

Recent Changes and Developments in the Family Court

Family Law Forum
Thursday 8 December 2005

Deputy Chief Justice Faulks
Family Court of Australia

What's Changing in the Family Court?

- National Rollout of the Children's Cases Program
- The Child Responsive Model
- Family Violence Screening Project

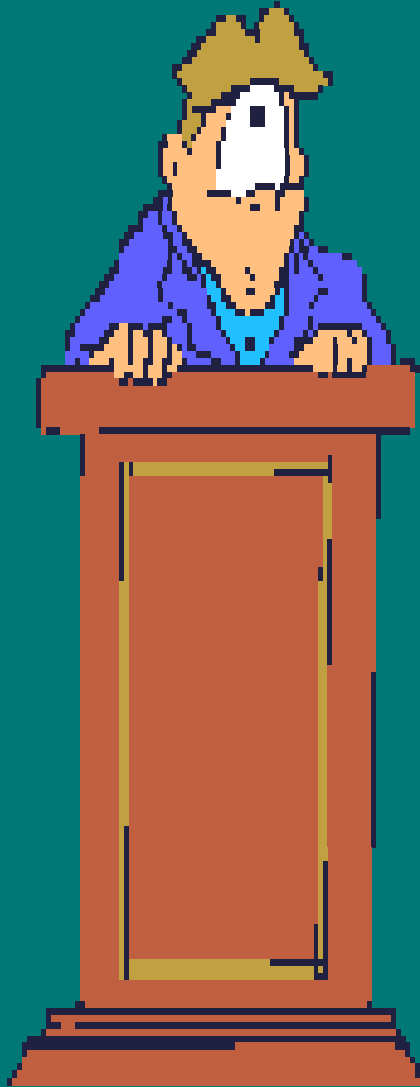
The Children's Cases Program

- History
- A less-adversarial process
- Revolution or evolution
- To be facilitated by legislation
(Exposure Draft of *Family Law Amendment (Shared Parental Responsibility) Bill 2005*)
- Affirmed by government



Key Features of CCP

- Not suitable for Magellan matters, Hague Convention applications, applications for contempt or contravention but includes cases involving drug abuse and family violence
- Trial commences when the case first comes before a judge
- On the first day all parties are administered an oath
- At the beginning of the trial the judge identifies the current arrangements for the parenting of the child(ren) and the proposals of each party specified in answers to a questionnaire and any material non-contentious facts



- The judge resolves what the contentious facts and issues are that are material to the proposals of each party
- No objections are to be taken to the evidence of a party or a witness or the admission of documents, photographs, tape recordings etc other than on the grounds of privilege, illegality or other such serious matters
- The judge determines the order, sequence and manner of questioning by the parties. It is entirely in the discretion of the judge whether cross-examination is permitted and to what extent

- The judge may speak with and address questions to the parties, whether they are legally represented or not
- The judge may make findings in relation to issues before the end of the trial and this does not provide a basis for disqualification
- Judgment may be given on discrete issues as the trial proceeds
- The judge will determine the evidence to be given, the method of receiving it and the witnesses to be called
- The judge may direct the parties (or any other appropriate person) to make inquiries and obtain evidence on any issue the judge determines is relevant to his or her decision, irrespective of what the parties contend

Evaluation

Internal

- Resources – Can we make it work?

External

- Professor Rosemary Hunter and Dr Jen McIntosh – qualitative assessment
- Comparison with control group



Outcomes to Date

Initial results are positive:

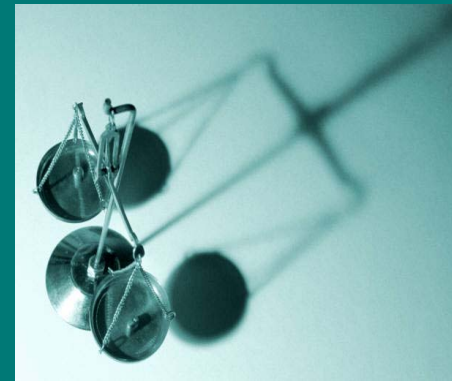
- Cases are brought before a judge sooner
- Reduction in the delay to trial is beneficial for children
- The trial length of CCP cases is consistently shorter
- Evidence is limited to the issues identified as relevant and genuinely in dispute

These features reduce costs for the parties

CCP and Natural Justice

CCP does not deny the parties' right to decision-making that adheres to the fundamental principles of natural justice and procedural fairness:

- The right to an unbiased and impartial decision-maker
- The right to be heard



CCP and Natural Justice

CCP while adhering to fundamental principles of justice and procedural fairness puts the parents' dispute into a framework that is:

- More child-centred; and
- More future focussed

The Voices of Children (at present)

- Interview of the child(ren) by counsellor or expert
- Section 100A
- The child representative



Whose decision is it anyway?

Why should an eight year old have to decide what the adults cannot?

Why should a child not have a say in what is going to happen?

Family Consultants

- Family Relationship Centres
- Developing a new role for mediators and counsellors in the Family Court and the Federal Magistrates' Court
- Pilot of new Child Responsive model in Melbourne



Child Responsive Model

- For children's matters only
- Issues of family violence can be identified early, risk assessments undertaken and the Family Consultants ('FCs') follows the matter through the CCP process
- Intake and assessment interviews adhere to the guiding principles of the Court's Family Violence and Cultural Diversity Strategies
- Separate interviews with both parties in recognition of family violence concerns and the need to effectively engage with clients

- If appropriate the FC conducts a preliminary Family and Child Conference in which they interview each child separately and with their siblings. These are conveyed to the parents to assist them to focus on the children's needs
- Preliminary report prepared to assist in settlement where possible and/or to inform the Court about specific family issues including family violence

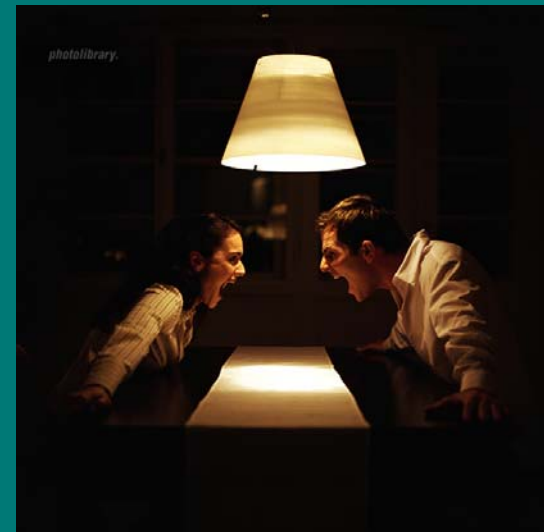


- Feedback interview occurs thereafter but prior to commencement of CCP
- Close working relationship with the parties, the family and the judge
- No privileged counselling
- Report based on continuing knowledge of the family
- Post-order involvement to reinforce the needs of children, to explain orders to children, to assist in the implementation, and to facilitate referrals to external support services

Family Violence

- Family Violence is defined in s 60D of the *Family Law Act 1975* as

Conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes any other member of the person's family to fear for, or to be apprehensive about his or her personal well-being or safety.



The Family Violence Committee developed a more comprehensive description as part of the Family Violence Strategy. The Court has adopted this description:

Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family.

Family Violence Strategy

- The Family Court has had a formal Family Violence Policy since 1993
- In 2003 the then Chief Justice established a Committee to develop the Court's strategy
- The Strategy has a series of guiding principles and key action areas – developed in consultation with external stakeholders
- The Strategy has also informed the development of new models such as CCP and the Child Responsive Model

Guiding Principles

1. Primacy of Safety
2. Recognition of the Impact of Violence on Children
3. Recognition of the Diversity of Court Clients
4. Adoption of a Risk Assessment Approach
5. Importance of Information Provision
6. Community Partnership Approach
7. Importance of Development Programs

Key Action Areas



1. Information and Communication
2. Safety
3. Training
4. Resolving the Dispute
5. Making the Decision – this area impacts upon the preparation of Family Reports and Case Management

Family Violence Screening Project

- Acknowledgment by Court of prevalence of family violence
- Seeks to improve information provision, screening and risk assessment procedures for clients – in line with Guiding Principle 4 of the Strategy
- Trial being run through Brisbane Registry which commenced in September 2005 which focuses upon early intervention and linking clients to relevant support systems or further risk assessment



Key Features

- Use of pamphlets to inform clients of the Court's policy in relation to family violence
- Inviting clients to contact a dedicated phone number to discuss safety concerns prior to attending Court
- Training of Client Services staff to respond to client concerns regarding personal safety
- Referral of calls to Court Mediators as appropriate
- Development of safety plans for clients concerned about safety

Outcomes

The evaluation of the pilot which is yet to occur will shape future practices in relation to nationwide screening

Risk assessment principles are not adequately addressed in the pilot and will require further development in order to attempt to prevent further violence occurring as opposed to attempting to predict future violence

Final orders?

- How final can orders be?
- The end of conflict - the beginning of a new life
- Cooperating about the kids is a “business” process



Final Words

Democracy is the worst of all forms of government –

apart from the rest!

A federation is the worst form of democracy –

apart from the rest!

That said

It is fundamentally absurd that there are mutually exclusive and competing State and Federal jurisdictions about children.