

PART 1
CHIEF JUSTICE'S REVIEW





Chief Justice Diana Bryant

CHIEF JUSTICE'S YEAR IN REVIEW

The past 12 months have to some extent seen a marking of time for the Family Court.

In March 2008, the Attorney-General announced a review of the administration and delivery of family law services by the Family Court and the Federal Magistrates Court. Mr Des Semple of Des Semple and Associates was appointed by the Attorney-General as a consultant to report to him. Submissions were called for and obtained, including submissions from the Family Court, and Mr Semple subsequently completed his report.

The Attorney-General then released a discussion paper, *Future Governance Options for Federal Family Law Courts in Australia—Striking the Right Balance*, in November 2008 and further submissions were obtained.

On 5 May 2009, the Australian Government announced its decision regarding the future of the courts. The Attorney-General proposes to merge the Federal Magistrates Court with the Family Court and the Federal Court. The proposed merger within the federal family courts will be by the creation of a second division within the Family Court.

By the end of the financial year, preparation of the legislation to implement the merger was underway. The government is working towards having legislation in place in early 2010.

It is fair to say that the period of uncertainty leading to the final decision has been a source of distraction for both courts.

Family Law Courts administration

In 2005, discussions about a combined registry and shared services model for the administration of the Family Court and the Federal Magistrates Court took place, involving executives from both courts. There was no serious progress in those initial discussions, but on 15 August 2008 the Chief Executive Officer (CEO) of the Federal Magistrates Court wrote to the Attorney-General's Department raising (amongst other issues) his concerns about the Court's inadequate financial systems.

The department's response stated that these concerns would be addressed if the two courts were to merge their administrative support and, with the agreement of both courts, this could occur quite separately from the government's review of the Family Law Courts.

Acting on this advice, in October 2008 the Family Law Courts Board (which then comprised the Chief Justice of the Family Court, the Chief Federal Magistrate and the CEOs of both courts) agreed to combine the courts' corporate services, which included functions such as human resources and payroll, property management and financial management. A single corporate services team, servicing both courts, was successfully implemented early this year.

The CEO of the Family Court, Mr Richard Foster PSM, was appointed Acting CEO of the Federal Magistrates Court on 26 November 2008.

In March 2009 the two courts planned to integrate other areas of administration in advance of the government's decision on any merger of the courts.

The arrangements to enable one administration can be made by the Chief Justice of the Family Court and Chief Federal Magistrate of the Federal Magistrates Court under the relevant Acts governing the administration of those courts.

To assist in advising them, the committee that had previously been meeting (the Family Law Courts Board) was replaced by the Family Law Courts Advisory Group. The membership of the advisory group comprises the Chief Justice, the Chief Federal Magistrate, the CEO of each of the courts, a judge nominated by the Chief Justice, a federal magistrate nominated by the Chief Federal Magistrate and Mr Ian Govey, Deputy Secretary of the Attorney-General's Department.

By the end of the financial year, the establishment of one administration for the courts was virtually complete and hereafter the court services will be provided by a joint administration. These arrangements will also be reflected in the legislation merging the Federal Magistrates Court with the Family Court.

As the legislation—and its passage through Parliament—still seems to be many months away, the courts are working together in other areas identified by the government's reviews as requiring greater clarity and cooperation.

Reporting of case outcomes

In April 2007, the Court began capturing in its electronic database some basic information about what orders are being made about the allocation of parental responsibility and the amount of time children are to spend with both their parents. Some basic information about why certain decisions were being made was also collected.

Collection of data enabled the first report on the types of orders being made to be made available in March 2009 (see page 15 for more information). The release of this data received considerable interest from the press and interested groups in the community. Reporting will take place on an annual basis.

In the 2006–07 financial year, I indicated that the process undertaken by Family Court judges in hearing and determining parenting and property disputes would be rendered more transparent as a result of the Court's decision to routinely publish decisions at first instance in addition to those by the Full Court on appeal.

In order to facilitate the publication of decisions which conform with the restrictions on publication imposed by section 121 of the *Family Law Act 1975*, decisions are anonymised prior to publication and pseudonyms are allocated in substitution for the parties' actual surnames. Despite this, it seems that because real names are not used, some members of the public still criticise the Family Court for being 'secretive' and not publishing its decisions. The identification of the parties by their true names would not, except in limited circumstances, comply with the provisions authorising publication in section 121.

The use of pseudonyms makes no difference to the transparency of the publication of the judgments by the Court, which are available at www.austlii.edu.au and on the Family Court website at www.familycourt.gov.au.

The press has given increasing attention to the judgments, and it is now common to see new decisions being the subject of reporting and commentary in the press. As this was the original intention of the publication, I am pleased to see that there is now public dissemination and debate about the decisions of the Court. It is, however, important that the decisions be accurately reported so that the community has an opportunity to see how decisions are reached.

Case management

During the year, the Court has been implementing new case management processes structured around the judicial docket. New rules were made by the judges on 1 March 2009, incorporating the new case management arrangements. The Court remains committed to ensuring that work is done expeditiously and efficiently and has been working on different arrangements in different registries to make sure that listings are efficiently done and cases are ready to proceed without delay.

Challenges for the Court

One of the most pressing challenges for the Family Court in the present environment is one similar to that facing the Federal Magistrates Court. There have been a number of judicial retirements in the Family Court over the past 12 months and more are expected. The number of judges is decreasing, reducing the court's capacity to manage its workload. At the end of June 2008 there were 39 judges of the Court, including the Chief Justice and Deputy Chief Justice. By June 2009, there were 35 judges, and the size of the Court is expected to reduce by another five or six judges by the end of 2009–10. The workload of the Federal Magistrates Court means that it, too, is facing increasing pressures. This comes at a time when both courts can expect an increase in their workload as a result of the de facto property legislation.

The *Family Law Amendment (De facto Financial Matters and Other Measures) Act 2008* was passed on 11 November 2008 and the substantive provisions in relation to de facto financial cases commenced on 1 March 2009. The new laws enable de facto couples who meet the threshold requirements to apply, as married couples can, to the Family Court and the Federal Magistrates Court for property and spousal maintenance matters pursuant to the Family Law Act. Cases between de facto couples concerning parenting arrangements for children have been within the federal family law regime since 1988.

Without replacement appointments to the Family Court or further appointments to the Federal Magistrates Court at a time when the workload is increasing because of de facto property disputes, there is pressure on both courts.



eFiling

Update on current initiatives

Electronic filing

Stage 1 of electronic filing (eFiling) in family law matters commenced on 16 August 2008, making it possible for lawyers to file supplementary documents via the Commonwealth Courts Portal. At the end of June 2009, 667 law firms had registered for eFiling and approximately 5900 individual users had registered. This includes practitioners, members of the public, journalists, academics, judicial officers and staff of the courts. Stage 2 of eFiling is due to be launched later in 2009. Work has also commenced on a major enhancement which will enable clients to view their own personal dashboard when they log onto the portal. This will provide them with a snapshot of the latest happenings and what is coming up in relation to their case. For more information, see 'Initiatives of the Family Court' on page 18.

Less adversarial trials

Division 12A of Part VII of the *Family Law Act 1975* commenced on 1 July 2006, enabling the Family Court's model for a less adversarial trial to be applied to all new child-related proceedings in the Family Court, without the need for consent of the parties.

To facilitate the learning and sharing of best practice, a less adversarial trial education package was developed and launched in June 2009. The education package is a valuable demonstration and education tool for other jurisdictions wishing to learn about less adversarial trials and provides the judiciary with a unique opportunity to see others in action.

The package contains three products: a DVD featuring three actual parenting cases, interviews with judges about their approaches and impressions of the less adversarial trial, and interviews with parties and lawyers; a handbook that provides background and context and which links the practices seen on the DVD to the less adversarial trial framework; and a copy of *Finding a Better Way*, which details the Court's journey towards implementation of a less adversarial model.



Less adversarial trial package

The package has been developed to highlight the experiences and practices of other judges and to give the legal profession and other interested parties—both here and overseas—an insight into the way the principles of conducting child-related proceedings are put into practice.

For more information, see Chapter 2 'Initiatives of the Family Court' on page 19.

Family Violence Best Practice Principles

The last piece of the Court's *Family Violence Strategy 2004–05* was put into place in April 2009, when the *Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged* were launched by the Attorney-General.

The *Best Practice Principles* are for use by the judicial officers in matters which involve allegations of family violence. They are relevant to any dispute in which violence is alleged, whether it is one of the parties or someone else connected to the case who threatens or commits violence.



Chief Justice Bryant with Attorney-General Robert McClelland at the launch of the Best Practice Principles

The principles operate as a checklist of matters that may be considered when a judge is deciding the next step in a case. They also include matters a judge may want to consider when they have made a finding that family violence has occurred or that there is an unacceptable risk of a child being exposed to family violence.

When a judicial officer has determined that it is in the child's best interests to communicate or spend time with a person against whom a finding has been made, the best practice principles assist the officer in deciding what particular arrangements should be put in place. These could include time being spent at a children's contact centre or having a family consultant undertake a supervisory role.

The *Best Practice Principles* are intended as an aid to assist judicial officers while still allowing complete judicial discretion. They are also available for the use of federal magistrates hearing family law cases and have been published on the Court's website for the benefit of interested persons.

For more information, see 'Initiatives of the Family Court' on page 23.

