2002 – Dec 2002)
- Mr Len Foster – Registry Manager, Newcastle (August 2002 – Dec 2002)
- Ms Grace Concannon – Project Officer, National Support Office (Jan 2002 – Dec 2002)

2 STEERING COMMITTEE MEMBERS

- Justice Buckley – Senior Administrative Judge, Family Court of Australia
- Mr Richard Foster – Chief Executive Officer, Family Court of Australia
- Ms Catherine Carney – National Association of Community Legal Centres
- Mr Gary Watts – Family Law Society

3 TEAM MEETINGS

- 7 June 2001
- 13 June 2001
- 7 September 2001
- 11 December 2001
- 6 February 2002
- 6 March 2002
- 1 May 2002
- 5 June 2002
- 31 July 2002
- 11 September 2002
- 31 October 2002
- 20 November 2002
- 4 December 2002

4 REPORTS TO CJCC

- May 2001
- November 2001
- February 2002
- August 2002
- December 2002

5 CONSULTATIONS

- Consultative Workshop – Parramatta - 19 November 2001
- Consultative Workshop – Brisbane - 20 November 2001
- Legal Aid - Hobart November 2001
- Visioning Workshop – Melbourne - 6 & 7 April 2002
- National Legal Aid – 2002

6 LITERATURE REVIEWED

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- Clarke, Billi & Matthews, Helen with assistance from Amanda Jones, *Trial by Legal Aid – A legal Aid impact study*, Victoria 1999.
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- Goldschmidt, Jona *The Pro Se Litigant's Struggle For Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, Family Court Review, Volume 40 Number 1 January 2002.
- Hirshon, Robert E. *The Importance of Unbundling Legal Services*, Family Court Review, Volume 40 Number 1 January 2002.
- Hunter, Rosemary *Litigants in person in contested cases in the Family Court*, Australian Journal of Family Law Vol. 12 1998 pp: 171-178.
- Hunter, Rosemary, Genovese, Ann, Chrzanowski, April & Morris, Carolyn *The Changing Face of Litigation: Unrepresented litigants in the Family Court of Australia*, Law and Justice Foundation of New South Wales, August 2002.
- Iowa Judicial Branch, Customer Service Advisory *Committee Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts*, Approved by the Iowa Supreme Court, July 2000.
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- Otton, Lord Justice *Litigants in Person in the Royal Courts of Justice, London*, Interim Report of the Working Party established under the Right Honourable Lord Justice Otton, London, Judges Council, 1995.
- The Law Society of New South Wales, Position Paper, *Self-Represented Litigants*, May 2002.
- Sackville, Justice Ronald *From Access to Justice to Managing Justice: The Transformation of the Judicial Role*, AIJA Annual Conference, Brisbane Queensland July 2002.

7 SRL Project ~ consultative workshops' report

PREPARED BY MICHAEL DAVIES

1 Overview

As part of the Self-represented Litigants (SRLs) Project, consultative workshops were held in Parramatta and Brisbane in 2001.

The process asked service providers and self-represented litigants to review their experiences of the Family Court of Australia (FCoA) processes and identify the needs of SRLs and the assistance the FCoA may be able to give to those individuals who choose or need to represent themselves.

Approximately 23 SRLs and 26 service providers have contributed to the discussions. The views expressed at the workshops are summarised below for the project team's consideration. In collecting together the input from both service providers and SRLs no attempt has been made to identify consensus or indicate a position of the project team with respect to any suggestions made.

1.1 Discussions with Service Providers

The discussions opened with service providers being asked about their perceptions of the experience for SRLs at their first presentation at the court. The discussions were launched with:

"Terrifying. At the starting point people need direction to some legal advice recognising the individuality of each case, this has to be face to face. People arrive at another service such as a Community Legal Centre (CLC) with a stack of forms often the wrong ones or wrongly completed. It is pointless for people to get into the system without legal advice as to what the first steps are for them. They are overwhelmed and confused by bureaucracy. They know they won't get legal aid. The complexity means it is difficult to know where to start."

The discussion then proceeded through the stages of the court process from preparation to enter the system through to the trial stage.

Comments and ideas are presented here in two major groups:

- Pre-entry and entry issues, and
- Services once a person is in the system.

Each of these are divided into four and five topic areas respectively.

As this is still at the exploration phase and excessive editing may have unintentionally excluded some important points, the ideas and comments outlined below may overlap, be contradictory or belong in more than one area of attention.

1.2 Discussions with SRLs

The same format was adopted for the workshop sessions with the SRLs and their comments and ideas follow on in this report after those of the service providers.

2 Pre-entry and entry issues: Service Providers

Comments and suggestions included:

2.1 When and how to introduce people into the Court's system

2.1.1 The court as a last resort

- There is a perception that if there is disagreement the court is the place to go. Before people get to court they need more mechanisms and support to resolve before it becomes too difficult. More resources into pre-filing services.
- Discussion of government policy emphasis on community – look at the consequences of this change and ensure the process works better. Difference in cost to clients but no apparent impact on filings yet.

2.1.2 The importance of early legal advice

- They are bewildered by the whole system and wonder where to go first. They can't get assistance for what they need. There is not enough assistance especially outside the capital cities.

2.1.3 Adequate gateways and gatekeepers

- One address for help would be good – or identifiable and accessible gatekeeper(s) in the community.
- No point in one gateway into the system if the system itself is complex.
- Community agencies are doing the previous FCoA pre-filing conciliation in different ways. May be an inconsistent understanding of the FCoA. Mediators may be the key.
- People turn to the Court but its counselling service is no longer available.
- CLCs are now collecting ‘referred by’ information. Common referrals are legal aid, Centrelink, FCoA and CSA (not as many). Much comes by word of mouth.
- Community Service Offices (CSO) could be used to distribute information and assistance to the general population on:
 - ~ Rules of the court
 - ~ Relevant part of the Family Law Act (FLA)
 - ~ Easy and comprehensive instructions on how to complete documents.
- There is a plethora of contact points which are not all going in the same direction.

2.1.4 The importance of good community education prior to becoming involved with the Court.

- FCoA should work together with local service providers to educate the local community to strengthen the vision that the court be the last point of call not the first, by directing prospective clients at the initial advice stage towards mediation and conciliation and other options available
- The importance of local coordination between the community agencies and between them and the FCoA, where the capacity to provide the service is a significant issue.

2.1.5 Highlighting the alternatives to the court system

- Differences of separating clients should be noted – not all need to go to court. Ways to send people to what suits their need should be developed. Men and women may be at different stages after separation.
- Relationships Australia provides an intake interview free of charge which looks into where the parties are.
- Community groups have good referral networks and plenty of people coming to them. Careful about overload of current resources. Word of mouth is often how networks operate.

- FCoA recognises there are clients who need not come to court. Needs to do more asking 'why are you here?' Could do this better if it had more pre-filing services.
- Can people have initial court contact without it being adversarial? Better information on the costs of taking the litigation path and potential for no or adverse outcome. However, there is sometimes the need to make a decision to tide people over re arrangements for children. This might have to happen before both parties are ready to resolve, but does it have to be in court?
- There are some situations where there is an adversarial assumption. – child abduction. Are there other ways of doing these matters?
- Does or should a CSO at the FCoA have a role in directing people elsewhere before they file an application?

2.2 How best to deliver the information they need in a way they can absorb

2.2.1 Handling the forms

- Service providers perceive that there is an overwhelming amount of information. People need to be able to explain what they are trying to achieve and given the appropriate forms to take away. (From the Brisbane registry people have been referred to CLCs in the first instance).
- Too many forms – difficult to work out what the claim is. Suggestion that there be one simple form, with basic information. Simplicity should be the objective of form revision.
- Idea of a simple information sheet on where to go for assistance to be received by the respondent when served. Given the government policy of community emphasis, who decides who should be on the form? What about non-funded services – like support groups?
- Note Federal Magistrates Service (FMS) simplicity but now they are asking for an affidavit to accompany it. There is a view that an affidavit may be an easier vehicle for a client to tell their story. But this can disadvantage the conciliation process.
- Guidance available from CLCs.
- Comment on sheet which lists draft pro forma orders – there may be too many, more than is needed. Needs improvement, clearer setout and more explanation. They may be used for the wrong purpose.

- Link the respondent to Brisbane's 'buff form'. The litigant takes this to a service provider with information on where the client is in the process and authority for the service provider to contact the court.
- Avoid information overload – some documents have too much information.

2.2.2 Guidelines for SRLs (see 4.2)

2.2.3 Advice for SRLs

- SRLs prefer advice and information by face to face or phone.
- Legal Aid Queensland has a 1300 number to provide advice all over the State. Has access to a database for referrals.
- Family Law hotline? CLC view that its lack of legal advice makes it less helpful than it might be. Prefer a legal advice line because this is what people want. If they don't get this it can aggravate their first interaction with the system. FLA needs interpretation and this can't be done effectively by phone. People need help with implementation of the advice they get. They need information at this point which helps them be better SRLs.
- People come to the Women's Legal Service not knowing what to do. Forms are not self-explanatory. People need legal aid. Application forms are too big and legal language needs to be avoided.
- People don't always want legal advice first.
- Client service areas in registries provide a similar service.
- Discussion of chamber magistrate role – service varies, at what point do they help people with forms? It is important that legal advice can help people get to the right place at the start. Good advice at the start can avoid getting off on the wrong footing.

2.3 What collaboration is needed with community and other governmental organisations?

2.3.1 Networking and relationship building

- The Family Court needs to network and build stronger working relationships with the Child Support Agency, Legal services, city, suburban and country community service agencies to participate in education programs for the wider community and community service workers.
- The FCoA needs to take itself outside the CBD's into the suburbs and country, and with the cooperation of other stake holders conduct joint sessions on information in their respective areas and referrals on how to access legal resources. This would allow for a "one stop shop" for information that is locally based.

- To ensure that all stakeholders are directing their individual services for the benefit of SRLs, cooperation is needed between the service community, Legal Aid, Community Legal Centres, Family Court, on issues relating to SRL's, without the feeling of competition.
- The court also needs to monitor impact of cancellation of pre-filing mediation being taken away from the FCoA. Also are community based organisations doing what was intended?

2.3.2 Community information strategies

- Get the information to where it is needed. Community education should address expectations. Lots of this is done by CLCs, the FCoA should join in these strategies. Information should be shared without prejudice on other services available. Court could develop partnerships with community organisations, especially to assist NESB and indigenous clients.
- Can community education be done often enough to make sure it gets to people when it's relevant to them?
- Other options – referral to counselling services needs to be appropriate and supported by early assessment for domestic violence and child abuse. Questions about who chooses where the client should go. Needs development of standard assessment questions.

2.4 How to address the needs of Non English Speaking Background and Indigenous population

- A more detailed collection of statistics to provide the Court with relevant information to provide a better service to clients from these communities. Cultural awareness, language difficulties need to be taken into account when the Court is dealing with clients from other cultures and to whom English is their second language, and from the indigenous population. The court provides interpreters at no charge to the client, and further assistance could be accomplished with the use of "volunteers" from the relevant communities to act as friends of the court, and accompany SRLs at their court appearances.
- Continuous video in registries on how to fill in forms, might help language difficulties. Cultural awareness noted as something that needs addressing. Parramatta has six/eight counter staff that speak another language. Importance of access to other services to help people from other cultures. Caution about creating more gaps was expressed if reliance on other services is not backed up with resourcing at that end. Build relationships with Community Legal Centres (CLCs) who work with non-English speaking background (NESB) clients.
- The court could investigate the possibility of having audio tapes, and printed material in different languages

- Further co-operation with referral centres for clients from NESB, and the indigenous communities.
- Indigenous women uncomfortable about going to a non-indigenous service. There are very few services.
- Aboriginal Legal Services do not take on disputes between indigenous people. Cultural implications.
- Cultural advice should be provided earlier than trial when there are indigenous issues. Should come from expertise. Difficulty of defining who are the indigenous experts.

3 Services within the system: Service Providers

Comments and suggestions included:

3.1 Information within the Court processes

3.1.1 Web site, PCs and other support

- The provision of PCs for use by SRLs for the preparation of documentation and with a continual website operating to enable the clients to download information relating to their cases from relevant sections of the Family Law Act. To ensure SRLs do not become victims of the information technology world, hard copies of all relevant information should also be provided.
- Suggestion that the case conference document could include people and the physical environment explained.
- Website and literature works well for those who can use them. Forms and divorce kits are useful and helpful and it is valued that they can be filled out by hand.

3.1.2 Expansion of Information Sessions

- The information session that is held on the morning of the First Return Date/Case conference is seen to be a good idea. However a more general session needs to be conducted providing more information on the environment of the court for example:
- What does a court look like? Who is a Judge/Registrar? Where do I go? Where are the toilets etc.
- A suggestion was that out of hours "tours" could be conducted with even the possibility of conducting "moot" court hearings with the litigants being able to get a "feeling" for the courtroom environment.

- The participation of the Child Support Agency in the information sessions was considered to be of the utmost importance, it would reinforce the issue of child support happening early after separation, and in conjunction with parenting roles within the family.
- Provision of clear concise written information with input from users, not designed by the court. The court should also look towards becoming a people's court, rather than a court's court and strengthen the process of "de-courtifying" itself.

3.1.3 Extension of roles within the Court

- More emphasis on client service officers being available within the court to provide assistance and information rather than the 1800... help desk phone line. This would give informed and suitable assistance at outset, and allow "hands on" assistance when needed most, at the implementation stage of the process after the initial advice.
- There is a real need for legal advice and information to be available within the court, with the extension of "duty solicitors" services. If the "duty solicitor" scheme could be enhanced it would provide assistance for litigants who do not have the resources for legal services
- Call for Magellan in all registries. If legal aid is an issue, note that Magellan found it saved legal aid money, but it is resource intensive. Use Magellan strategies for acrimonious/intractable cases – intensive case management is addressed, at least partly, by caseflow.
- Communication skills of people on the bench are variable. Sometimes language is not helpful to an SRL. May be something services might take into account when advising on choice of court; choose the Federal Magistrates Service (FMS) for this kind of reason.
- Positive feedback about Family Court client information officers who help people fill out forms.

3.2 Case Management of SRLs

- Case conferences are seen to be an improvement on a directions hearing for the first appearance stage of the process with a larger percentage of matters settling than in the past.
- While the theory of case management by caseflow officers is in practice in most registries, there needs to be more involvement in the intensive management of cases of SRL matters by court staff.

- The practice in the Parramatta registry, of providing an orders and directions "bench sheet" in clear language - sealed and handed out by court officers directly after a court appearance to the SRL in clear language should be extended to all registries of the Family Court. This enables the SRL, and court administrative staff to have an easily understandable account of what directions were made in court, and what documentation is needed by what date to ensure the matter proceeds without unnecessary adjournments.
- Because of the length of time between country circuits provided by the FCoA these clients are seen to be at a distinct disadvantage. The prospect of conducting case conferences on country circuits should be investigated to allow the same possibility of early settlement as is seen by clients who live within an accessible distance of a Family Court registry.

3.3 Timeframes

- Timeframes often work against clients. One hour is not enough time from a Deputy Registrar for procedural advice. Should have pamphlets or someone always available to give procedural advice.
- Investigate the timing of matters as they proceed through the court system, and recognising that in some cases there is not enough time between events to allow SRLs the opportunity to fully digest the directions given or to get further legal advice.
- Often it is seen as too much too quickly followed by the long wait to get to trial stage if needed. This could be done by "tracking" clients at intervals of 3-6-12 months after mediation.
- How can there be effective timing of events in different places – counselling, legal aid conferencing, case conferences etc. Links between when advice is given and the next event.
- Caution about prolonging the proceedings. Can be a big gap in contact with the children made worse by this.
- Once parties are in the system the process needs to go ahead at a pace which suits that family.

3.4 Unbundling legal services

- The court needs to look inside itself and work with solicitors to unbundle the process. Information, Education, and Assistance – more emphasis should be placed on the provision of small pieces of information and legal advice when needed. Do it yourself kits with easy to understand directional instructions should be available on the website and hard copies to SRLs.

- Unbundled services are the greatest opportunity, working at the CLC level. Court procedures may have structural problems which prevent unbundled services, e.g. conciliation conferences presuppose representation.
- Unbundling can work – with support to put a good case together and then legal aid can assist.
- Presumption that language is understood, need step-by-step basic language so each person knows what is happening.
- Problems arise when varying advice is given.

3.5 Mediation and other Support Services.

- Mediation services encourage clients to seek independent legal advice.
- Would expect court-based mediation to be more directive. – but this can fix the parties to particular positions and work against resolution.
- Options can be explored which leads clients to a choice within a range.
- It is not yet known what the effect of mediation is down the track, whether in the community, the court or legal aid conferencing.
- Suggestion of something similar to a case conference before filing like legal aid conferencing. Query how this could be made mandatory.
- Many people who come to legal aid or a CLC are already in the system, so how should these services assist?
- Suggestion of taking conciliation and mediation out of the court system altogether so that once a person goes to court they go through quickly. People will still settle at the door of the court. How would you stop people filing before they have tried conciliation etc in the community setting? But if they have gone through this, they should not have to do it again.
- What about diversion to other non-legal services such as mediation? May be there is a small minority of people who want their day in court and who are unable to reach agreement – maybe because they are unrepresented. (These may benefit from assistance from skilled mediators who can help them communicate better and work through the issues in dispute.) CLCs can encourage the use of alternatives to court. Success in primary dispute resolution (PDR) needs both parties to participate; one may see they have an advantage in this environment.

3.6 Assistance during proceedings

- What about an inquisitorial process once proceedings have begun?
- SRLS find it difficult when the other side is represented. Could include a lay adviser with social science background to assist the judge. Aim to preserve fairness. May be better than having a self-representing woman being cross-examined by the perpetrator of violence.
- Judicial officer would do the fact-finding. Would need an investigator attached to the Court – added to a more interventionist judge. With or without lawyers?
- A lot doesn't happen until people get very close to trial, preparation for trial happens very late. This phase is very difficult.
- Develop a process to allow decisions on summary issues in a timely manner to allow clients to get on with their lives.
- Cutting lawyers out per se may be problematic because they play an important role in the process – provide guidance.
- Early conciliation conferences ought to be helpful.
- People with not much property to sort out need a summary decision process – some comment on FMS not being a good experience.
- Many don't take notice of directions hearings and get around case management guidelines. People need to understand the benefit of preparing hearing documents well in advance.
- Canberra registry sends a letter out in advance which lists what has to be done before a hearing date will be allocated (trial notice). Matters then proceed on evidence filed, no matter what if one party has complied. Acknowledgement that there will never be a hearing in which every thing is before the court. This may need more explanation.
- Needs to be more uniformity across registries.
- Child representatives should be appointed early, family reports available on time.
- After conciliation processes are done, need better information before going to trial about what is involved.
- Should be noted that it is a disadvantage to be unrepresented in the current system.
- To change the system requires working with lawyers, not seeing them as part of the problem.

- What happens if we change the system? Is it possible to properly test evidence in another system? Understanding the Evidence Act may not be a problem confined to SRLs. Rules have been developed which are not designed to increase fairness. System has to change to be fair and to work well. The status quo is not the solution.
- Duty solicitor schemes: There are pro bono schemes in Sydney. Family Law Committee is very interested in pro bono. Parramatta is looking into the possibility of duty solicitors.
- When the court appoints a child representative, and either or both parties are SRLs the solicitor gets the feeling that they are expected to "run" the entire case, to ensure that the child has the best possible representation.
- The following is a dot point summary of some issues faced by solicitors who are in court against SRLs: They have perceptions of:
 - ~ Judicial favouritism
 - ~ Direct access to judge by SRLs
 - ~ Opportunity to vent
 - ~ Not bound by rules of evidence, rules of the court
 - ~ Evidence is given from bar table
 - ~ Costs issues – lack of settlement
 - ~ Adjournments due to lack of compliance and not ready to proceed
 - ~ The judicial officer takes on an inquisitorial role and is perceived to lose judicial neutrality.
 - ~ Solicitor is often dealing with unmeritorious applications.
 - ~ When SRLs approach a solicitor for advice or the preparation of partial documentation the issue of professional indemnity arises. SRLs expect to receive very detailed advice without the solicitor having the advantage of being in possession of all the facts.

4 Pre-entry or entry: Self-represented litigants

4.1 When and how to introduce people to the system

- The court process is seen by SRLs as being terrifying, daunting, cumbersome, and especially time consuming with the length of the process, delays in getting orders and actual time wasted in "hanging" around the court all day for matters to be heard.

- An important issue appears to be that SRLs are often forced into litigation because of the other party's reluctance to come to an agreement through mediation or conciliation. Ideally they would like to take lawyers out of the loop, and make the system more inquisitorial rather than adversarial.
- There is a need for more mechanisms to be put in place to resolve issues before they get to court, with resources made available through court or non-government organisations to enable early advice, on how conciliation or mediation may be the pathway to follow. Resources could be well spent on more advertising to the general public on the services provided by the court and community service providers. Support also needs to be continued for litigants throughout and after process.
- The FCoA and Child Support Agency (CSA) need to conduct workshops in local communities, including country areas.
- People often at their worst when first entering the system. People need to know what is going to happen. Identify goals and expectations.
- There is a perception that information which comes from the court is not impartial, is not gender neutral. Videos need to be presented from a gender-balanced perspective.
- There is a perception that if there is disagreement the court is the place to go. Before people get to court they need more mechanisms and support to resolve their dispute before it becomes too difficult. More resources into pre-filing services.
- (An SRL) had not been able to get advice. Legal aid would not advise and did not refer to CLC. "Most men think they have done something wrong when they find themselves in the Family Court. Brought to the Court by the other party". He had contacted a men's group but did not take it up, recognising an agenda he was not interested in ('being a victim' he called it).

4.2 Providing Advice

- Free legal advice available to more people, by increasing or the introduction of the provision of "duty solicitors" in legal service centres, or Family Court registries. Including the availability of provider to give free advice on the merits of the matter. This could be the first link up with the litigation process before the lodgement of documentation, and include advice on the steps that lead to trial, dollar costs, emotional costs and advice as to possible outcomes. At the other end of the process, advice on the interpretation of orders to allow discrepancies to be dealt with before they cause more litigation to occur through contravention orders.

- Peer Support Service has also dealt with people who have not yet filed an application. May be harder to stay out of the area of giving advice if a person has not filed an application, could be referred to a CLC, who can help a person to get things right at the beginning. Avoid the first step being the wrong one.
- (SRL) Guidelines would be helpful – some indication of what a reasonable outcome will be, how things should work. Why is it all so vague? Issue of discretionary jurisdiction. And there has been enormous resistance to past attempts to do this.

4.3 Support

- One SRL indicated that his initial experience of counter staff not helpful (he found it to be much better later). He did not get help to fill out forms. He felt that there was a wrong attitude of counter people when clients are in emotional state. Other SRLs in the group gave strong support to the counter staff from their experience.
- Discussion of government policy emphasis on community – look at the consequences of this change and ensure the process works better. Difference in cost to clients but no apparent impact on filings yet.

5 Within FCoA Registries: SRLs

5.1 Information

- When SRLs approach the FCoA it is imperative that they have access to up to date, information. More general information sessions should be conducted by the FCoA on the processes, and the environment of the court, and include a question time. Use of para professional advice information
- Access to electronic and other sources of information, explaining the processes of the court, terminology. Including a "dummies" guide do-it-yourself instruction booklet, and the availability of the FCoA website at a visible point in the registries, (community service organisations local libraries) including the following information:
 - ~ Breakdown and handouts re forms and processes
 - ~ Information on the standard requirements and format of documents
 - ~ Step by step clear language and instructions, on protocols and court etiquette
 - ~ Ensure the information is provided on a continual basis with appropriate information for each step of the way.
 - ~ Register of available solicitors

- PCs at the registries – are they obvious enough?
- Follow up information sessions to ensure the understanding of what is happening and what happens next, these could also include speakers from the general community who have experienced the court. It should include a walk through a court to familiarise themselves with the courtroom before the final hearing.
- An SRL found the counter staff good but everything else went down hill. Inconsistency is the issue. Shock to receive application, went to legal aid for advice, referred there by Relationship Australia (RA). Told to go to a lawyer but this was not what he wanted. Had to respond to wife's application. Perception that lawyers cost a lot and you don't get much for it. Not eligible for legal aid because of value of assets.
- There is a lot of information on the Internet, FCoA website has been found valuable. Also some positive comments made about Australian Law on-line.
- Succinct and clear affidavits are essential.
- Information session felt useless. Video was not impressive. Spent some time with presenter afterwards with specific questions and got more help that way. Information session would be better if it had a question and answer section.
- Problems occur up front with filing the right forms – trouble with F16. Pamphlets did not help with F16. It only made sense in hindsight.
- Website was found to be good.
- Caution about too much reliance on the Internet.
- Need a breakdown of the procedure – if you are filing for divorce, then... this.
- One SRL said he found out late of a requirement to type forms (this was explained as not a requirement). Some misinformation about on this. Formatting requirements not sensible.
- One SRL received an application at 6 am to appear 2 days later.
- There was a comment that the FCoA is not expected to do everything but information provided now needs to be elaborated and simplified to make it understood by anyone. Needs to be broken down more into comprehensible chunks. There are too many pamphlets.
- Disadvantage strongest for people without education. Should get information about what to do when you receive an Apprehended Violence Order (AVO). Need a neutral place for access to this information, e.g. Centrelink as an outlet.

- If people could get pamphlets before the information session this would assist a question and answer format. Inside the courtroom, people will forget everything. Should take people through a courtroom to prepare for the day itself.
- Information to come with service documents – what to do and where to go to get help.

5.2 Advice

- Some emphasis on family/relationship support would be valuable as well as legal support. It would be difficult for the FCoA to provide all this. Men feel the loss of the relationship strongly – painful practice of dividing everything up.
- Support for promotion and duplication of Ray Lenton's peer support program. "Solicitors don't get to know their clients like Ray's people do". Groups such as 'Dads Against Discrimination' were seen as too radical for them.
- An invitation was offered to observe one of Ray's workshops.
- Some men's groups have agendas which are not helpful. Presented as an advisory service which it wasn't.
- Can get help from others who have been through the system, from conversations with lawyers. Has been poor advice from a CLC – not all are giving a good service.
- Would prefer to spend money on the children than on lawyers.
- Value in mentoring and peer support both at entry to the system and exit.
- Advice on alternatives to going to court – need to manage the different stages the parties will be at. People aren't always sensible when they are emotional.
- Should be free legal advice to dole recipients or those on low income.
- Suggest someone with a paralegal background could be included in an initial counselling session.
- Advice received also from local pro bono service, since closed. It did help him get papers through Court. Good response from Deputy Registrar during interim application for residence and contact.
- There is high need for community legal advice services.

5.3 Support

- SRLs see the need for a spokesperson through a peer support group to be present with them in court, as many feel intimidated, over emotional and unable to successfully speak for themselves, the criteria for the appointment of a “McKenzie’s friend” to the court to be extended.
- Should be one-on-one assistance at the beginning. Each party could get information on the steps involved in getting to trial and what to expect both emotionally and financially.
- Note that it is not just the clients who are going through the process who are affected – e.g. grandparents.
- Support expressed for voluntary mediation services in the court.
- The initiatives listed in the case studies booklet should be everywhere.
- Typing service – for consent orders. Hand written documents are acceptable, but some information sheets (not clear where these are from) indicate need for typing.
- Anxiety to do the best possible to make the system work for him said one SRL.
- (SRL) Court processes may be pushing people towards the court if resolutions processes don’t work. Could a mediation service give an indication of what is fair? – or future direction?

5.4 SRLs and Court Processes:

5.4.1 Conferences

- Process of conciliation conference – the conferences can be too short and not allow enough time for parties to consult with respect to the issues at hand. Seemed to eliminate a further opportunity for settlement. There are times when more than one conference is necessary.
- It is possible to sort mediation, counselling and conferencing processes by lying. How does the court know what to believe?

5.4.2 Court Roles

- Investigate the role and value of family reports, standardisation of the qualifications the report writer must have to conduct the process, and where the report is done. Who is responsible for referral to qualified psychologist or social workers? Late arrival of the report is detrimental to outcome of the case, with the perception that the Judicial officer may not have time to totally familiarise themselves with the information contained in the report, and put orders in place that may not accurately reflect the situation.

- Appointment of children's representative needs to be clarified, and information given to clients at the time of the appointment with respect to costs, and obligations and consequences of the parties agreeing to the appointment.
- All day access to Deputy Registrars for in-depth procedural advice or, the provision of para-professional advice through the court.
- It would be beneficial to have the same judicial officer dealing with a matter throughout the process. Service in FMS is better as it involves the same magistrate.
- The Judiciary needs to use more understandable language, to eliminate the confusion in the interpretation of directions or orders, and need to be aware of, and take into account the emotions of the process and not disadvantage a SRL against a represented client. There is also the perception of bias against SRLs by judicial officers – comments and body language lead SRL to believe that representation would be beneficial.
- While ever it remains a courtroom it cant be made less intimidating. Especially for the party who was left.
- What about a tribunal? Inquisitorial system allows the judge to ask questions. Solicitor can get in the way of telling the judge what a person wants to say.
- Mediation is the key to minimising litigation because it can sort out what is not in disagreement and focus on what really are the issues.
- Representation of the other party can be intimidating. The barrister can make a difference to the outcome even when there are clear breaches of contact, for example. Intimidation is not just from what happens in the courtroom.
- Family Reports – influence the court. Claims are not proven. (Outside this project.)
- There are issues of regarding child representative's relationship with a litigant.
- Interpretation of orders would be valuable.
- Court pamphlets are out of date and not always accessible.
- Counter staff are not professionals and don't know what to do in court
- Difference in perspective between those who are using the system and those who are in its bureaucracy – emotional pressure etc. Should be an ability to take account of that by professionals and by the process.

- McKenzie's friend should be able to do more when in court - should be able to speak for the party. Too hard to manage the hearing process when you are so emotionally involved. Not in the interests of the children to be unable to present the case.
- Different processes and timeframes in different courts are a problem.
- Ex-partners are represented and SRLs get no help. Assumption by the other side that an SRL is stupid. In fact other side was not ready when it came to court.
- Too much time spent waiting around.
- It is a daunting challenge to represent oneself. The adversarial system is the problem. It should be an absolutely last resort.
- Comments on impact of AVOs on access to mediation, impact of consent without admissions. Advice of a lawyer re this found subsequently to have significant detriment to case. Needs to be quick follow up to resolve the AVO. This does not help get an harmonious outcome.
- In the courtroom, the judicial officer needs to make it clear to an SRL when they will get a say (magistrates do this).
- Problems also arise after the case. Orders made should specify the reasons and pick up specifically on matters that were clearly in issue. Not doing this can lead to problems with contraventions later – especially in the absence of good will.
- Three SRLs felt they had done well out of representing themselves.
- Court appointed experts – an order to share the cost – need to know the cost in advance. Also an issue about the quality of the report and avenues for complaint. Not a good service but had been recommended by legal aid. Court and parties should be aware of the content prior to the day in court.
- Order for a child representative – should be made clear who will pay. No clear understanding of the requirements of legal aid – it was not made clear that the parties have a choice about paying if they are not in a position to. FCoA could provide more information on this at the time of making the order.
- At hearings there is a perception of bias towards the represented party. Negative reaction to self-representatives – comments and body language need to be addressed.
- Too much delay to resolution of an application – particularly with respect to contravention applications. Took the initiative of asking the child rep to convene a conference sooner than the hearing date. Has been agreed to. There is too much capacity to frustrate the process.

- Caseload is no excuse for bad service.
- Proposals from SRLs:
 - ~ take the lawyers out of the loop. Set up a panel of magistrates or judges.
 - ~ People thinking of representing themselves need to be educated about the terror of the process and the stress that it causes. Should be addressed in community education.
 - ~ Make information session compulsory and more about preparation. Someone who has been through the process might be a good educator.
 - ~ Value counter staff as they play a vital role.

6 Individual presentations

6.1 Sheila Bird from CSA

In 48% of CSA cases, parents transfer the money between themselves.

Very small percentages go down the court path for a change of assessment, after the internal review processes. Court is usually involved when the case is very complex or acrimonious as a means of continuing the fight.

Area for specific attention: step parents. Complexity of the natural parent's responsibility combined with impact on stepparent. Beyond average understanding.

CSA has a solicitor's hotline which provides technical advice to solicitors by experienced CSA officers. In some registries CSA provides a 'friend of the court' role. May be an issue about the name of this role and how it is perceived by clients – possible bias.

There is a perception amongst clients that things take too long in CSA – education may be necessary to change the perception. Good information about when there is access to a stay would be helpful.

6.2 Tom Altobelli, University of Western Sydney

Has sent an expression of interest to AGD to establish a court support program at Parramatta. Cooperation with University of Western Sydney (UWS), FCoA and FMS, Legal Aid Commissions (LAC) and Attorney Generals' Department (AGD). Proposal would use trained and supervised law students in providing services to

SRLs at the Parramatta registry for both FCoA and FMS. To provide referrals, limited representation, enhance coordination of existing services. Expectation that it would increase opportunity for settlement, reduce the number of times SRLs need to come to court, reduce their impact on court processes. Benefits would be expected to flow to the court, the legal profession and the SRLs.

At the time of filing it is intended to provide applicants with information about the program. There is an assumption that at this point they have made a choice to represent themselves in court proceedings, so it is not aiming at the general public.

They are given an opportunity to attend an introductory workshop, and one on one interview with a student to look at documentation and an opportunity for referral to other services.

Workshops to be offered on how to go about representing oneself, preparing a case for trial etc.

Hopes to bridge the gap between having information and being able to implement it. There would be an opportunity for representation in very specific circumstances, e.g. uncontested divorces.

The program should be available once or twice per week.

Students would be supervised and have completed study in family law and the skills of family law practice.

Addresses issues about line between information and advice and also meets educational needs.

Law Society is not supportive. If Commonwealth funding is available it could be up and running by mid 2002. Legal profession may prefer use of paralegals when people can't afford a lawyer. They might be persuaded by the removal of frustration they experience when the other side is unrepresented.

The Dandenong project has been evaluated. It has had marginal impact on time and numbers measures but impact on experience of participants was significant, particularly reduced stress on clients as well as benefits for students who gain excellent skills for practice.

Needs clear exclusionary criteria e.g. a Magellan approach for the complex cases. Expectations also need managing.

6.3 Suzanne Christie, Law Society of NSW

Presentation from the perspective of the represented party, SRLs appear to have direct access to the judge. It is hard for the represented party to keep their counsel when the other is allowed to speak for themselves and present evidence from the bar table, often this involved stuff that would not otherwise be aired before the judicial decision maker. Would be better if there was fully open communication before the judge with all material being on the record.

SRLs are not bound by a professional code of ethics, they are not bound not to lie and they cannot have detachment.

Private costs as well as public costs are increased by SRL on the other side.

Settlement opportunities are lost.

Shorter time involvement of SRLs is probably explained by dropout rate or by simplicity of the case.

Costs orders are ineffective. Procedural adjournments, which are frequent cause, added cost to the represented party.

Recommend that costs orders be encouraged in appropriate cases and that SRLs be advised of the implications of representing themselves with respect to this.

There is a tension between the adversarial system and the inquisitorial nature proceedings take on when there is an SRL. Questions emerge around judicial neutrality or evenhandedness – assumptions that come with it can be distressing for clients.

Interim affidavits – these are good for SRLs. They guide what are relevant s.68F factors. On the other hand simplified forms allow for increase in applications without any merit checking.

Unbundled legal services – supports an education and assistance program for legal aid clients. Some legal assistance is better than none. Position is still that legal aid is necessary and should be well funded. Issues of professional indemnity – where does the responsibility of the person providing the assistance begin and end. Representation is the hardest part.

This is an important issue for CLCs. There is a question of whether or how FCoA is able to deal with CLC at the level of service they provide.

Reference to a Phoenix program which provides an information pack to take away – appropriate documents and supporting information.

Particular difficulties for child representatives when they are dealing with SRLs. There is an unconscious temptation to run the case of the SRL. This creates extra work. When both parties are SRLs the child rep tends to run the entire hearing.

Proposes a separate case management track for SRL cases. More case management. Litigants respond better to direction/information from the court than they do if it comes from the other party. A piece of paper with a court seal with what is to be done by the next date – similar to the terms of settlement sheet used at Parramatta. Issues of language problems need to be addressed. Refer to sheet used by Brisbane – referred to in case studies booklet. Provides authority for a CLC to contact and speak to the court.

6.4 Ray Lenton - Lone Parent Support Network

Has been helping SRLs for 2 years, both men and women. His own experience was with representation for 18 months and then became an SRL. With limited understanding of the system. Background in social sciences.

Found solicitors did not spend enough time with him to understand what was happening. Alone in court looking to serve the best interests of the children. Following directions given, it is usually possible to find the way through the system. Appears often as a McKenzie's friend as a way to provide lay support for SRLs. Helps to get a resolution of the case. Has achieved improved family arrangements in most cases.

Offers a workshop based program which also deals with AVOs. Also offers a workshop on 'making contact work' which places high value on contact. Another is on child support with a loose structure.

Provides assistance to people after the hearing, which has long been recognised as a gap in service. Understanding the grief when the case is lost. For people who have been through the process both with and without representation.

Help is provided by 'para-professionals' with limited training in community support. It is not a therapeutic process. The aim is to have the peer support program he offers supported and extended. Would like to have his flyers made available in the registry.

Issue for men is not so much a lack of services but they are hard to find. Men may not want help and they have a limited understanding of the broader welfare system. Violence is acknowledged as an issue but it is not all one way.

7 Items beyond the parameters of this project

- Legal aid merit test pre-determines the outcome.
- Should be free legal advice to dole recipients or those on low income.
- It is possible to sort mediation, counselling and conferencing processes by lying. How does the court know what to believe?
- Should be a Family Consultant in Brisbane – also or alternatively have counter staff with indigenous background – would assist with the intimidation factor but should not provide cultural advice.
- Data should be collected on indigenous clients.
- Extra resources needed for Community Legal Aid Services
- The quality of ‘outside experts’
- Legal Aid needs to clarify that there is a choice regarding payment of child representatives.
- Would the whole process be enhanced if there was a defined foundation principle of equal contact, except where there is concern about domestic violence or risk to the child? The suggestion was made that the legislation has it right but the way it is put into practice which is not applying this principle. This is not seen as just an issue for men but women suffer a social stigma if they ‘lose residence’. Difficulty of applying this principle in a less than ideal world.
- Issue of solicitor’s advice and the impact of AVOs on subsequent family law proceedings. [This is a Pathways issue and should be referred to that process.]
- There is no accountability, no follow up investigation of claims which are made by a party, either by the police or the court. Police don’t understand family law, child support or domestic violence. The process is too automatic and is often the first step into the system. Used as a ploy for keep away from the children. Emotional impact of being classed as violent. Statements about solicitors advising to take out AVO’s as a strategy. Manipulation of the process. Can’t distinguish between violent and stupid men, both are labelled the same. How these things are taken into account will vary between judges – when there are AVOs made by consent but without admissions.
- Why can’t the FCoA have the same kinds of powers as CSA? Links between contact and child support payments. Issues about asking the children what they want.

- Men don't get the same access to legal representation as women. Legal aid should find a legal aid accepting lawyer for the other party [refer to LACs] A register of pro bono lawyers should be available.
- Need information to be able to challenge a costs agreement and clear paths for complaints about legal representation [refer to law societies].
- Need up to date listings of people practising family law [refer to law societies?]

8 REPORT ON THE VISIONING WORKSHOP

6 & 7 April 2002

- 1 The project has broadly proceeded under three main streams:
 - ~ Information;
 - ~ Collaboration; and
 - ~ Innovation.

- 2 The project has concentrated so far, principally upon the first of those two objectives. The third phase of the process involves the concept of bringing together those who could imaginatively contribute to the design of a system that would be fair, not only to self-represented litigants but also to those who are represented – a fair go for all.

- 3 The first part of the process (which became the Visioning Workshop) was an opportunity for those with vision and imagination to put forward an ideal system to achieve the above objectives. Those ideas and that plan will be put before the Court to determine realistically how they might be implemented.

- 4 Finally, whatever may have been accepted as the "real" model would be implemented incrementally in accordance with the Court's broader objectives, plans and budget. This third phase would involve necessarily the recruiting of all relevant stakeholders to the validity of the plans and objectives.

- 5 It was hoped that the first part of the process – the Visioning Workshop – would provide the outlines or a draft blueprint for the Court against which changes (either brought about by budgetary variations or dictated by circumstances) could be measured. It was also considered that it would be a vehicle for change in itself and would provide an impetus towards the implementation of reforms to produce a fairer go for all participants in the system. To that end the first part of the process was not to be constrained by the obviously realistic considerations of budget and staffing. The marrying of the ideal with reality was seen as the function of the second phase of the program. The third phase would refine that reality to accommodate the legitimate concerns of those who are stakeholders in the system.

The Participants

- 6** The Court was fortunate to secure the services of Mr Fred Chaney AO as a facilitator for the weekend. His experience with a similar exercise in Western Australia ideally suited him for the task. In addition, his passion, imagination, concern and enthusiasm made him the ideal person for the job.
- 7** The others invited were:
- ~ The Hon Justice Geoffrey Davies, Queensland Court of Appeal;
 - ~ Associate Professor Kathy Mack, School of Law, Flinders University;
 - ~ Mr Tim Mulvany, T.L Mulvany & Co Solicitors;
 - ~ Ms Zoe Rathus, Women’s Legal Service, Queensland;
 - ~ Professor John Braithwaite, Research School of Social Science, Australian National University;
 - ~ Chief Judge David Carruthers, District Court of New Zealand;
 - ~ Mrs Dianne Smith, Judicial Registrar, Family Court of Australia;
 - ~ Ms Sarah Mansfield, Victoria Legal Aid;
 - ~ Professor John Dewar, Dean, Faculty of Law, Griffith University;
 - ~ Mr Raymond Lenton, self-represented litigant;
 - ~ Ms Belinda Lo, Brimbank Community Centre;
 - ~ Ms Janet Tregear, self-represented litigant;
 - ~ Ms Julie, self-represented litigant;
 - ~ Ms Sandra Elims, Assistant Secretary, Legal Assistance Branch, Commonwealth Attorney-General’s Department; and
 - ~ three self-represented litigants.

And with the participation of Justice John Faulks, Judge of the Family Court of Australia and leader of the SRL project.

- 8** All participants were chosen not only, or so much, for their expertise in the Family Court processes themselves, but rather for their ability to think outside the square of the existing patterns of litigation. For example, Mr Justice Geoffrey Davies’ seminal paper about the convergence of the inquisitorial and adversarial systems ideally qualified him to participate in this creation of a new jurisprudence.
- 9** Similarly, the experience of Professor John Braithwaite with restorative justice in fields quite different from the Family Court meant that he was able to contribute uniquely to the process. Equally importantly was the contribution made by Chief Judge David Carruthers of the District Court in

New Zealand. He brought his unrivalled experience in "conferencing" to say nothing of his observations of other systems and his exceptionally clear thinking.

- 10 Others who participated did so, in many cases, from a depth of experience of the Court itself and this enabled a balance to be struck between the theoretical and the real. The process was designed to bring about a proposal for reform of the Family Court processes. It was always contemplated that the results would be available to all other Courts so that, to the extent that they were relevant to those Courts, they could be adapted and used. However, its primary focus was to provide opportunities for the Family Court of Australia to go forward.
- 11 Logically, for this process to have any measure of credibility it was necessary for a number of people who had been involved in the experience of self-representation to be part of the team. In this regard the Court was fortunate to secure the attendance of three individuals, all of whom had been through the process of self-representation and all of whom are keen to assist those going through the same process in the future. In varying degrees they had already begun this process but it would be fair to single out Mr Raymond Lenton as someone who has contributed enormously to the assistance of those who are representing themselves in and about Parramatta in Sydney.

What it was hoped to achieve

- 12 As is set out above, it was hoped that there might be one or more proposals from those present which would provide a broad path to the future. It was clear that there would be no constraints on the possibilities in this part of the process except those dictated by common sense and the general objectives of the Family Court of Australia.
- 13 It was also recognised that as part of that process, inevitably, there would be suggestions for reforms that might be instituted immediately. That catalogue of suggestions would be conveyed to the Chief Justice's Consultative Council via the project team in the expectation that such suggestions would be considered, and if feasible, implemented. The self-representing litigants participating have made a number of sensible suggestions. Some of these reinforce existing Court processes; others suggest amplification of those process; and still others offer alternatives or new ideas which will enhance the Court processes. Those are set out in a later part of this report.

The Way Forward - The Road through Litigation in the Future

- 14** Although there is a certain convergence of the following two proposals, and indeed, in part each of the major proponents of these themes saw his proposal as covering the same ground as the other, it is important in the view of the Project organisers that they should both be presented and recognised as being viable and independent alternatives. That is not to suggest that at some point the paths may not converge or indeed that as a result of the consideration and possible trialing of these proposals, there may not be some amalgamation of them in the future. Such an amalgamation would accord with common sense in many respects because the objectives are the same.
- 15** It is interesting also that the principal proponents of these proposals did not have a detailed knowledge of the existing practices of the Court and it will be immediately obvious to anyone who is associated with the Court that parts of the suggestions mirror initiatives that have already been undertaken. It is however significant that these existing practices should perhaps be redirected or, perhaps more appropriately, based on a clearer philosophy of their part in the broader pathway towards the effective administration of justice, and how they sit within the broader family law system which was envisaged by the Family Law Pathways Advisory Group.

The Objectives of the System

- 16** The visionaries were both unanimous and enthusiastic about the summary, given by Associate Professor Kathy Mack, of what the fundamental characteristics of a fair system should be. She suggested that the objectives of any system of justice were:
- ~ that the system should be accepted by the community as enabling just decisions;
 - ~ that it should be free from bias;
 - ~ that it permit those who are seeking the resolution of their disputes to be heard; and
 - ~ that it accorded respect for the parties involved in the disputes.
- 17** These she saw as the top down part of the process which provided the prescriptions against which to test or assess the building blocks that would enable the system to be constructed from the ground up. John Dewar also reminded the group to take a systemic view and be mindful of where the Court sits in a future integrated family law system. In this system much assessment of issues and need and pathfinding will happen before the parties have come to the courts.

- 18** Kathy Mack emphasised the importance of the process itself pointing out that there were a number of studies which reflected the fact that there was a much greater acceptance of an unfavourable outcome for a litigant if he or she felt that the process has been fair, rather than (perhaps curiously) a good outcome from what was regarded as a bad process. A good example of this during the workshop was the frustration that litigants feel in a process that does not allow them to speak (usually when represented). This broad philosophy both overlaid and pervaded the considerations of the weekend.

The First Road - following the court assisted litigation route

- 19** This proposal recognised the difficulties of self-representing litigants and indeed of many represented litigants in coping with the existing system. The level playing field is not there when there is an imbalance of resources or skill of representation. Court time (in the sense of judicial time) is not maximised where the parties with competing interests present only the evidence supporting his or her position. Nor is the decision maker ensured of access to the best evidence – vital information may be left out. Without some assistance the intervention of a Judge in trials may operate unfairly to the parties. However, all of the self-representing litigants regarded the intervention of the Judge in the proceedings they had been involved with, or had experience with, as being important to a fair process.

The objects of the first road

- 20** The proposal has three objects. The first is to put a self-represented litigant, as nearly as possible, on an equal footing, in the conduct of a Family Court matter, with his or her opponent whether or not that opponent is also self-represented. The second is to reduce the time wasted in litigation where one or both parties is or are self-represented, because they or one of them does not understand what evidence is relevant and what irrelevant and what arguments should be advanced on that evidence. And the third is to reduce adversarial bias.
- 21** As to the first of these, our present system works fairly between opposing parties only when they are of equal bargaining strength, a situation which rarely exists in fact. For example, the richer litigant can always employ the better lawyer, and more lawyers, and can expend more time and money generally on the preparation of his or her case. And the dominant partner in the marriage would ordinarily be at an advantage in both negotiation and more confrontational litigation.

- 22 As to the second there can be no doubt that our existing system is designed for litigation by lawyers. The rules of procedure and evidence and the substantive law are too complicated even for intelligent non-lawyers to grasp and implement in litigation.
- 23 As to the third, there is no doubt that witnesses giving evidence for one side or another tend to be adversarial, even if that occurs unconsciously, and that tendency is increased by the way in which litigating lawyers proof witnesses and ready them for giving evidence.
- 24 The scheme in detail
- (a) In the first place a form of questionnaire directed to each of the parties would replace existing initiating and subsequent documents. The questionnaire would attempt to elicit the issues which those parties would wish to raise, the contentions which they made about those issues and the evidence which they said was relevant to each of those issues. It would also seek to identify by its questions whether the matter is one amenable to some solution outside the court and if so whether with or without additional support being given to one of the parties.
 - (b) In many cases it may be possible to proceed from the filing and exchange of these documents along the path of preparation for a judicial hearing or along one of the other non-curial paths. But in some cases it may be necessary first to elucidate matters further by bringing the parties together with a court officer. In others, that may be deferred until after some non-curial process has been tried and failed. Ideally that officer should be the person who prepares the case for trial in the manner referred to below.
 - (c) If the case proceeds along the path of a proposed court hearing a legally qualified court officer should prepare the case for trial. He or she should take statements from relevant witnesses suggested by the parties, determine whether statements or reports should be obtained from additional witnesses and, after consultation with the parties, obtain statements or reports from those witnesses too. Such additional witnesses should include any necessary experts. It would be desirable in all cases for the parties to agree upon any additional evidence and the person who will give it, but the court officer or a judge should have power to appoint additional witnesses and obtain statements from them over the objection of one or both parties.
 - (d) Obtaining statements in this manner should not preclude, at any time, the matter, or some aspect of the matter being referred for resolution in a non-curial way. Indeed that question should remain under review wherever it appears to be a possibility.

- (e) The court officer should then determine which of those witnesses are sufficiently relevant to be called as witnesses in the case. However, either party should have the right, if he or she is dissatisfied with a decision of that officer not to call a witness, to raise the matter with the judge, who should then determine whether or not that witness is called. Similarly, the court officer should decide what evidence each party can give but if either is dissatisfied with that decision and wishes to raise other matters he or she should raise that question with the judge.
 - (f) At the hearing it is envisaged that all witnesses are called by the judge with either party having a limited right, after completion of the judge's examination of the witness, to ask further questions. The judge should, of course have the power to determine whether those questions are relevant.
- 25 It is a key feature of the proposal in that it helps the parties to identify the issues in dispute as soon as possible. This may happen at the court or prior to coming to it (in an integrated family law system).
- 26 The benefits in the objectivisation of the evidence which this delivers are readily apparent. The dependence on the quality of the person appointed by the Court is equally obvious. The present system is dependent on the quality of lawyers for the parties or in the case of SRLs, the skills of the parties themselves. The change would not remove all possibility of bias. It should however remove the adversarial bias. Good inputs produce good outcomes. It would not be crucial to this model that the person should actually be employed by the Court, although the funding of that person would seemingly have to come from an independent and impartial source such as the Court's budget or the Legal Aid budget, or one established for the purposes of the administration of justice. There are political implications for each of those choices.

The scope of the proposal

- 27 It is intended that the proposal operate in cases in which one or both parties are self-represented. A pilot program of a fixed number of cases, chosen on a random basis over a set period during which a similar random number of cases are run in the ordinary way as a control group, with comparative costing at the end.

This would aim to determine the feasibility, viability and productivity of the proposed model.¹

1 The productivity should be measured not only in raw data terms but also whole of process economic terms.

- 28 There may or may not be broader implications for the processes of the Court in matters in which both parties are represented but the primary need was seen to be adjustment to the system in circumstances where at least one party is self-represented.

The Second Road - following the route of a Presumptive Path

- 29 Somewhat to the surprise of those involved in the weekend the self-represented litigants were unanimously of the view that once proceedings have been commenced, the sooner a Judge became involved in the process and the sooner a judicial determination was available, the better the process would be for them. This was contrary to the expectations of most involved who had seen, in line with the practices of the Court for some time, that self-representing people would prefer the informality of alternative or primary dispute resolution processes. However, it is not clear how well informed they were with respect to the options or how much the attitude of the other party impacts on this view.
- 30 This led to the proposal from Professor John Braithwaite that there should be a presumptive path or position which retained the objectives of procedural justice and cultural appropriateness. The first road just described might be this presumptive path. The idea of a presumptive path is simply that we presume this would be the pathway normally followed. But if there were good reasons for diverting from the presumptive path to take one of a number of alternative tracks we can do this too. This means we have a main line, a number of branchlines and a pathfinder to help litigants find the right line. This is not inconsistent with the Family Court's existing emphasis on tailoring services to meet the needs of clients.
- 31 The presumptive path, in general terms, would mean for most SRLs the fastest possible track between filing and judicial determination. This necessarily involves a measure of process control and also incorporates scope for opting out of that particular path and taking another, or out of the system altogether at different points depending on the individual requirements of the parties involved. There was some acceptance for an analogy of a dedicated train with a specific destination with nevertheless the possibility of stopping at different stations along the way depending upon the individual needs of the passengers. One existing example of the process of opting for an alternative pathway which incorporates a number of the features proposed by Professor Braithwaite, is the Court's Magellan Project where the particular requirements of the parties in child abuse cases are given the advantages of additional resources, some external assistance (through the Legal Aid Offices and the Family Services Departments) and judge management towards a speedier curial disposition.

- 32 Although as mentioned above this process is compatible with, has many features in common with, and could be overlaid on that proposed by Mr Justice Davies, it is essentially capable of standing on its own. It closely resembles the thinking of the Family Law Pathways report and has the potential to be tried out in that context. Both proposals involve a measure of path finding or gate opening by an appropriate person within the Court system. They both include the possibility of court processes being preceded by an assessment of issues and need which may be external to the court or the first step within the court. The court person would be responsible for directing those involved towards the most appropriate either Court PDR process or external PDR processes. That person would be responsible for the speed with which the parties would move towards a judicial decision if that is what was required. That person would also be the gate-keeper or gate-opener or path-finder (all of which analogies were adopted by the visionaries) and would provide the facility of direction and the advantage of control of the court process by the Court itself.
- 33 The Braithwaite method of course might reasonably proceed on exactly the same general principles as the Court currently operates upon. It is consistent with notions of tailoring responses to client need. It was however acknowledged by Professor Braithwaite that there were advantages in the proposals from Mr Justice Davies which would enhance the presumptive path method.
- 34 Again these are matters which require some more detailed specification and trial before implementation and should be trialed with appropriate control groups. One advantage of the presumptive path is that aspects of the system might be trialed in advance. It could be determined which, if any, of the particular parts of the process are most effective. Professor Braithwaite pointed out that the greater number of variables involved in a process the more difficult the evaluation. It may be that this option is best developed in the context of the implementation of the Pathways Report.

Summary

- 35 The necessarily brief statements set out above scarcely do justice to the discussions that took place over the weekend about these matters. Details will also need to be hammered out by the team in developing recommendations to the Court for the way forward.

Commentary on matters relating to the proposed system's lack of jurisprudence or effective research data about the effectiveness of PDR/ADR

- 36** The litigation process itself has not been the subject of accurate research about the needs, desires and satisfaction of its clients. There was agreement that it would be appropriate for there to be both immediately post litigation counselling/assessment/exit-polls and perhaps more significantly some form of follow-up after six months particularly in relation to children's orders to ensure that they are being carried out and that there is satisfaction with them. Despite the obvious drawback of perhaps eliciting further litigation and the more significant drawback of perhaps encouraging people to regard "final orders" as experimental, both proposals received the endorsement of those attending the workshop.
- 37** In addition and importantly the SRL's were concerned that in relation to any consent orders made by the Court there should be a process which enabled a self-representing litigant to be placed in the witness box and heard as to his or her real consent to the orders that were being made. Again, this was a proposal that met with general concurrence. This was also a proposal relevant to represented parties who feel frustrated at the lack of opportunity to have a say on the day.
- 38** The processes of Alternative Dispute Resolution (ADR) have not been the subject of scrutiny nor in large measure could they be. As was pointed out by Zoë Rathus there is no jurisprudence of mediated agreements. The process of conflict counselling which has been pioneered by the Family Court, has not been (until recently) the subject of much scrutiny and the satisfaction of participants or the success of the process in resolving disputes, justly and reasonably, is both difficult to gauge and crucial to the development of future processes in the Court. Even more strongly, the community based processes of mediation, conciliation or any variation thereof are difficult to assess. While it is the accepted wisdom that a chosen solution must necessarily be preferable to an imposed solution, it is sometimes difficult to assess the quality of the chosen solution for those participating.
- 39** Again and again the self-representing litigants, and others participating in the workshop, emphasised the differences between self-representing litigants. These differences included, without being exhaustive, differences in power of negotiation, differences in articulateness, differences in knowledge and differences in the stage of grieving reached arising from the breakdown of the relationship.

- 40** Both of the proposed Roads came with the strongest of recommendations that the pathfinder should be capable of observing the participants and making informed and effective decisions about the processes most likely to be of assistance.

Conferencing

- 41** There was unanimous agreement that conferencing, involving parties and those with an interest in those parties, is a process which should be introduced although not for all litigants. The New Zealand process which might include a large number of people, in some cases, should be both examined more closely and implemented. There are already precedents in the Family Court for family conferences involving the children, counsellors, Deputy Registrars and other members of the family, and this process was generally agreed to be a desirable option in many cases. Strong arguments were put during the weekend, however, that this approach would not be suitable in some circumstances, particularly when there is an imbalance between support resources available to both parties. In other cases, adding friends and family advocates to the conference circle might actually reduce power imbalances at the same time as it includes in the circle people who might assist in a just settlement (or who might derail a just settlement if they are excluded from the process).

A different concept of a Child Representative

- 42** No conclusion was reached about a proposal that the child representatives functions should perhaps be broken up into two different parts. The representation of the best interests of the child, mainly referable to younger children (less than eight, nine?), might possibly be carried out by either a Court-appointed or, in some respects better, a Court-employed person. This person would have a role akin to Counsel Assisting a Commission and fits comfortably into the court assisted litigation option.
- 43** The need for older children to be represented in the proceedings and for their voice to be heard in a real way was also regarded as very important and the assistance of Mr Tim Mulvany and Ms Sarah Mansfield, about these matters, was of a great help.

The need for advice but the limitations on the availability of Legal Aid are recognised

- 44 While there was general appreciation of the resources presently available to parties, there was also a unanimous and absolute recognition of the need for parties to be both informed and advised at an early point about the law and practice in the areas in which the dispute arose. The disparity in practice about the provision of duty lawyers and the attitude of the various Legal Aid Commissions about the potential conflict of interest was noted.
- 45 Unbundling of legal services is a relevant issue here but it did not get discussed during the workshop to any depth, primarily because the issues are not relevant to the models under consideration.
- 46 One particular suggestion on advice was the need for guidance about the likely percentage outcomes (in financial matters), possibly like the Child Support calculator. It would need to take into account the fact that there is no statutory formula and include reference to the grounds on which the court might make decisions to vary the likely outcome. One SRL also thought the Court should be enabled to provide advice on the best avenues to assistance, actual referrals rather than just information. This would have to follow exchange of information sufficient to know what the problems are.

McKenzie Friend

- 47 There was extensive discussion about the nature and limitations upon the provision of this assistance to self-representing litigants. The judicial officers indicated universally that they were prepared to allow McKenzie Friends to speak on behalf of self-represented litigants on some occasions. Interestingly, the self-representing litigants themselves, were not as committed as might have been expected to having someone available to speak. They did all however emphasise the importance of having someone at court to talk things over with, perhaps to get a different perspective from and generally to help with the organisation of material in court. It was, again, universally agreed that it was preferable if that person could sit at the Bar table to assist in that process of organisation.
- 48 One self represented litigant was anxious that there should be some registration process, not so much to qualify a McKenzie Friend on a semi-professional basis, but rather to provide a contact point with that person in relation to the proceedings. In effect it was, on his part, a desire that he should be recognised, as genuinely a person committed to assisting the Court if he should attend with a self-represented litigant. He also expressed frustration at the attitude of some members of the legal profession, many of whom refuse to speak with him.

- 49 Some time was devoted to the question of the certification or endorsement of McKenzie Friends and without training or some form of formal accreditation, there was opposition to a consideration of such a proposal. It should be noted that they did not seek other than that a McKenzie Friend should be given leave on each occasion, and he commented that the process whereby leave was obtained was generally a brief and satisfactory process. A consideration of his comments, however, would suggest that the leave process is not necessarily an informed, or even a particularly fair one.

Making the most of the SRL resource

- 50 There is a considerable resource available in SRLs who have been through the court system. This could be encouraged and mobilised by the Courts. This could be done through cross registry consultation. They can assist people to navigate existing structures, mentoring through the issues, solution based counselling, reality testing, workable solutions and developing options.

To incorporate this resource into the system requires some agency to pool the administrative framework within which peer support and mentoring was organised and coordinated.

Should Counselling be Privileged?

- 51 In line with the comments made above there was some discussion about the desirability for counselling to be privileged, particularly when both parties are present. It was noted that this was a practice common in a number of United States jurisdictions. The contrary position, particularly for individual counselling was expressed quite strongly by Julie and there was general acceptance of the need for litigants, as part of their recovery in the grieving process, to be able to have conversations with an appropriate counsellor which are private and confidential. It seems that more thought needs to be given to the process of counselling/mediation and for a distinction to be made. Such a distinction should apply to the process whether it occurs within the Court or within the broader range of community services. In particular it was noted that there were occasions where admissions were made particularly as to violence by one litigant during privileged counselling which could not thereafter be evidence in Court and which may lead the other litigant to regard the process with some degree of scepticism.

General suggestions from self-represented Litigants

52 One of the self-representing litigants produced a quite remarkable document. It is a series of reminders to herself about the sorts of things that she needed to do in Court. It also provides a ready guide to other self-represented litigants about the sorts of things that should be undertaken both before and during court processes. It is a reminder to the Project Team of a number of matters which fall within the first two streams for the projects consideration – Information and Collaboration. The importance of the document, in many respects, is the fact that it comes from the perspective of someone who is self-representing and does not represent what the Court thinks would be good for such people. The document contains a number of comments and criticisms as well, of course not all of which would be accepted in their entirety by the Court, but nevertheless, they operate as reminders of the needs and concerns of those who are either obliged to, or who by choice, represent themselves.

- Another important comment was made about the speed with which the court processes progress. It was said to be too slow and many problems arise during delays. People are not aware that they can seek an urgent hearing in some circumstances.
- Time-staggered lists would be useful, not only for SRLs as many people and their representative waste a lot of time waiting for a long list to progress.
- Vetting of affidavits by Registrars in advance of hearings would facilitate smoother hearings and provide opportunity for parties to present supplementary material to remedy the striking out which often happens during the hearing and there is no opportunity to deal with it.
- Where settlement orders are hand written, the court should take responsibility for typing them up. It is not appropriate to the confidence of an SRL in their accuracy if this is done by the other party, or even the Child Representative if they have been seen to be contrary to the SRL's case. This process should be as immediate as possible.
- Consent order procedures often require instant decisions in Court which can be unreasonable for and SRL. Time should be allowed to check and consider the detail and the implications of what is proposed. Access to advice would also ensure informed consent.
- A resource room at court for SRLs to compile their information and pull together into a sensible set of orders. There is lack of consistency in this area across registries.

- 53 It was indicated at the beginning of the proceedings that it was likely that there would be suggestions that would flow from the workshop which would be considered by the Project Team as part of its overall brief. Those suggestions were collected as the meeting proceeded and will be incorporated into the Project Team's consideration in due course.

Overall assessment of the perspective of the SRLs involved in the workshop

- 54 The SRLs had a strong focus on how to make the present system more workable. This is not surprising given that their attitudes flow from their direct experience of the present process and they all have invested a great deal of themselves into the process. Their knowledge and value is based on the status quo. There is, however, a strong and consistent line in their contributions which suggest that they are most relaxed when they are dealing with an authority figure and in particular, a Judge. There is no doubt that the difficulties that they seek to surmount and the suggestions they put forward relate to the adversarial elements of the system. They are at their most comfortable when a clear position has been articulated by an authoritative figure. They want to be told the ground rules and the likely range of outcomes in line with their circumstances. They are less interested in processes which require strategic approaches.
- 55 On reflection, these concerns point to the Justice Davies' model. Their suggestions, when tested against it, either fit in or are rendered unnecessary by it.
- 56 The status quo, which the SRLs have responded to, already involves elements of identifying issues early and tailored case management which shapes the procedural path. Therefore the critical part of the first Pathway option is the centralised and objective gathering of material which enables the Court to make a decision about evidence. This confines narrowly the adversarial aspects of the process. SRLs may find in this future that it would be relatively easy for them to manage without technical assistance.

The Implementation of the next Phase of the Visioning Process

- 57 Those members of the Project Team who attended the Visioning Workshop look forward to the opportunity of presenting this report orally to the Chief Justice's Consultative Council, and to amplify its contents and the nature of the deliberations of the workshop and potential recommendations from it. That would not be the whole of the second part of the Visioning process.

58 Originally it was envisaged that there would be a meeting between the Project Team and the Visionaries not necessarily, but not precluding, in the nature of a "confrontation". The object of this meeting would be to enable the Visionaries to explain and to amplify, and possibly, even to justify some of the suggestions made. As Project Leader and upon reflection I do not think that the expense of such a meeting can be justified to the Court. In addition, because of the clarity with which the options emerged from the weekend, it seems to me that the appropriate next step is the consideration of the broad thrust and potential recommendations by the CJCC in a preliminary way after an initial presentation from Ms Buring and myself. The Project Team itself should then meet face to face for the purposes of considering the matters raised by the Visionaries and should consider any suggestions made on a preliminary basis by the CJCC. That meeting would then give rise to recommendations to the CJCC which may either reinforce the preliminary views of the CJCC or seek to change the views of the CJCC about some matters. None of this process should in any way impede the Project Team or the CJCC from proceeding to deal with a number of the individual recommendations that emerged from the workshop. The earliest opportunities should be taken for consultation both with the legal professions, the Legal Aid Commissions, CLCs and the Court generally. This last recommendation is made with some reluctance not because the need for consultation is not acknowledged but because of the possibility of confusion as to the Court's position. Timing and control of the consultations is obviously important and should only occur with the concurrence and guidance of the Steering Committee on behalf of the Court and the Project Team.

Afterword

59 Once again the Visionaries wish to thank the Family Court of Australia for the opportunity to participate in this challenging and vitally important aspect of the development of litigation in the future. The Visionaries collectively hope that if their meeting does not constitute a milestone on that future pathway, that at least it represents an effective signpost to the way in which the road should be developed in the future.

John Faulks

APRIL 2002