

# Family Court Bulletin

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Welcome to the first edition of *Family Court Bulletin*, a new publication to keep legal practitioners, parliamentarians and other key stakeholders up to date with the work and workings of the Family Court of Australia.

Through this publication, I plan to inform you about trends in family law, the work of the court, new programs and initiatives, judicial and executive appointments and retirements as well as jurisprudentially interesting judgments.

*Family Court Bulletin* will also emphasise the changing focus of work done by the Family Court and how it is becoming more distinct from the family law jurisdiction of the Federal Magistrates Court (FMC). Increasingly, the Family Court is hearing fewer cases but they are the more complex and intractable family law matters requiring substantial court time.

'Complex' cases include those involving allegations of physical or sexual abuse of children, family violence, mental health issues, domestic and international relocation, international abduction and the Hague Convention, nullity of marriage and special medical procedures. The court also hears cases relating to financial matters, including the division of matrimonial property, that can incorporate intricate commercial issues and the involvement of third parties.

The Federal Magistrates Court is doing the more straight forward trial work, with the number of magistrates increasing to cope with the rising work load.

There are many changes occurring in the Family Court and I hope to acquaint you with them through *Family Court Bulletin*. The most recent changes include adopting an individual judicial docket, the publication of anonymised first instance judgments in addition to the full court judgments and a continuing focus on putting the interests and welfare



**Chief Justice**  
The Hon Diana Bryant

of the child first in proceedings. The child responsive model, the less adversarial trial and the Magellan case management pathway are all examples of focusing on what is in the best interests of the child. Some of these changes are explained further in this edition.

The Bulletin is not intended to replicate the formal account of the year that is more properly done through the annual report. *Family Court Bulletin* will, however, give you a snapshot of what is happening in the court and provide sources of further information for people with an interest in a particular topic.

I hope you find it interesting and that you will look forward to the next edition in six months time.



# Judgments of interest

## The Full Court Interprets the Amendments to the *Family Law Act 1975*

In the Goode and Goode case, the Full Court set out the principles to be applied in interim parenting orders. In so doing, the intent of the *Family Law Amendment (Shared Parental Responsibility Act) 2006* was thoroughly examined.

The reforms to the Act have placed a greater emphasis on children's rights to have a meaningful relationship with both parents and on parents continuing to share responsibility for their children after separation.

The Full Court found that the changes have a number of implications for the approach courts should take when deciding interim parenting disputes. While hearing the appeal against the interim order, nine discrete questions were identified.

One of the questions was the extent to which the case of Cowling continued to apply. In that case, it was established that as a general rule, any interim order should promote stability and that is usually achieved through the continuation of existing arrangements.

The Full Court reconsidered Cowling in the light of changes to the Act which require consideration of shared parental responsibility and shared time. It recognised that the legislation intended to promote the substantial involvement of both parents in their children's lives, subject to issues of protection, the child's best interest and practicality.

Instead of simply continuing a well settled living arrangement, the Full Court said that judges must follow the new structure of the Act and consider the involvement of both parents on an equal, substantial or significant basis.

The full judgment and the nine essential questions identified can be accessed at: [http://www.austlii.edu.au/au/cases/cth/family\\_ct/2006/1346.html](http://www.austlii.edu.au/au/cases/cth/family_ct/2006/1346.html). The citation is Goode & Goode [2006] FamCA1346 15 December 2006.

*'The reforms to the Act have placed a greater emphasis on children's rights to have a meaningful relationship with both parents and on parents continuing to share responsibility for their children after separation.'*

# Initiatives and programs

## Judicial Docket System

Following deliberations at the Annual Judges' Conference in August 2007, the Family Court is working on the implementation of a new judicial docket system.

The basis of the judicial docket is that individual judges are responsible for the management of their own cases from the conclusion of the resolution phase to finalisation of the matter. The system is designed to ensure early judicial intervention and active judicial case management in order to streamline the process, ensure earliest possible settlement or determination and to dispose of cases efficiently.

Registrars, each with the support of a case coordinator, will assist the judges to manage their pool of cases. The registrar and case coordinator team, to be known as a case management support team, will not be specific to one judge—rather they will be assigned to a case and support all of the judges who are running a judicial docket.

### Docket Principles

- Every case has a future date and event
- The determination phase will be managed by the judge.

### Benefits of the judicial docket

- Earlier judicial intervention resulting in early settlement, narrowing and earlier determination of issues
- Flexibility promoting efficient use of judicial time and resources
- Strategic Registrar support maximising judicial availability to determine cases
- Integration of the less adversarial trial process for both parenting and financial cases
- Streaming of cases to the appropriate jurisdiction at the earliest possible stage

- A single case management pathway in which events will be structured to the individual case and flexibility exercised as to which events are conducted
- When cases are assigned to judicial dockets they will be listed to the first day of trial, removing the case management events
- No trial affidavits will be filed until issues are identified and ordered by the judge
- After the first day, the judge determines listing of future trial events—including continuation events and conclusion.

### Brisbane pilot

The Brisbane Registry commenced a pilot of the docket in August 2007. This will enable the court to address the preparatory work required to support the transition of the rest of the court to the new system.

In conjunction with the implementation of judicial docket, the Brisbane Registry has since 1 July 2007 implemented the Child Responsive Program for parenting cases to prepare them for the less adversarial trial.

### Next stages

There are several more steps to be undertaken in the lead up to the implementation of the judicial docket in early 2008.

- Consultation with external stakeholders
- Evaluation of the Brisbane pilot
- Rules revision
- Case management directions revision
- Education and training development.



## Magellan Project

Cases before the Family Court that involve serious allegations of physical or sexual abuse of children are classified as Magellan cases and follow a special case management pathway.



Chief Justice The Hon Diana Bryant  
and Dr Daryl Higgins  
Australian Institute of Family Studies

In 1997 the Honourable Alastair Nicholson appointed a committee to develop a new way of managing these cases. The new approach was prompted by the increase in the number of cases involving allegations of serious abuse, the involvement of other agencies, such as state welfare departments with the families, and the need to respond efficiently and effectively.

The aim was to identify these cases at an early stage and to obtain relevant information about them where there had been an involvement of state welfare authorities and police.

A pilot project commenced in 1998 and, after an evaluation process proved its effectiveness, Magellan was progressively rolled out in all Family Court registries.

Each Magellan case is overseen by a team, the members of which handle it from start to finish and direct significant resources to it in the early stages with the aim of resolving it in six months.

The team consists of one or more Magellan judges, judicial associate(s), Magellan registrar, the Manager of Child Dispute Services, and a client services officer who acts as case coordinator.

The National Magellan Stakeholder Committee, chaired by Justice Burr, continues to act as a steering and reference group for the project and commissioned the Australian Institute of Family Studies to evaluate the project in September 2006.

In October 2007, the final report into the evaluation of the Magellan Project was launched. The author of the report, Dr Daryl Higgins of the Australian Institute of Family Studies, found that the Magellan case management model is a significant improvement on the previous procedures in the court and that those stakeholders involved in the Magellan project were highly satisfied with the management of these cases.

During the evaluation, case-file data from 80 Magellan cases that had progressed through a Magellan list were compared with 80 *Magellan-like* cases drawn from registries prior to Magellan being implemented there.

Results showed that:

- Magellan cases had a greater involvement of the statutory child protection department
- Matters were generally believed to be finalised more quickly than before
- There was better coordination and consistency of approach through judge-management (but with a concomitant higher burden and risk of burnout for judges) and
- Relevant information was available in a timely manner.

In addition to the case-file analysis, data was gained from focus groups and interviews with 51 stakeholders (Magellan judges, registrars, mediators, lawyers, police, child protection department etc.) which also found Magellan to be a successful case-management process for responding to allegations of child abuse in parenting matters.

As a result of the evaluation, the court will consider issues such as listing practices, national uniformity and the availability of judicial time with a view to further improving the Magellan case-management system.

More information on the Magellan evaluation—including a copy of the report—can be found at [www.familycourt.gov.au](http://www.familycourt.gov.au)



## Children and the court

Since its establishment in 1975, the Family Court of Australia has undertaken a key role in promoting child centred practice to ensure that the views and wishes of children affected by their parents' separation are taken into account throughout the litigation process. The adoption by the court of a less adversarial approach to conducting children's cases and the Child Responsive Program are the latest initiatives.

The changes to the family law legislation, effective from 1 July 2006, have supported approaches to how the court deals with cases involving children. These approaches bring the views and experiences of children into sharper focus and highlight to parents the damage that continuous conflict can have on their children.

### Less adversarial trials

The *Family Law Act 1975* (Division 12A of Part VII) mandates a less adversarial approach to trials in child-related proceedings. The Family Court applies Division 12A through the less adversarial trial.

The change from a traditional common law approach to a less adversarial trial has significant implications, not only for the conduct of family law litigation, but also for the conduct of litigation as a whole.

In a less adversarial trial:

- No affidavits are filed before the trial – parents only complete a questionnaire
- The judge, rather than the parties or their lawyers, decides how the trial is conducted
- The judge controls the case and keeps everyone concentrated on the major disagreements about their children's best interests
- Parents and carers can speak directly to the judge, not simply through their lawyer/s

- The judge identifies the issues to be decided and the evidence to be heard
- The judge is assisted by evidence from a family consultant.

### The Child Responsive Program

To assist the family and the court to establish arrangements that best suit children following family separation, a new program called the Child Responsive Program (conducted by family consultants) has been designed to integrate with trial proceedings.

While the role of the family consultant has always been important, their new responsibilities ensure they play a more significant role in the court process.

Under the Child Responsive Program, each case is allocated a family consultant who manages the case until it is resolved or determined. If the matter goes to trial, the same family consultant will provide evidence about the issues in dispute, the children's experience and views and referrals to other agencies. The family consultant may provide a written report to the court after further assessment of the family and significant others in the children's lives.

Where matters require a determination by a judge and orders are made, the same family consultant will follow up with the children and parents to support the implementation of orders and make referrals to community services where necessary.

The Child Responsive Program aims to integrate the court's child dispute services with the less adversarial trial approach to achieve the best outcomes for children by:

- Removing privileged child dispute services and making all interventions with the family and children admissible in Court proceedings. This reduces duplication of privileged services available in the community sector and enables the same family consultant to work with the family at the pre-trial, trial and post-trial stages of proceedings.

- Including children early in the proceedings to provide support and an opportunity for them to talk about their experiences and put forward their views.
- Encouraging parents to refocus on the needs of their children.
- Providing early feedback to parents, legal representatives and significant others from a social science perspective.
- Assisting the judge on the first day of the less adversarial trial to identify relevant issues and provide advice on referrals to programs outside the court that may assist the family.
- Providing further assessment of the family relationships and other factors as required by the judge.
- Assisting the implementation of orders by helping children and parents manage future arrangements and referring families to programs outside the court.

Following an evaluation of the pilot of the Child Responsive Program, the Program is now being extended across the Family Court in conjunction with less adversarial trials.

### **New Court fees**

Since 15 October 2007, some fees payable in the Family Court of Australia and the Federal Magistrates Court of Australia have changed. These changes occurred in an effort to streamline and align the fees between the two courts. Other court fees will be reviewed in line with the normal fee review process.

Information about the new fees is available on the [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

## **Reallocation of Resources between the Family Court and Federal Magistrates Court**

Due to the low number of filings in the Alice Springs registry, the court decided not to staff the registry other than at times when there were court sittings. Filings were to be via the Darwin registry. Due to concerns expressed about Indigenous access to the court, this decision was re-considered and the registry will be staffed for at least the next 12 months.

The Family Court and the Federal Magistrates Court operate a combined registry. This involves an integrated filing registry and the sharing of other resources including family consultants and registrars.

Until now, the two courts have shared resources in a flexible way. However, several factors including the growth of the Federal Magistrates Court, have resulted in an increased requirement for those shared resources which is difficult to reconcile. Because they have different case management approaches, the courts have agreed to separate some of the shared resources to allow the courts to employ that resource as best suited to their process.

The Family Court's Child Responsive Program will be delivered predominantly by in-house family consultants. The court, however, has determined that the service can be provided by fewer staff who are not necessarily based in the town where their services are required.

In relation to family consultancy services to be provided by the Federal Magistrates Court, work is taking place to examine the ways in which these services can most effectively be provided. The two courts are working closely together to affect the necessary transfer of both human and financial resources in support of this work.

In some locations the Federal Magistrates Court will take over in-house family consultants to deal with its work. In other areas, the service previously provided in-house will be contracted to outside practitioners. Services may be provided differently in some areas, but will not be reduced.



## Judicial and executive appointments

### Judicial appointment: Mr Peter Murphy SC



The Family Court welcomes the appointment of Mr Peter Murphy SC to the bench. He was sworn in on 11 October and brings considerable experience and expertise in family law to the court in Brisbane. Justice Murphy began his legal career as a solicitor in 1978 and between 1990 and 2004 practised as a barrister. He was appointed as senior counsel in 2004 and is also an accredited mediator and arbitrator.

Justice Murphy has contributed articles to Family Law in Australia as well as writing and presenting many papers on family law over the last decade. At the time of his appointment, he was a member of the Family Law Section of the Law Council of Australia and of the Australian Institute of Family Law Arbitrators and Mediators.

He spent a fascinating seven years in London in the early 80s working as a janitor, hospital orderly, dishwasher, waiter, shop assistant, bicycle tour route planner, freelance journalist as well as sub-editor and editor of newspapers and magazines. While all these life experiences will no doubt assist him on the bench, it is his time as a law clerk at the English Law Society Ethics Department which is likely to be the most instructive. There is little doubt that his contribution will extend well beyond Brisbane.

### Judicial appointment: Mr Stuart Fowler AM



The court also welcomes the appointment of Mr Stuart Fowler AM to the court. Justice Fowler was sworn in on 16 November and serves the court in Sydney. He was admitted as a solicitor in New South Wales in 1966 and has practiced mainly in the area of family law since.

Before joining the court as a judge, Mr Fowler was vice chairman of the New South Wales Family Law Practitioners Association. In addition to his role on the bench, Justice Fowler will continue as co-chairman of the World Congress on Family Law and Children's Rights. His services to law in Australia and internationally, particularly his role in establishing the Congress, were recognised in 2005 when he was made a Member of the Order of Australia. His broad experience gained over 40 years as a solicitor will be of great benefit to the court.

### Executive appointment: Mr Richard Oliver



Earlier this year, the court welcomed Mr Richard Oliver as Executive Director, Client Services. Richard joined the court after heading the corporate function at two Federal Government Departments—the Department of Prime Minister and Cabinet and the Attorney-General's Department.

Richard is responsible for managing the provision of high quality family law registry services to the judicial officers of the Family Court and Federal Magistrates Court and the clients and stakeholders of both these courts. There are family law registries in 19 locations throughout Australia, serving Family Court Judges and Federal Magistrates. The Family Law Courts also provide a National Enquiry Centre service through which clients can access the services of both Courts. Richard also works very closely with the Marshal for both Courts, as security for judicial officers, staff and clients is of paramount importance.

Richard's main challenge over the next year is to ensure the registry services provided by the Family Court meet the expectations of judicial officers and clients of both courts. New governance and reporting arrangements are being established to ensure ongoing high quality shared services to both courts.

## Retirement



### Judicial Registrar Dianne Smith

Judicial Registrar Smith, who retired in August 2007, was the first female judicial registrar in Queensland and only the second appointed in Australia when she took up the position in 1994.

Judicial Registrar Smith has seen the role of judicial registrars change over the years and particularly since the Federal Magistrates Court was established. In recent times, judicial registrars have become more involved in hearing cases on Judicial Duty Lists and Judicial Registrar Smith has worked tirelessly. Her patience and dedication is reflected in the esteem in which she is held by her fellow judicial colleagues, court staff and family law practitioners in Brisbane and beyond.

Prior to her appointment as a judicial registrar, she made a significant contribution to the law and her community. In the words of Helen Moye in 'A Woman's Place: 100 years of Queensland Women Lawyers', during her career in family law "Dianne Smith has seen most of the problems and she has been part of many solutions". She was Queensland's first female city solicitor and first female town clerk and the broad legal and administrative skills she gained in her early career were applied to her role as a judicial registrar.

## Vale

### Mr Ken Nixon

Mr Ken Nixon, the court's first Principal Registrar, died recently at the age of 86 years. Mr Nixon was appointed to the position of Principal Registrar before the formal establishment of the court in early 1976. Previously he had been a Deputy Registrar of the Supreme Court of New South Wales.

Assisted by others, he set up the Principal Registry (now the National Support Office) in Sydney, and recruited staff for the other Registries as they were established around Australia.

The new Court began with a backlog of cases and was inadequately accommodated in commercial buildings. From the first day, there were long queues of lawyers and litigants needing assistance.

Despite an onerous task ahead, Mr Nixon developed a simple but effective procedural system. In particular, by coordinating the work of Registrars and Court Counsellors, he made a significant contribution towards achieving the philosophy of the new Family Law Act with its emphasis on conciliation, rather than on adjudication, of disputes.

His critical contribution was the foundation of the alternate dispute resolution and sophisticated case management system that is essential for the court's work today. The court extends its condolences to Mr Nixon's family and friends.

## In the next issue

- Family Law Courts Board
- Family Law Forum
- Commonwealth Courts Portal

## Further Information

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