

CHIEF JUSTICE'S REVIEW





The past year has been a challenging and productive one for the Family Court of Australia with a number of key initiatives either completed or significantly progressed.

FAMILY LAW REFORMS

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (the Act), which came into effect on 1 July 2006, makes important changes to the operation of the family law system, particularly through the establishment of Family Relationship Centres, and to the substantive law applied by courts exercising jurisdiction under the *Family Law Act 1975*.

The primary purpose of the Act is to encourage shared parental responsibility after separation (insofar as this is consistent with the best interests of the child), promote resolution of disputes outside court and enable parenting disputes to be conducted using a less adversarial and more child focused approach. The Act also changes the way in which parenting orders can be enforced and imposes an obligation on family courts to give early consideration to allegations of violence or abuse.

The Government introduced the Family Law Amendment (Shared Parental Responsibility) Bill 2006 into the House of Representatives in December last year. It passed the House in March 2006 although a month earlier the proposed legislation was also referred to the Senate Legal and Constitutional Affairs Committee for inquiry and report. The Family Court made a short submission to the Inquiry.

The Senate amended the Bill and referred it back to the House of Representatives where it passed in late May.

During the Act's development and passage, the Family Court regularly consulted with the Attorney-General's Department (AGD) to provide feedback on the operation of the new laws and how they could be improved. Many of the Court's suggestions provided during those consultations have been incorporated into the Act.

In addition, the Family Court undertook a broad range of activities to ensure it was prepared for the commencement of the new legislation. For example, the Court delivered training programs to all Court staff, including a dedicated registrar education program. Judges and judicial registrars were also provided with information packages about the legislation at the Judges Meeting in May, and received specific training on the operation of Division 12A of the Act, which contains principles for the conduct of less adversarial proceedings in children's cases. The Court's Case Management Directions, Case Management Manual and benchbook were all reviewed to ensure consistency with the changed laws, and the Court's forms and brochures have also been updated.

Additionally, the Court issued Practice Direction Nos. 1 and 2 of 2006 to give the legal profession guidance about transitional arrangements and the conduct of child-related proceedings. Referral protocols between the Family Law Courts' National Enquiry Centre and the Family Relationship Advice Line (AGD) have also been developed.

FAMILY LAW AMENDMENT RULES 2006

The *Family Law Rules 2004* were amended by the *Family Law Amendment Rules 2006*, which came into effect on 1 July 2006. The purpose of the Rules amendments was to cater for the commencement of the new family law legislation and the *Jurisdiction of Courts (Family Law) Act 2006*, as well as clarifying issues and procedures.

The Rule changes also amend various delegations and introduce new forms. The development of new Rules and forms was a priority project for the Court's Rules Committee during 2005-06.

FAMILY LAW COURTS BOARD

The Family Law Courts Board, comprising of the Chief Justice of the Family Court, the Chief Federal Magistrate of the Federal Magistrates Court and the Chief Executives of each court, established during the previous year to oversee the coordination and management of the shared arrangements evolving through the combined registry initiative and other shared services arrangements, continued to meet during 2005-06.

The Board has functioned effectively in considering and working towards the resolution of cross-court issues.

COMBINED REGISTRY

In July 2004 the Family Court and the Federal Magistrates Court (FMC) commenced work on a combined family law registry. The Combined Registry Program is managed by a steering committee comprising the two Heads of Jurisdiction, the Deputy Chief Justice, a Federal Magistrate, the two Chief Executive Officers, and a representative from the Attorney-General's Department.

The Combined Registry Program has five key aims:

- reduce confusion for clients through a single point of filing and the introduction of a common form
- reduce the number of times clients need to attend court and ensure each event adds value and progresses the case towards a conclusion
- provide earlier access to a judicial officer

- provide a single entry point – it has been agreed by both Courts that the FMC will ultimately provide the single entry point, and
- provide services that make the process more timely and help to improve community perception of the Courts.

Sixteen individual projects are being progressed as part of the Combined Registry initiative. The Family Court continued its work under the Combined Registry Project during 2005-06 with a number of significant initiatives being completed.

Over the past 12 months, the Family Court and Federal Magistrates Court have:

- established a national family courts telephone enquiry centre, accessible for the cost of a local call. Clients are able to obtain information about family law, applying to the Family Law Courts and the forms and publications of both courts. General information about a client's case, for example the date of the next court event, can also be provided
- implemented the first stage of the family law courts website, which provides information, brochures and forms for both the Family Court and the Federal Magistrates Court (www.familylawcourts.gov.au)
- developed a series of pilot projects involving the use of registrars to support Federal Magistrates in Brisbane, Melbourne, Parramatta and Canberra registries
- standardised, where appropriate, the more than 200 letters commonly used by registries under the Family Law Registry banner
- developed a nationally consistent approach for registries to handle transfers between the Family Court, the Federal Magistrates Court and state courts
- integrated the Family Court and FMC hard copy files into one Family Law Registry file cover, to be used from 1 January 2007 onwards, and
- developed and installed consistent signage to identify family law registries in each location.

CHILDREN'S CASES PROGRAM / LESS ADVERSARIAL TRIALS

The Children's Cases Program (CCP) was developed by the Family Court as a pilot for conducting child related proceedings in a less adversarial way. The pilot, which was conducted in the Sydney and Parramatta Registries, has now concluded with data collected on 200 cases up to 31 December 2005. In March 2006, Dr Jennifer McIntosh of Latrobe University presented the Court with a report that explored the impact of CCP on parenting capacity and child wellbeing. The report compared data from parents participating in CCP with similar data from parents in a control group of cases that were finalised in the same period.

The CCP group reported:

- more satisfaction with post-court living arrangements, including for the children
- significantly less difficulty in managing conflict
- a positive impact of the court process on themselves as parents
- significantly less damage to the parenting relationship post-court and to the parent child relationship, and
- greater contentment and emotional stability in children after court.

A final evaluation report prepared by Professor Rosemary Hunter of Griffith University in Queensland, similarly found that, as a less adversarial and more child focused process, the CCP has the potential to assist parents to parent more cooperatively.

Professor Hunter also found that the CCP pilot resulted in a faster court process, and parties who had participated in CCP were generally more satisfied with that process than parties whose dispute was determined using a traditional adversarial approach.

During the reporting year, the Court extended the pilot in New South Wales and planned to implement the program throughout the Court on a national basis by 1 July 2006.

The Court now intends to use the CCP model it developed to implement the provisions of Division 12A of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* which establishes principles for the conduct of child related proceedings in a less adversarial way. This new process is called the 'Less Adversarial Trial' for which the Court has promulgated a Practice Direction dealing with less adversarial hearings.

CHILD RESPONSIVE DISPUTE RESOLUTION PROGRAM

In June 2005, the Court received \$239,604 in funding from the Attorney-General's Department to pilot a new model for working with families. The project, entitled the 'Child Responsive Dispute Resolution Program', was funded on a one-off basis for 12 months and commenced in the Court's Melbourne Registry last October in tandem with the Children's Cases Program.

The pilot program provides for greater focus on children by obtaining children's views and interviewing parents earlier. It also provides for the same family consultant (formerly 'mediator') to work with a family throughout its time with the Court, and to feedback views to parents at various stages throughout the Court process. Additionally, the Court will be able to refer people to community-based mediation and conciliation services if there is a real potential to resolve matters without further Court involvement. All interventions between the family and the family consultant (formerly 'mediator') are reportable, meaning they are not confidential and can be used in court.

While the formal evaluation of the pilot is yet to be completed, the preliminary results are very encouraging, particularly in terms of early settlement rates and parties' willingness to try new parenting arrangements. The Court will consider the feasibility of introducing the new approach on a national basis after the evaluation is completed. National implementation, however, is dependent upon the availability of adequate funding.

OPENING OF THE NEW ADELAIDE COURT

Adelaide's new registry was officially opened in February 2006 by the Hon. John Howard MP, Prime Minister of Australia.



Chief Justice Diana Bryant with Kuarna elders, Josie Agius (left) and Lewis O'Brien, at the opening of Wadna Wadna Wodli in May 2006.

Around 50 Family Court staff members, including family consultants (formerly 'mediators'), librarians and more than 30 client service staff, now occupy the Family Court's new premises. Six judicial officers and six registrars sit in 10 courtrooms, including the Family Court's specially designed Indigenous courtroom.

The Indigenous courtroom, known as 'Wadna Wadna Wodli' (meaning 'a place of decision-making'), was designed to recreate, as close as possible, an open air Aboriginal court (see front cover). The Court's Aboriginal and Torres Strait Islander Committee consulted extensively with the local Kuarna community throughout the courtroom's design and construction process.

A key feature of Wadna Wadna Wodli is the circular seating, which enhances the concept of the Court conducting an inclusive process to determine the best interests of the child. The placement of the bar table at a similar height to the bench, the warm earthy tones and the use of woodwork and other sympathetic materials are also an essential part of the courtroom's design.

JUDICIAL WORKLOAD

At the commencement of the 2005-06 fiscal year there were 44 judges and six judicial registrars. At the end of the financial year there were 41 judges and six judicial registrars.

The number of Applications for Final Orders filed in 2005-06 per judicial officer was 232 and the number finalised was 274. In 2004-05 the corresponding figures per judicial officer were 234 applications filed and 277 finalised. There are three facts of significance about these figures.

The first is that they relate only to the Court's caseload at first instance and do not include appeals which form a significant part of the Court's core business.

The second factor is that the cases pending reduced from 11,026 at 30 June 2005 to 9050 at 30 June 2006. This shows that cases are being disposed at a higher rate than applications are being filed. The final factor is that in 2004-05 the percentage of cases settled at trial was 54 per cent whereas in 2005-06 it had dropped to 53 per cent. The corresponding measure for 2003-04 was 59 per cent. This reflects the fact that the cases being dealt with in the Family Court of Australia are the more complex, difficult cases and thus less likely to settle.

The Court would like to see a continuing reduction of the pending cases list which would subsequently lead to reductions in the time taken for cases to be heard. However, this depends upon a stable number of judicial officers to perform the work, timely replacement of judicial officers or, if judges are not replaced upon retirement, the capacity to transfer work to the Federal Magistrates Court.

Each financial year, the Family Court supplies services free of charge to the Federal Magistrates Court. These services are provided from the Court's annual appropriation and include:

- client services
- registrars
- family consultants (formerly 'mediators')
- property
- information technology, and
- security.

The provision of these services must be taken into account when considering how the Family Court's budget is expended.

In 2006-07 the Court is seeking to transfer resources to the FMC so that it is able to purchase these services back from the Family Court. This transfer will provide greater transparency to Government on how the Court's costs are expended, as well as provide greater control and accountability to the FMC. Accordingly, the memorandum of understanding with the FMC will need to be modified to a purchaser/provider model and the Court's outputs and respective unit prices will need to be revised in the Portfolio Budget Statements.

CONCLUSION

The Family Court of Australia is reducing in size while the Federal Magistrates Court continues to grow. In particular, the number of judges and judicial registrars has decreased from 48 to 41 since the introduction of the Federal Magistrates Court in 2000. This ongoing diminution requires careful management of the workload between the courts to ensure that the Australian community continues to receive a high quality and timely service in both courts which are integral parts of the family law system.

