



Shared Parenting Council of Australia

Federal Courts Branch
Australian Attorney-General's Department
Robert Garran Offices
3-5 National circuit
BARTON ACT 2600

Improving access to justice – a better framework for federal courts

Consultation on Review of Future Governance Options for Federal Family Law Courts in Australia

The following is a submission by the Shared Parenting Council of Australia (SPCA) in relation to the consultation requested as part of the above Review.

*The "Review of future governance options for federal family law courts" prepared by Mr Des Semple and the Attorney Generals Department proposes a restructuring of the family law court system to provide a single administration, while at the same time allowing the two principal courts, the FCA and the FMC, to retain a large measure of their present judicial autonomy. **The main reasons for such a restructure are claimed to be improved efficiencies and financial savings.***

The report of the Review recommended that a single Family Court should be established headed by the Chief Justice of the Family Court Australia ("FCA"); with two separate judicial Divisions reporting to the Chief Justice, but with a single administration including corporate and financial services.

The Attorney-General said he wanted the "faster, cheaper and less formal" practices of the Federal Magistrates Court to become part of family law culture, and described Mr Semple's model as "a reverse takeover".

The Chief Justice has stated as recently as this week that additional funding is required. Her comments about the lack of resources, judges and staff is a reasonable assessment as it appears that the backlog is growing and that court delays are not appropriate.

- The SPCA does not favour any erosion of the Federal Magistrates Court (“FMC”) operational activity.
- The SPCA has concerns that a single administrative structure would not be able to manage two separate legal jurisdictions and make the required savings. The present model is financially unsustainable in this respect.
- No thought has been given by any of the submissions to the review to consider a radical overhaul and to implement a single commission approach similar to the efficient operation of the Workers Compensation Commission (WCC) in NSW. The Chief Justice comments that the Federal Magistrates are already considering a split within the court due to specialisation of family matters thus creating three separate jurisdictions under the new system.
- We have concerns that no effort has been made to deal with the fundamental issues of improving service levels and producing better outcomes for applicants (and therefore children) to the court.
- Although not directly part of the review, the SPCA has grave concerns about the operation and delivery of judgements of the Family Court in Western Australia, and the lack of any controls and accountability in respect to proper process and compliance in relation to delivery of judgements in accordance with the new Act. We have numerous instances of cases such as the Russel Wood case, the Paul Harrod case and McJannet case where the Family Court of Western Australia has not delivered or is not delivering proper outcomes.
- The restructure, if adopted, will pose a serious risk to the former FMC (to be renamed the “General Division” of the combined court). In general, the culture of the Federal Magistrates, particularly with the delivery of a new Family Law framework in July 2006 has been to produce very timely outcomes for litigants. A merger would be a backward step, reducing these effective outcomes.
- If the gains made by the FMC are lost, any restructure will be accounted a failure

The SPCA agrees to a large extent with the Lone Fathers Association of Australia (LFAA) that a more fundamental problem with the existing family law system is the expensive and lawyer-driven culture in the FCA. This coupled with the leisurely pace within the court process has created a culture that places more emphasis on the pomp and circumstance of the court than on delivering timely and compassionate outcomes to families.

Despite the attempts of the Family Court Chief Justice to improve the processes of the FCA, she has been unable to install a sense of immediacy and urgency.

How will this proposed restructure make any appreciable change to the Family Court? We contend that the concept of merging the Federal Magistrate’s Court into the Family Court will not affect the desired outcome.

It therefore follows that the more agile Federal Magistrates Court, in family matters, have virtually made the Family Court somewhat redundant.

As such, the SPCA would recommend that the Family Court of Australia in its current form be closed down and:

- a new entity be established to deal with Family matters,
- the Federal Magistrates Court be further expanded and resourced; or
- another alternative is consideration of a 'Commission' approach

At the end of the day the Family Court's operation should solely for the benefit of litigants and achieving appropriate outcomes for parents who need the Court's assistance to resolve matters relating to children and property after separation.

There has been much discussion in the Report about a single entry point.

The creation of a single registry has already created this single entry point, so it is redundant to suggest that it does not currently exist.

What other savings are there? Have these been detailed? Has there been consideration given to a properly conducted audit of the Family Court, to determine its efficiencies or areas for improvement.

Questions Raised by Attorney-General's: Answered

1. If there is to be a single Family Law Court, what should it be called?

Federal Children's and Property Court (**FCPC**)

Or

Federal Parenting and Property Court (**FPPC**)

To reflect the primary roles this court has in dealing with:

- Property
- Immigration
- Contact
- Contraventions
- Child support

2. What new procedures should be adopted in the new court to ensure the timely, efficient, and informal resolution of matters? Should these be different depending on the division in which the matter is dealt with? If so, how?

- The delays in obtaining initial orders in a children's family matter is still an issue facing most people as they enter the court system. Too little action taking too long. New procedures dealing with cases where contact is withheld should be considered for fast tracking in the making of interim contact orders. This could be done by allowing more junior court officers or Registrars to effect interim decisions.
- The Federal Magistrates/General Division should be given additional powers to deal with access cases where one parent delays proceedings and in general thwarts

contact efforts through contraventions. Further investigation should be carried out as to the effectiveness or otherwise of contravention proceedings.

- The SPCA supports the idea of a new Child Orders Enforcement Authority working with the court to deal specifically with contact contraventions.
- Additionally the SPCA supports the extended cooperation from local State police to deal with enforcement of parenting orders through the issuance of “on the spot fines”, similar to a traffic fine, for breaches of contact orders. In the first instance a parent should be able to contact their local Police who would, at the very least, make contact with the errant parent who has breached the orders.

It is hoped that this would be sufficient, in most instances, to encourage the recalcitrant parent to facilitate contact as outlined in the orders. In any situation where there is a likelihood of family violence or any other valid reason for failing to maintain contact this would be considered by the local Police at the time.

- Current practice directions and rules must be carried over to the new body to ensure that it maintains the Federal Magistrates culture.
- Publishing of all judgements should be a standard practice and follow the process that has been used in the New Zealand Family Law system for some years.
- Statistics from the Case Management System should be available on a quarterly basis detailing:
 - case performance,
 - numbers of applicants and
 - case outcomes
 - an indication of the number of day’s contact granted to each party.
- A standard judgement’s “template” is required with proscribed meta tag data fields will enable specialised search technologies to return better search results.
- Additional Case Management Practices should be documented for the purpose of effectively assisting people to understand what will happen at court, what is expected from them, how best to prepare, how long it will take and the likely cost.
- The cost of transcripts of court proceedings should be markedly reduced and made available in recordings, rather than transcripts.
- Personnel from domestic violence crisis services should not be permitted in the Court to speak for one party, unless a case of significant gravity has been proved against the other person.
- There should be an immediate and concerted effort to overhaul and review the credentials, practices, and procedures of independent Family Report Writers. A number of these reports have come to our attention as being biased and inaccurate representations of events. Judges and Magistrates often rely on these reports to make decisions that affect a child’s relationship with their parents day to day and in the longer term. The evidence we have to date is that some of these reports are substandard, leading to inadequate contact outcomes, significant delay and further litigation.
- Further consideration should be given to recognising Mackenzie Friends to assist Self Represented Litigants (SRL’s).

- Penalties for non compliance to Pre Trial procedures and for legal representation delays.
- A single compliance requirement.
- Directions to file in one court
- Have summary documents prepared to avoid the Judicial Officers having to read through hundreds of pages of affidavit material.
- A move to a full online environment for case management and documents for litigants.
- Modify the court rules to allow an applicant to apply directly to the court if there has been no contact with the children for a period of 12 weeks.

3. What kinds of matters should be heard by each division?

Contact and interim order hearings, enforcement issues, contraventions and general property matters (in separation) hearings should be dealt with summarily by judicial officers in the Federal Magistrates/General Division.

Alternatively the Commission approach suggested above, could review these matters. We note that the WCC (Workers Compensation Commission) in NSW has been entirely successful delivering expedient results for applicants in compensation matters.

Arbitrators are allocated via a web based calendaring system and largely operate from their own premises, attending the Commission for allocated activities.

Currently the pool size appears to be the determinant of where cases go. Cases \$2 million and above appear to have been dealt with in the FCA. In 2005 the threshold was just \$750,000.

The SPCA recommends all cases are lodged in one court only.

A review of the case file will determine the level of expertise is required and the potential length of the case. If the case involves significant time resources or is more complex, then it could be dealt with by specialist judges within the organisational structure. It would process in the same way but through a different judicial team.

4. What should judicial officers of the General division of a single Family Law Court, and of the proposed new division of the Federal Court, be called?

From the couching of the question it appears the indication is that a “General division of a single family Law Court”, appears almost a certainty.

The transfer of non-family law judges to the Federal Court is expected to cause friction, given the vast difference in qualifications and experience.

We would expect that a separation of title between divisions would create a hierarchy and a perception of lesser Judicial Officers.

Therefore our view is that there should be no discrimination in title, with all sitting bench judiciary being given the title of Judge. From our attendance at hearings, most Judicial Officers are already addressed as “Your Honour”. A respectful title that is appropriate in the setting.

5. What further court services are needed to achieve early, non-adversarial resolution of issues?

The Federal Magistrates/General Division should be given additional powers to deal with contact cases, working in collaboration with a new Child Orders Enforcement Authority.

Legal aid made available should be provided on a fair and equitable basis for both parties involved. It is an issue currently that where one party is granted aid the other is not.

Self Represented Litigants are increasingly using both court facilities. The court should consider and extend the formalisation of the “Mackenzie Friend” concept and allow experienced lay persons to sit beside litigants. In a number of cases this is done, although it is very much at the discretion of the Judicial Officer.

An accreditation could be awarded to organisations with specialist “Mackenzie Friend” pools available such as the SRL-Resources group; a group working closely with SPCA.

SRL’s should be able to file online. Solicitors have an unfair advantage with access to online filing.

History and Background

The Attorney-General’s Department, assisted by consultant Mr Des Semples, conducted a review and prepared a report on the delivery by the Federal Courts of family law services. The report of the review, “Future Governance Options for Federal Family Law Courts in Australia - Striking the Right Balance” provided a blueprint for achieving a more integrated and efficient Family Court system, and proposed changes to the ways that general federal law services are delivered.

The Federal Magistrates Court was established in 1999 in order to change the culture of the family law system, by providing “a quicker, cheaper option for litigants”. It has, to a very large extent, achieved that result. The family law system is now in a consolidation/rationalisation phase. It is important that this phase in the development of the family law system remains on the path of continuous improvement.

Review Terms of Reference and Recommendations

Submissions made to the Review

All submissions to the Review, except one, expressed a wish to see a *single court* with all Judicial Officers appointed as Chapter III Judges. The exception was the submission from the Federal Magistrates Court itself. The Federal Magistrates Court was very clear about its opposition to a single court.

The report recommended that a single Family Court should be established, headed by the Chief Justice of the FCA, with two separate Judicial Divisions reporting to the Chief Justice, but a single administration (including corporate and financial services).

The Terms of Reference for the Review

The Terms of Reference for the Review were to advise on:

1. Governance options to
 - (a) Achieve a more integrated family law system, while
 - (b) Continuing to tailor the system to the nature of the work
2. Structures and processes necessary to improve effectiveness, efficiency, and integration
3. Possible changes in structures and reporting relationships
4. Administrative efficiencies, and
5. Possible impact on the other administrative and judicial structures.

Family law culture

The SPCA and affiliate organisations has been intimately involved in making changes to the family law and child support regimes through submissions and involvement with a wide range of Government initiatives.

The Shared Parenting Council fully supported the report of the House of Representatives Standing Committee on Family and Community Affairs, entitled *Every Picture Tells A Story* (“**the Report**”) and whilst we were disappointed that a presumptive equal parenting arrangement was not accepted by that committee, we did however agree with the overwhelming majority of its findings and recommendations and congratulate the members on their patience and endurance through the overwhelming public response to their inquiry and also for their clear demonstration of an extensive understanding of the circumstances that may befall everyday Australians who end up in the Family Court system.

The SPCA has been involved in numerous committees and had a representative position on ten Child Support task forces.

The SPCA has members in courts daily, around Australia, assisting Self Represented Litigants and we have a large resource Portal at www.familylawwebguide.com.au that is receiving in excess of a million hits a month.

The SPCA holds a position on the CSNSEG (Child Support National Stakeholder Engagement group) which deals with issues around Family Law and Child support.

We are therefore well placed to comment on proposed changes to the system and the current Family Law culture.

The Chief Justice has said that she would like to see all Family Court judgments published.

We supported this initiative in our earlier submissions to the HORISP committee. Within judgements, it is often difficult to see the specific reasons for a decision as the decision is buried in various references to other matters and the courts do not use a standard "Meta Data" document format to publish judgements. This has been the subject of various requests made on the court.

We recommended following the New Zealand process which has been in operation for some years now.

It should be of great interest that the Family Court in New Zealand has decided to publish all Family Court decisions.

The source and detail is listed at:

<http://www.stuff.co.nz/stuff/0,2106,2908715a11,00.html>

16 May 2004

Family Court to put rulings online
By DONNA CHISHOLM

Family Court decisions may be available on a new website as early as next month.

Principal Family Court judge Peter Boshier said the site would go online within a few weeks and all judgments would start to be posted - with identifiers removed - as soon as practicable after that.

More care would have to be taken to remove identifying information in small town cases. "The small town aspect is an issue but if we are to have proper transparency, someone in, say, Taihape has to be able to go to the website and see what the court in Taihape is doing over custody cases," said Boshier.

"I would naturally be concerned if because of smallness, people's details are identified more easily. But we have to appreciate that the smaller the place, the more people are going to identify someone they might know."

He said although judges often wanted their decisions made public there was no mechanism to do it.

"Judges are already opening up the process by more liberally making decisions available. They are taking the initiative and I am encouraging that."

Family Relationship Centres are functioning as an important mediation and information resource which compliments the judicial institutions of the family law sector.

The latest statistics suggests an 18% reduction in Family Court cases is the typical impact of the centres. This is counter to the findings in Mr Semple's Report.

Shared parenting has been firmly established in the public mind as a desirable objective and the Child Support Agency have established that over 20% of Child Support cases have the father as the primary carer. Further statistics will be following as an addendum.

New Levels of care or care bands have been determined with 5 categories: Below regular (0 - 51 nights), Regular (52 - 127 nights), Shared (128 - 237 nights), Primary (238 - 313 nights), Above primary (314 - 365 nights)

With the vast majority of CSA cases now falling into or above regular care (50,900 receiving parents whose payer has regular care) this indicates a strong trend to shared parenting being accepted by the community at large.

Need for a coherent vision

In order to understand the purpose of the various Courts in the Family Law system, a clear and coherent vision statement is required.

There is sufficient information available for such a vision to be developed and publicised, and we would be pleased to make a contribution.

It is important that the Government itself embrace and endorse and vision developed.

The need for reform, and who would benefit

What is needed?

The question arises as to what further reform (if any) to the family law court system is actually required.

Is the supposed “duplication” of activities between Courts complained of in the Review really of major proportions?

Australia already has a “superior (family) court” in the form of the Family Court of Australia, and a reasonably effective appeals system. The two Courts concerned already use a range of standardised forms.

Who would benefit from the proposed reform?

It is hard to see what benefits would be available to the end user: couples and parents.

On the face of what has been suggested, there is little benefit to separating and separated spouses, parents and their children.

The convenience of the legal profession should be seen for what it is, namely a secondary issue.

Perceptions by the public

The world has changed in significant ways in recent decades – and many people now believe that it is necessary for the Family Court system to meet the same standards of efficiency and accountability as any other public institution.

The establishment of a “stakeholders” group to monitor activities and changes in the courts would help greatly in achieving the above objective. This group already exists at CSNSEG.

Much more use and interaction with the existing CSNSEG group which is run by FaHCSIA should be an immediate aim of whatever new entity is developed.

Information required for assessments

Before any proposed reforms to the system are further pursued, there should be a careful analysis of the effect of the Family Court of Australia's appeal decisions on Federal Magistrates Courts decisions and approach.

Statistical information on actual decisions made by the Family Courts on shared parenting time since the reforms of 2006 should be available by now, and it is a serious criticism of the Family Court that they have not yet been released.

Our feedback from parents is that the actual processing of details in the court is in many a case inherently inefficient. How many, we are unsure as there are no real statistics.

There are cases with litigants having written enough affidavits, financial statements, applications in a case, Responses and more over a four year period and not yet getting a trial.

There is no one in the system who has actually read the documentation. So when they appear before a Registrar, JR, or Judge there is no summary of the material, preventing rapid understanding of the material.

This repeated effort causes significant wastage of court time and a backlog which causes emotiveness to escalate in parties thus exacerbating and intensifying hearings.

The collation of many of these issues from users in the forums on our web site is commended.

Workloads of the courts

Utilisation of resources

The Report says that *"there is a widespread agreement that the current arrangement does not enable the most efficient utilisation of the resources provided to the family law system"*, and that *"data collected by the review supports this view"*.

It goes on to say that, *"the combined future levels of expenditure will, under current arrangements of the Family Court and FMC, significantly exceed their annual allocations and are unsustainable for future years"*.

This presents a problem at the present time when Government revenues are rapidly contracting because of the world financial crisis and subsequent economic recession.

The statement is made in the Report that, *"Allocation of judicial support resources, in particular family consultant services, has not reflected fully the shift in workload and has been a source of tension in the Family Court and Federal Magistrates Court"*.

The two courts have attempted to establish when matters should be transferred from one court to the other – in a "de facto" division of responsibilities.

It is clear looking at the day to day case loads in the Federal Magistrates Court that delays are becoming more significant. In particular, cases where contact has groundlessly been prevented by one parent should be dealt with within a few weeks to at least get contact re-established.

A fuller explanation should be provided of the basis on which contact has been denied.

Definition of “complexity”

Agreement has yet to be reached between the Federal Magistrates Court and FCA on how the degree of “complexity” of cases might be defined. There is a question, under the proposed new rules, as to who would or should have the power to decide such matters in practice.

Financial aspects

Basic information has been provided in the Report on expenditure estimates. More evidence, however, needs to be provided to support the claim that no reductions in present expenditure by the courts should be contemplated.

A key point is that changes should not be primarily about saving money.

It should be about establishing the correct approach to the handling of family law issues, in order to assist Australian families in the best possible way. Any savings should go to improving waiting times, which are extensive.

Proposed role of the Chief Justice

It is proposed in the Review report that “*The Chief Justice would manage across both divisions and not be directly responsible for either*”. There would be an Executive Officer responsible for transparent and equitable mechanisms for allocating judicial support resources. Some matters may be referred back to Family Relationship Centres for resolution where appropriate.

The proposed Superior and Appellate Division of the Family Court would have a separate head – that is, not the Chief Justice.

Explanation is needed as to how a judicial division of the court dealing with superior and appellate matters could operate with the Chief Justice not being a member of it.

The Family Court

Legal practitioners have traditionally had an overly influential role in the conduct of the affairs of the Family Court, and there are frequent, unnecessary postponements in proceedings without penalties being imposed on those responsible.

It is a matter of concern that the Court has in recent years failed to meet any of its key performance indicators.

The approach of the Court appears to be overly focused on the pomp and ceremony of the law rather than the efficiency of proceedings.

A fundamental problem is that the Court seems in many cases to be either unable or unwilling to uphold its own orders and deal with contraventions in an efficient and transparent manner.

It is clear many breaches of orders are not dealt with in a timely manner and filing is often not done due to the "Reasonable Excuse" provisions which are often "imaginative" to say the least.

Further the cost of transcripts of proceedings is far too high.

Solicitors pursuing monetary releases in hearings before a JR wherein the costs for running the application equate with the money released, out to be restrained. In effect if the money is going straight into a lawyers pocket, it should not be pursued in this fashion.

Loughnan JR at Sydney has on multiple occasions challenged solicitors in regard to this behaviour. He appears to have no means to cull this other than ridicule. Delays caused by unprofessional services are a concern. Solicitors not toeing the line ought to be noted and a point system reflecting their effectiveness in respect of filing on time could prove a motivating factor and provide a guide as to who delivers.

A recent case which became a 174 day hearing and costs into the \$5 to \$6 million is an example of such inefficiencies. The Judge who ran this hearing was heard to reprimand counsel and was to include comments in his yet to be released judgement.

Another case about a well known person consumed about 40% of the pool of assets. These cases occupy the major part of Family Court resources.

An efficiency analysis of the activities of the Court is sorely needed and long overdue. This would enable some decisions to be made as to how cases like the above may be handled.

The Federal Magistrates Court

The Federal Magistrates Court has established a reputation for efficiency and agility since its commencement in 1999. It has been able to do this, in part, because it was established free of any dependence on pre-existing tradition or culture.

The Magistrates "seem on the surface" to have grasped the concepts and directions embellished in the previous Attorney Generals "Explanatory Memorandum" on the new Family Law Act.

Any problems with this Court are largely attributable to shortage of resources - the Court being typically "time-poor." Certainly, lists are extensive and often parties fail to attend, suggesting some better case management system could be deployed such as SMS reminders etc.

The question is:

Would merging the courts in the way proposed in the Report lead to an undesirable and untenable erosion of the culture of the Federal Magistrates Court?

The Federal Magistrate's Court believes that it would.

Federal Magistrates noted (unanimously) that *"to change the present structure is to place at risk the very essence of the culture that has made (the Court) successful"*, and that *"the morale of the court would be destroyed"*.

The SPCA agrees and suggests it is essential that the views of Federal Magistrates be closely examined, fully understood, and respected.

The Report stated that *"we do not want to damage the culture of the Federal Magistrates' Court"*. However, will the necessary safeguards be in place to ensure the achievement of that objective.

The only practical way to ensure the Federal Magistrate Court's culture is preserved is to create a completely new entity and induct Judicial Officers to deal with the required program of work.

Examples are given below of the performance and practices of some of the Federal Magistrates, as noted with approval by those involved in particular cases:

Example 1

"I have had the pleasure of watching (FM A) on a few occasions.

"He always gives the guy off the street a fair chance; he also explains the options and the judgements to them.

"He has also made some courageous judgements of late."

There are many more examples listed at:

<http://www.familylawwebguide.com.au/forum/pg/forumview/misc/71>

Where a person represents themselves, Magistrates generally make an effort to assist the person. Although some Family Court Judges are noted for doing so also so it cannot be said that as a generalisation the Federal Magistrates have that accolade alone. It appears that Federal Magistrates have a more appreciation of the "every day" case.

The Federal Magistrates Court believes that much of its strength lies in its capacity to do work in a broad range of federal law - not just family law. This consideration should not be disregarded.

Dual appointments of some Federal Magistrates/Judges to both the Federal and Family Courts would allow this benefit to continue to be received.

A substantive policy issue for the Family Court system

Enforcement of child contact orders

The Family Law Council in October 2007 said that:

“The Government establish a child orders enforcement agency, or in the alternative that the government provide additional specified funding to enable the State and Territory legal aid commissions to assist parents to bring applications that serious contravention to parenting orders before the Family Courts”.

The Child Orders Enforcement Agency would, where a complaint has been received that access is not been provided (or not been provided on a satisfactory basis), examine and evaluate the case and provide prompt advice to the Federal Magistrate/Judge dealing with the case.

In order to make maximum use of the staff and other resources available within the APS, it could be appropriate to establish the Child Orders Enforcement Agency at least initially as a semi-autonomous area within the Child Support Agency.

We support the use of existing staff from the Child Support Agency engaged in investigation could be seconded to duties in the Child Orders Enforcement Agency area. This would create a capability for establishing whether access has been provided in accordance with court orders in particular cases.

The Child Orders Enforcement Agency would compile and maintain a database on amounts of access time specified in court orders and parenting agreements and amounts provided in cases where there was a dispute, and would organise this information in a way which would permit it to provide useful advice to any enforcement process that might be required.

Possible role for the CSA

The CSA holds a considerable amount of information in relation to court-ordered access and access actually provided, as part of their current activities in assessing child support obligations, and would be able (if authorised to do so) to assist also in cases where there is non-compliance with access.

As part of this, some surveillance staff who currently investigates failure to pay child support could be used to investigate failure to comply with access court orders.

The Vice President of the SPCA and Secretary SPCA have been involved with the CSA since the concept was first mooted, has had recent meetings on these issues with the Minister for Human Services and Child Support, the General Manager CSA, officers of FaHCSIA, and the Chief Federal Magistrate.

Possible role for the Federal Magistrates Court/General Division

The present Federal Magistrates Court (proposed by the Review to be rebadged as the General Division of the new Family Court) requires additional powers to be able to effectively deal with cases of non-compliance with child access orders.

Both federal and State police should have power to implement access enforcement orders made by the Federal Magistrates Court/General Division.

As stated at the beginning of this summary the SPCA believes local Police have a much better rapport with community members and may well be in a far better position to deal with contravention matters in a more timely and expedient manner. They are certainly quick to respond to other domestic and family matters but do not phone or attend to assist in any breach of contact orders.

Systems in other countries

Of the systems in other countries examined, the Danish system stands out in particular. While that experience cannot be directly translated to Australia because of constitutional differences, there are many features from the Danish system which could be adopted.

As Professor Parkinson has pointed out:

“First of all, initiating action (in Denmark) to resolve a conflict problem is simple, and does not involve any need for legal representation. Because there are no forms to fill in, there are no procedural hurdles to overcome, and nor are there impediments for people for whom English is not the first language or who have literacy problems. Secondly, the system is not adversarial ... Thirdly, the system is quick. Contact disputes have to be resolved speedily ... Fourthly, it is cheap. The system is free to users ...”

The Danish experience demonstrates that informal processes - that is, office-based rather than court-based work best in this area. For constitutional reasons, a Child Orders Enforcement Agency in Australia probably could not make decisions which have immediate legal force as can be done in Denmark. However, this need not be a problem. It is envisaged that the Child Orders Enforcement Agency would make recommendations, which, in the majority of cases, the Federal Magistrates Court/General Division would formalise into legally binding decisions.

It is noteworthy that in Denmark, decisions in relation to access are made by a court whose specific role and function is to enforce the orders made by other courts. A section of the FMC/General Division could be proposed to carry out this function in relation to access in Australia.

Other areas of the family law system

Family Relationship Centres

The full “roll-out” of Family Relationship Centres (“FRCs”) throughout Australia has only recently been completed. It is not yet possible to be definitive about what the effects FRCs have on results achieved and what the impacts of those results will be in the future. Reports to the present have been mixed.

The claim in the Report that FRCs have not significantly reduced the number of applications filed, needs to be investigated further.

Our figures show a reduction in court matters of approximately 18%

Need for monitoring

The recommendations of the Report intimately involve the interests of mothers, fathers and children as well as other members of families. Parents and interested groups will need to closely monitor developments at every point.

There are questions about both the form that legislation may take and the timetable for implementation. There will be severe criticism of the proposed changes to the court system if the ongoing concerns of parents and other family members are not properly taken into account.

It would be very short-sighted for the Government to seek to limit and/or make more difficult the necessary, close involvement by interested groups in this monitoring process.

The SPCA have been providing valuable advice to successive governments since 2002.

It is able to make a contribution to every stage of the legislative process, and has over many years played an especially significant role in putting forward new and innovative ideas.

We look forward to be involved with any detailed determinations and directions for a single court system, a Commission or the creation of The Child Orders Enforcement Agency.

Yours Sincerely

W.R Butler
Executive Secretary

Speaking with ONE VOICE on Family Law Reform

The Shared Parenting Council is a non-profit association that was established in September 2002 as a result of much communication and discussion amongst various groups and both gender individuals across Australia who share the ideal of achieving legislative reform to Family Law in Australia. These include Family Law and Related Issues organisations, Church Groups and Service Organisations, affiliated and involved in the Council.

The Council was established to create a single unified representative lobby group whose main aim and purpose is to seek to enshrine in Family Law in Australia, a child's fundamental human right to share an equal opportunity and relationship with both their mother and father following family breakdown, separation or divorce.

Affiliated organisations have representatives on the Council and those groups include:

- Australian Family Association
- Australian Institute of Men's Studies
- Conservative Council of Australia
- Contact Father's Coalition
- DIDS
- Dads Australia Inc
- Dads Landing Pad Inc
- Dads on the Air
- Lifeline WA
- Family Council of South Australia
- Family Law Reform and Assistance Association Inc
- Family Law Reform Association NSW Inc
- Family Law Reform Association QLD
- Fathers After Divorce
- International Council for the Status of Fathers
- Joint Parenting Australia
- Lone Fathers Association Australia (National)
- MATES
- Mens Advisory Network
- Men's Confraternity
- Men's Information and Support Centre
- Men's Help Information and Resource Centre (NSW)
- Midwest Men's Health Inc (WA)
- Nuance
- OzyDads
- Reliable Parents Inc.
- The Australian Separated Fathers Network

Michael Green QC - Patron Sydney

- Elected President SPCA 02/2004 and Patron 2008
- Admitted to the New South Wales Bar in December 1975.
- Practised at the private Bar for four years mainly in criminal and common law and in the newly created Family Court of Australia.
- Joined the NSW Public Defenders Office in February 1980 and for sixteen years specialised in criminal law. He appeared in all criminal jurisdictions from Local Courts, District and Supreme Courts, to the NSW Court of Criminal Appeal and High Court of Australia. He became a Queens Counsel in 1988.

- In 1996 Michael returned to the private Bar and for the next four years conducted an appellate practice in the NSW Court of Criminal Appeal and High Court of Australia. Interspersed with those cases were appearances in the Wood Royal Commission into the NSW Police Force.
- From July 1998 to June 2000 he worked with the Legal Representation Office in appearing for the families of the victims of the Thredbo landslide disaster of 1997.
- After the Coroner's judgement was handed down at the end of June 2000, Michael retired from the Bar to further his passion in mediation and family relationships.
- He is the principal of Michael Green Mediation, a private mediation practice specialising in family conferencing, mediation, life skills programs and local government, workplace and commercial disputes

Wayne Butler – Executive Secretary Shared Parenting Council of Australia - Central Coast NSW

- 9th year Involved in shared parenting and family law reform.
- 5rd year as executive secretary of the SPCA
- Father of 9 year old boy
- Extensive involvement with CSA review and various CSA working groups such as the forms reform.
- Preparation of submissions to Government in 2001, 2002 and HORISP review.
- SPCA attendee representative on CSNSEG working committee
- Presented evidence before the HORISP Committee public hearing in Gunnedah and Wollongong.
- Preparation of technical submission to working party
- IT background and currently working in a senior IT role within NSW Government. Worked also on projects for the Workers Compensation Commission, which has transitioned from an adversarial court based system to an Arbitrational system.
- Participated in various workshops within Family Law court reviews in Parramatta, Sydney
- Represented in Family Court
- Self represented in Federal Magistrates court
- Self represented in CSA matters at local court
- Worked on Self Represented Litigants papers on early development (DCJ Faulks)

Ian Tuit – President Sydney based

- Shared parenting father of two children for 16 years
- Family law consumer
- Advocate for family law reform

Edward Dabrowski – Federal Director Perth based

- Elected Federal Director SPCA in December 2003
- Media Director, radio commentator and spokesman for SPCA
- Father of two children; parenting a boy (9) and girl (11) in a shared parenting arrangement
- Advocate for shared parenting, children’s rights and parental rights
- Represented in Family Court culminating in written submissions made to HORISP.
- Presented evidence before the HORISP Committee Public Hearing in Joondalup, Perth WA
- 8th year of involvement in the Shared Parenting Movement and Family Law Reform
- Advocate for Fatherhood - concerned with male spirituality, male rites of initiation into manhood, improving academic and life-based outcomes for boys
- Family First Party Candidate for Collie-Wellington District in the Western Australian State Election 2005
- Member of World Wide Kresy Siberian Interest Group for families of Polish East European Migrants. Involved in family searches and reunions after separation resulting from mass deportations of refugees during the Second World War.



Michael Green



Wayne Butler



Ed Dabrowski