



**Attorney-General's Inaugural Family Law System Conference**

**19 – 20 February 2009, Canberra**

**Speaking Notes**

**Geoffrey Sinclair, Chair Family Law Section**

As family lawyers we are required to consider and follow the law. The *Family Law Act 1975* (the Family Law Act) sets out the principles for conducting child-related proceedings, including as a first principle the consideration of the needs of the child and an emphasis on safety, and the conduct of proceedings in a way that promotes cooperative and child-focused parenting.

Underscoring that, there are the *Best Practice Guidelines for Lawyers Doing Family Law Work*. These guidelines arose from a recommendation made by the Family Law Pathways Advisory Group in their 2001 Report, *Out of the Maze*. They were drafted by a joint committee of the Family Law Section of the Law Council of Australia and the Family Law Council.

The aim of the guidelines is to encourage current best practice in family law. Best practice in family law is characterised by:

- A constructive and conciliatory approach to the resolution of family disputes.
- The minimization of any risks to separating couples and/or children by:
  - (i) alerting separating couples to treat safety as a primary concern
  - (ii) avoiding arguments in front of children, and
  - (iii) keeping children out of conflicts arising between separating couples.
- Having regard to the interests and protection of children and encouraging long-term family relationships.
- The narrowing of the issues in dispute and the effective and timely resolution of disputes.
- Ensuring that costs are not unreasonably incurred.

The guidelines do not create new duties, or override lawyers' duties to their clients or their duties as officers of the court. These duties are set out in the Family Law Act and in case law. It may sometimes be impossible to comply with the guidelines because clients refuse to take advice or it may not be possible to meet the ideals because of the circumstances of the particular case. It is important for us to remember that family matters are diverse and a one-size-fits-all approach should not be imposed.

While the Family Law Act and Best Practice Guidelines set the framework, the critical step is ensuring that there is an ongoing commitment to education so that practitioners meet those standards. The Family Law Section, and each and every state association of family lawyers around the country, has a very strong commitment to ongoing professional development, which includes a focus on non-legal skills. Our professional development activities regularly include expert speakers and panelists from the fields of psychology, social work, academic research and related disciplines.

In October last year we launched a new professional development activity – the *Essentials of Family Law Practice*. This is an intensive two and a half day program which has been designed to contribute to the development of best practice standards amongst family lawyers. The program was developed in partnership with Zoe Rathus from Griffith University and Donna Cooper from Queensland University of Technology. It is aimed at young practitioners or those who are new to the practice of family law. In designing the program we drew on a multi-disciplinary approach with a strong emphasis on alternative dispute resolution, and also a strong emphasis on the ethical obligations of family lawyers in conducting proceedings related to children. In the presentation of each module of the program we worked with judicial officers from the Family Court, the Federal Magistrates Court, and leading practitioners from the law, family consultants and the Legal Services Commissioner. We plan to run two further programs this year – one in Melbourne and one in Sydney.

At the other end of the spectrum our national Family Law Intensives are aimed at more experienced practitioners – these are run each year in Melbourne and Sydney. The Sydney Intensive held last weekend attracted 220 delegates. The program included a plenary session focusing on family violence presented by a leading social scientist, a judge and a lawyer. There was also a session on ethical responsibilities.

The Section, also in partnership with National Legal Aid, presents the Independent Children's Lawyer Training Program which is again an intensive two-day program designed to train those representing the child's best interests.

Our biennial National Family Law Conference brings together many stakeholders in this important area of law, including representatives from government, the judiciary, academia, non-government organisations, the practicing profession and many associated disciplines from all parts of Australia and from many other parts of the world. From very small beginnings in Hobart in 1984, the conference has grown to become by far the largest regular event in the Australian legal calendar.

As Clive Price noted yesterday the involvement of other disciplines in our biennial conferences has continued to grow in recent years and is adding value to education of family lawyers.

Good family lawyers have always recognised the desirability of parents reaching agreement about their children. When I started practice some 26 years ago, the tools available to family lawyers to help bring about that result were limited. In an area of constant change, the variety and quality of community based options, and the level of awareness among family lawyers of those options, represents one of the biggest and most important changes in the family law landscape.

With the significant increase in the number of counselling and mediation options available to the public, the profession has readily embraced the concept of dispute resolution with more and more referrals. The Family Law Section has developed for its members a referral form to assist with entry into to Family Relationship Centres (and other services). We are grateful to the comments provided by the Attorney-General's Department in the design and content of the referral form.

One of the issues for discussion today is how we as practitioners manage our ethical obligations in acting for a client that is not the child, within the framework I described earlier.

All good family lawyers try to resolve family matters. They all bring different skills to the table.

They provide a reality check for clients when discussing options for their children. They actively challenge clients on their proposals, their approach and their attitudes. All good family lawyers recognise the need to help clients focus on the best interests of the child, but what they don't do is substitute their own personal judgment for that of the parents, or the judge, as to what is in the best interests of the child.

At the end of the day we have to recognise our individual roles – we are there to assist parents to reach their own solutions in the interests of their children if they can – knowing that if they cannot the courts' onerous task is to decide for them. Once parties are in that position our job is to ensure that the case is presented in a way that meets the principles I spoke of earlier.

Quite properly, the focus of our discussions has been on resolution of issues in relation to children. However, there is one additional point which must be made. It is important to remember (particularly when talking about access to services, which must include court services) that family law practitioners and the courts also work with separating families to help resolve financial disputes. Quite often, the resolution of a financial dispute will in itself have a significant impact on the children in that family.

We also need to remember that people resolve their disputes at varying points along the pathway. In many cases, the availability of an "umpire" in the form of the court helps that resolution. Conversely, if the court cannot be accessed without inordinate delay, that delay may contribute to poor quality resolutions and an inadequate address of power imbalances - *acquiescence by attrition*, rather than true agreement. Proper resourcing of both family law courts is fundamental to ensure that poor quality outcomes do not occur.

It is important to recognise the positive aspects of the 2006 reforms, for example, anecdotally parents are spending more time with their children through significant and substantial time orders.

Family lawyers and family dispute resolution practitioners (and others in community) are working closer together to bring about agreement.

As we continue to work together to improve the system we must not lose sight of its inherent strengths.

All elements of the system are focused on dispute resolution outside the court processes. That can only be a good thing. Filings in the family courts are down, as we are told by 18%, but we must ensure that the court system remains adequately resourced so that it can continue to help those families who simply cannot resolve their own disputes without access to the court.

All of the professional disciplines involved in family dispute resolution whether legally based or social science based have a shared commitment to ongoing education, continuous improvement, and child focussed practices. That commitment has been amply demonstrated by the attendance of all of us at this conference.

Among the options we could consider as we move forward and continue to seek improvement is, as was observed yesterday, a reduction in duplication of efforts by the various parts of the system.

If, for example, the family dispute resolution practitioner is seen as the gatekeeper to the court system, what can we do to improve the quality of the transfer once it becomes clear that access to the court will be required? Why not make use of the expertise of the family dispute resolution practitioner, and the work he or she has already done with the parents, to help the court identify at the earliest possible stage the real issues which need to be determined?

Finally, I would like to echo the sentiments expressed last night by the Hon Richard Chisholm and encourage a steady-as-she-goes approach while we assess the impact of the 2006 reforms.