

## INAUGURAL FAMILY LAW CONFERENCE

### NOTES FOR GEORGE TURNBULL PLENARY PANEL DISCUSSION 19 FEBRUARY 2009

I too would like to acknowledge the (Ngambri and Ngunnawal peoples, the) traditional custodians of the Canberra area and pay my respects to their elders past and present.

Let me preface what I say by mentioning that I don't necessarily speak on behalf of all my colleagues – some may well want to disown me altogether when they hear what I have to say – but of course what I say is based on the knowledge and experience of Legal Aid practitioners.

Whatever else might be said about the Family Law System it is a system which has undergone enormous challenges and change in recent years far more so than any other area of the justice system and it is a system where all participants are genuinely striving for better outcomes for families and children.

From a Legal Aid perspective there are many examples of what is being done well.

**To mention just some of those:**

- The less adversarial system, where it operates, works better because the procedural and substantive focus is on the children's best interests rather than the different positions of the parents.
- The establishment of Family Relationship Centres throughout Australia has created high visibility and access for the general public as both a key entry point to the family law system and referral point for family support services. .
- The expansion of Children's Contact Services throughout Australia, particularly into regional centres, has greatly assisted families, legal service providers and courts. These services have also helped ensure greater protection for children from risks including exposure to high conflict situations.
- The introduction of compulsory dispute resolution has encouraged the greater use of alternative mechanisms for resolution other than court proceedings.
- And the introduction of quality assurance measures for Family Dispute Resolution Practitioners, including the requirement

for ongoing training, formal accreditation standards, registration and complaint mechanisms, is a positive step towards delivering to clients quality alternative dispute resolution processes.

- There is better recognition across the system but particularly in the courts, of the effects of violence and child abuse on families and children (for example, programs such as Magellan and Columbus). Screening tools and case management strategies have been developed to assist affected families. These problems often arise in combination with alcohol and substance abuse and/or mental health issues. Similar recognition and appropriate case management strategies are required for these multiple issue families.
- Screening processes in relation to family violence and child abuse in particular have improved considerably across the family law system. The dialogue about screening of family law clients between agencies and professionals involved in the sector is improving.

The establishment of Family Pathways Networks in each State is a particularly welcome initiative. Such networks show that an integrated response to separating parents and families is

best achieved (with all relevant stakeholders) at a local level (i.e. where families actually access the system).

Opportunities to produce collaborative inter-disciplinary problem solving for separating families (eg development of intensive and specific referral protocols between agencies etc) have come from these networks where agencies share important practical information on a regular basis, up skill, network and develop trust in and knowledge of each others services.

**Challenges:**

But we all know we still have a long way to go



- We know that serious issues continue to arise as a consequence of the State/Federal jurisdictional division between child protection and child related family law matters as reflected in current Commonwealth and State legislative and funding arrangements. These issues include the lack of information sharing protocols between the two jurisdictions. In our view no thorough review of the family law system can ignore this divide – it is one of the biggest challenges facing the sector.

- Also, in many regional areas of Australia clients do not have the same access to the less adversarial model available to metropolitan clients due to court funding constraints, requiring a continuing focus on the adversarial positions of the parents in those areas. Much of the family law system is still city-centric. This is also the case in respect of the availability of the family support services required by many families in the court system.
- The system has become more costly and time-consuming, in part due to increased court events in children's matters which quite rightly get priority.
- Consequently and additionally, there is a lack of access to the court for highly complex matters involving multiple issues for those who truly need it (typically being disadvantaged clients) through a lack of sufficient legal aid funding.
- The conduct of property matters is procedurally and legally complicated particularly for self represented litigants. Alternatives to litigation are limited and funding for assistance even for disadvantaged clients is similarly limited.

- We think there is a need to develop multi disciplinary training opportunities for judicial officers and to prioritise that training for those concerned. Judges after all make the decisions upon which legal advice and practice is based.



- There is a need for more effective use of the media to support the development of the family law system and the cultural changes required, and provide wider education, for example in relation to appropriate parenting arrangements for infants and 50/50 shared care arrangements in high conflict cases.

- Notwithstanding what I said about the benefit of Family Pathways Networks, collaboration across the family law system is still in many ways embryonic – to meet this challenge more extensive opportunities are required for multi-disciplinary training involving lawyers, mediators and social scientists to promote improved understanding of the different but complementary roles that each play in the family law sector. This training should receive appropriate support and recognition from the relevant professional bodies of each discipline. This I gather is the subject of Professor Helen Rhoades keynote address after morning tea.

- And where a party has consistently breached court orders, particularly in child related matters, current court and

enforcement processes need to be streamlined to enable appropriate and timely sanctions to be imposed. – The current lack of effective processes to address behaviour of this kind increases conflict within the family, the overall costs of the conduct of the matter and the financial and emotional stresses for the affected party. A similar approach is required in relation to parties who make multiple applications in relation to the same or similar issues within a minimal time frame.

- Collaborative law and the role, if any of arbitration might be explored as practical alternative dispute resolution options.
- It is highly desirable to provide a system of intake that reduces the need for clients to retell their stories and identifies multiple issues clients that are likely to require early, intensive, coordinated and multi-disciplinary case management.
- The need for legal research in family law is at a peak. Contemporary research around family law issues in Australia is primarily coming out of the Institute of Family Studies, which has a social science base and agenda. While the Institute deals with the full range of issues regarding families,

it might be worthwhile to further sponsor opportunities for partnerships between the Institute and legal researchers specifically relating to separation and the legal framework that this occurs in.

## **TURN OVER**

### **OPTIONAL**

→ By way of example from Northern America and Canada, the AFCC (Association of Family and Conciliation courts) largely grew from leading academics sharing information. Although it was cross sector, legal research from a court base was clearly evident from the outset and continues today. Many of the leading research studies and programs showcased at the annual AFCC conference in 2008 related to cutting edge, multi issued separation cases where these families intersected specifically with the courts.

It seems the level of research sponsored in North America and Canada where social science and law stand as partners, has provided the opportunity for the courts to truly embrace non-litigation options even in the  
→ courts themselves (eg see BC client intake assessment for court based services also in Connecticut)



## Turning briefly to the Draft Blueprint

**In relation to Question 2, what issues raised in the draft Blueprint do you agree with/disagree with and why?**

- I think we would all agree generally with the summary of what makes a more effective family system as set out in the draft.
- From the perspective of National Legal Aid, areas to focus on include strengthening cultural accessibility and access to justice for disadvantaged clients.

I have already referred to many of the positives in current practice in my suggested answers to Question 1 but we think that the description of a more effective family law system could perhaps be improved by including a number of key issues that are not identified in this section of the Blueprint including:

- A family law system framework based on sound, multi-disciplinary contemporary research (particularly including research carried out in Australia, taking into account our unique cultural and geographical



requirements). This framework would involve not only direct research by research providers such as AIFS (Australian Institute of Family Studies) but also multi-disciplinary research and study through universities;

- Another key issue not mentioned is access to sufficient and competent legal advice and representation.
  
- It would be helpful for the Family Law Act to be thoroughly reviewed and re-drafted so that it reflects all of the changes in a structured, simplified and easy to read format.
  
- Another area to consider is early education in relationship, communication and conflict resolution skills. Preventative programs need to be developed in schools that emphasize appropriate communication and conduct within relationships. For example, government support should be provided for programs such as the Schools Conflict Resolution and Mediation Program (SCRAM) which operates in a number of States including WA. SCRAM is an interactive role play competition for Year 9 & 10 high school students aimed at encouraging the development of peaceful dispute resolution skills and awareness in secondary school

communities. Students mediate simulated disputes which relate to their everyday lives based on scenarios prepared by volunteers working with the program.

Without government funding, support and assistance, the development of such programs depends solely on volunteers and their effectiveness is inherently limited through time and resource constraints.

### **Question 3.**

**How do we make sure that people get the services they need, irrespective of entry point?**

- One proposal would be to create a national front end screening point for entry for all clients into the family law system (telephone, internet, in person) providing information, assessment and referral which is separate from service delivery. This would include immediate access to both clinical and legal expertise in identifying the correct path for all matters.
- There would need to be provision of consistent training for all intake officers based on appropriate research and on one screening/intake tool.

- In addition there would need to be widespread education for all service providers about the role of the national entry point and screening/intake tool.
- Standard referral protocols and ways of transferring relevant client information between services would also need to be developed.

**This links in with Question 4**

**Can the ideal pathways outlined in the draft blueprint be used as a starting point for a National Blueprint (para 6-18) Q2-3 and Attachment C**

- Yes, it's a good starting point, but if we were to adopt the proposal for a national screening entry point that I referred to a moment ago, you might incorporate the Tier 2 intake, screening and assessment processes into Tier 1.
- The Tier 1 entry point would contain both clinical and legal expertise. A purely legal intake may not recognize all clinical issues and a purely clinical intake may not recognize legal issues and, in particular, may incorrectly assess urgent legal matters.

- A new Tier 2 would pick up all the non court based or non court directed services including family dispute resolution processes both legally and non legally represented models, however all should include appropriate legal advice at appropriate stages during the process and prior to finalizing any agreement.
- Tier 3 would encompass court based services reserved for high conflict, serious violence and child abuse matters, which often arise in combination with alcohol and substances abuse and/or mental health issues and matters that have not reached agreement at Tier 2. The courts (Tier 3) should have wide powers in relation to compulsory education, post order and monitoring programs both within and outside the court.
- Anyone entering Tiers 2 and 3 must show that they have been through the Tier 1 screen and this information should be made available to the selected service provider.

This proposal would be in keeping with the Report of the Family Justice Reform Working Group (British Columbia CA) in May 2005 which proposed the introduction of the “Family Information

and Referral Hub”. In introducing the proposal the working group said and I quote:

“Chapter 3 describes the front end of our proposed family justice system and says that it is here that resources should be focused. Families find the justice system complicated and confusing. Confusion can heighten and prolong conflict, especially for the increasing number of people who do not have legal representation. Information is a dispute resolution tool and should be provided through an accessible single point of entry. The entry point we propose is the Family Justice Information Hub. This would be the front door to the family justice system, the co-ordination point for local services for families, for legal information and advice, for assessments and referrals. The Hub would also be available over the internet and by telephone.”

The significant difference between this and our current system of FRCs is the involvement of lawyers from the outset as an integral part of the process – providing both legal information, advice and assessment for legal services where deemed necessary. This is the fundamental difference.

I think that’s probably all I wanted to say at this stage – thank you.

End

[http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf)

**Notes:****Note 1:**

The Challenge of the jurisdictional divide between child protection and child related family law matters:

**Example:**

DCP had concerns about the welfare of two children in the care of their mother. The children had different fathers. DCP placed the older child, aged 6 years, with the child's father. DCP has commenced protection and care proceedings in relation to the other child (aged 2 years) who has been placed in foster care. There are issues in relation to the mother's contact with both children and the children's contact with each other. The mother has raised these issues with DCP and has been advised that the contact arrangements between the siblings and the arrangements between the mother and the older child are not considered to be an issue for DCP as the older child is not the subject of protection proceedings and, as such, is not the Department's responsibility. The Family Court does not have the power to make orders in relation to the mother's contact with the child in the care of DCP or the contact between the siblings without the consent of DCP, which would require the Department to participate in the Family Court proceedings. The Children's Court does not have power to make orders in relation to the mother's contact with the child that is not in the care of DCP, or orders in relation to the contact of the children with each other, as the father of the older child is not a party to the Children's Court proceedings. If an Independent Children's Lawyer (ICL) was to be appointed for the child in Family Court proceedings between the parents, an application would have to be made for that person to also become the child representative in the Children's Court proceedings. If a single expert (psychologist or social worker) was to be appointed to prepare a report to assist the Family Court to make a decision about the care arrangements for the child the subject of those proceedings, applications will be required in both Courts to enable the two children to be involved in the preparation of the report and for the report to be given the status of a Court requested report (section 139 Children and Community Services Act 2004) in the Children's Court proceedings.

**Note 2:****SCRAM:**

SCRAM is an interactive role play competition for Year 9 & 10 high school students aimed at encouraging the development of peaceful dispute resolution skills and awareness in secondary school communities. Students mediate simulated disputes which relate to their everyday lives based on scenarios prepared by volunteers working with the program.

The SCRAM competition operates currently in Western Australia and New South Wales. Over the years it has operated in other States also. There are currently approximately 10 schools participating in the Western Australian program and over 60

participating in NSW. The WA competition is run under the auspices of the Western Australian Dispute Resolution Association and the NSW competition is run by the Law Society NSW.

The competition operates from around March - August each year. Students are provided with a manual and a series of coaching sessions.

In Western Australia volunteers who are experienced mediators go into the schools to provide coaching; in New South Wales the teachers carry out the role of coach for the competition. The SCRAM calendar starts with a practice round and then 3 or 4 scoring rounds which are adjudicated by experienced mediators. Each school generally has between 6 - 10 students involved. For each school in each round, there are two co-mediators, 2 students play one side of the dispute with different personalities/factors involved (Party A1 and Party A2), and another 2 students play the other side of the dispute with different personalities/factors involved (Party B1 and Party B2).

Prior to each SCRAM mediation round, all participants including the mediators are provided with a set of common facts, the scenario for that round. At the commencement of the mediation round, the parties are each given each individual confidential facts which they individually use to fill out the scenario. The mediators do not have access to the confidential facts. The parties should not reveal all confidential facts straightaway but are coached to bring them into the mediation session as it unfolds, as would happen in a real mediation situation.

Adjudicators assess the teams on the performance of both the co-mediators and of each of the parties, in terms of their approach to the mediation and the authenticity of the parties' role play. In particular, the adjudicators consider each stage of the mediation model used in SCRAM and the active participation of each of the team members.

Different school teams approach the SCRAM competition in different ways. Some schools rotate the role of the mediators and other schools may choose to identify 2 students who will act as co-mediators throughout the competition. In each State a grand final is held between the two best teams. In Western Australia there are a number of sponsors and a number of different awards for students and coaches taking part in the competition.

In September 2008 an interstate Grand Final took place as part of the National Mediation Conference for the first time at the Perth Hyatt Hotel between Christ Church Grammar School (WA) and Seven Hills High School (NSW) with Christ Church Grammar winning a closely contested final. A highly experienced team of adjudicators assessed the teams, led by John Wade of Bond University. There have been previous interstate grand finals between NSW and Victoria but this was the first time that an interstate grand final took place at the National Mediation Conference".